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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 9, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent.

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

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Page   1  , July 9, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ALI, FARIDA, SUSAN B., RIZWAN & ADNAN MAHBOOB, VC 96-S-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.2 ft. from rear lot line and addition 4.0 ft. from rear lot line. Located at 9482 Gauge Dr. on approx. 15,849 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((16)) 82. (OUT OF TURN HEARING GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Kevin Ludwig, 848 Loxford Terrace, Silver Spring, Maryland, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996. Ms. Langdon noted that the BZA denied a previous variance request in February 1996 submitted by the applicant. She said this request involved variances of 21.0 feet to the minimum rear yard requirement for a gazebo and 1.95 feet to the minimum rear yard requirement for a deck.

In response to a question from Mr. Hammack, Ms. Langdon said the dwelling on Lot 84 was 38 feet from the shared lot line.

Mr. Ludwig presented the applicant's request as outlined in the statement of justification submitted with the application. He submitted one letter of support from Mr. Simms, the adjacent neighbor on Lot 84, stating that he had no objection to the variance request. Mr. Ludwig said he had also talked to the Giles Run Homeowners Association and they had approved the request. He noted that the deck and gazebo had been redesigned and moved further from the rear lot line to allow for maintenance.

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

Mr. Hammack moved to grant VC 96-S-062 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 2, 1996.

Mr. Dively said he agreed with Mr. Hammack and noted that this situation was partly caused because the property was developed under the PDH standards and was later rezoned to the R-2 District.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-062 by ALI, FARIDA, SUSAN B., RIZWAN AND ADNAN MAHBOOB, under Section 18-401 of the Zoning Ordinance to permit construction of deck 2.2 feet from rear lot line and addition 4.0 feet from rear lot line, on property located at 9482 Gauge Drive, Tax Map Reference 97-4 ((16)) 82, 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 9, 1996;  
and

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

1. The applicants are the owners of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 15,849 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is shallow.
6. The placement of the house on the lot precludes putting the deck or gazebo in another location that would be functional to the house.
7. The neighbors dwelling on Lot 84 is 38 feet from the shared lot line; therefore, there is no detrimental impact to that 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific gazebo and deck shown on the plat prepared by Phillip Blevins for Urban Engineering and Associates, Inc., dated June 23, 1994, and revised through May 3, 1996, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition and deck shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 3, July 9, 1996 (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER V. MCFAUL, VC 96-P-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line. Located at 2519 Villanova Dr. on approx. 11,166 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (F) 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. Christopher McFaul, 2519 Villanova Drive, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996. The applicant requested a variance of 3.3 feet to the minimum side yard requirement for a garage.

Mr. McFaul presented his request as outlined in the statement of justification submitted with the application. He added that they were trying to keep the garage set back as far as possible so they would not impede any neighbor's view of the street unnecessarily.

The following spoke in opposition. Edward P. Day, 2524 Villanova Drive, Dunn Loring, Virginia; and, Rick McNutley, 2521 Villanova Drive, Dunn Loring, Virginia. They said the garage would block the neighbor's view and possibly cause water drainage problems. They felt there could be a better solution than what was proposed today and suggested that the applicant build a carport instead of a garage.

In rebuttal, Mr. McFaul said that when he initially designed the garage they had it pushed further back on the property, but that increased the amount of variance needed; therefore, they decided to pull it forward. Mr. McFaul said if they moved the garage farther forward they may not need a variance; however, he felt it would be a greater detriment because it would block the neighbor's view even more than what was proposed today. Mr. McFaul said they had addressed any water drainage issues by leveling out the slope next to the proposed garage.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-P-056 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 2, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-056 by CHRISTOPHER V. MCFAUL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.7 feet from side lot line, on property located at 2519 Villanova Drive, Tax Map Reference 49-1 ((9)) (F) 22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,166 square feet.
4. The applicant met the nine required standards for a variance.
5. The location of the dwelling on the lot prevents the applicant from placing the addition in a more practical location.
6. The excessive setbacks off of Marymount Drive are 41.3 feet at the nearest point.
7. The granting of this variance will not be detrimental to the community.

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

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



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

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

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

1. This variance is approved for the location of an addition (garage) shown on the plat prepared by Kenneth W. White, dated April 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 5, July 9, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MOIN-AMIN MAHMOUD, VC 96-M-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of building 10.0 ft. from front lot line. Located at 7029 Columbia Pi. on approx. 21,956 sq. ft. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((1)) 102A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Lynn Strobel, with the firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., replied that it was.

Denise James, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report dated July 2, 1996. The applicant requested a variance of 15.0 feet to the minimum front yard requirement for a building. Ms. James noted that the variance plat submitted was the same one that was approved by the Board of Supervisors on March 11, 1996 for SE 94-M-010 with development conditions. She added that Development Condition #17 stipulated that the granting of a variance would be necessary for the construction of the carwash building or the carwash would be deleted from the approved special exception plat.

Ms. Strobel presented the applicant's request as outlined in the statement of justification submitted with the application. She said the Board of Supervisors approved a special exception which allowed for renovation of the existing service station to include new pumps, a canopy, and a new building addition for a carwash. Ms. Strobel said the use of the property had already been approved by the Board of

Supervisors and the issue before the BZA was whether a variance should be granted to permit the construction of the proposed carwash addition.

In response to questions from Mr. Dively, Arif Hozdic, architect for the appellant, said the estimated number of customers was 15 per day. He said they arrived at that estimate by calculating over a period of time to come up with an average. Mr. Hozdic pointed out that this was not the maximum nor minimum number of customers expected per day.

Barbara Carpenter, Department of Housing and Community Development Revitalization Program, stated that she was not in support nor in opposition to the variance. She explained that the Revitalization Program was implementing a bonds funded Streetscape Program in Annandale and the first program was along Columbia Pike which would include the frontage of this property. Ms. Carpenter said the applicant has included in this application improvements that were in accord with the Streetscape Plan.

Irving L. Denton, 7124 Dale Court, representing the Annandale Business Beautification Committee, stated that this property had been an eyesore for 29 years and the granting of this variance would allow the applicant to place the proposed carwash addition in an open area on the lot in need of repair.

The following came forward in opposition. Richard Stahl, 4122 Leonard Drive, representing the Marion Center Unit Owners Association; Jack Conner, 1033 North Fairfax Street; Roger Midgette, 4308-M Evergreen Lane; and, Elizabeth Mare, 4503 Wakefield Drive. They felt the applicant could not meet the required standards for a variance, opposed the granting of multiple uses on this property, and felt the granting of this variance would add to traffic congestion on Columbia Pike.

In rebuttal, Ms. Strobel said the objections raised to the use of the property had already been heard and decided by the Board of Supervisors by virtue of approval of the special exception. She said the lot has an exceptional size and is bounded by a pipestem driveway creating two front lot lines.

In response to a question from Mr. Pammel, Ms. Strobel stated that the size of the lot was a pre-existing condition prior to application of the special exception request. She said the Board of Supervisors felt the proposed use was appropriate.

Mr. Kelley discussed with Mr. Hozdic how the applicant came by the economic figures presented in this application. Mr. Hozdic said it was at the suggestion of business consultants hired by the applicant that there would be enough income generated to do all the listed improvements if a carwash was added to the property. Ms. Strobel also noted that other improvements, such as a new canopy and gasoline pumps, were added in order to generate additional income besides the carwash.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 96-M-054 for the reasons set forth in the Resolution.

Mr. Dively stated that he would vote against the motion because he felt it did meet the standards required for a variance since the applicant was requesting a variance towards a pipestem and not Columbia Pike. With regards to the testimony about traffic congestion and economic viability, Mr. Dively felt the BZA was being asked to reconsider the judgment made by the Board of Supervisors regarding the special exception. He said the question of economic viability hits on the issue of whether the evidence presented was believable or credible and while he did have some problems with that issue, he was not a member of the Board of Supervisors; therefore, he would not pass judgment on the special exception. Mr. Dively said the citizens who were opposing the variance lost that issue and venue and added that those issues should have been addressed with the Board of Supervisors. Mr. Dively thought the variance was reasonable.

Mr. Pammel stated that while the narrow access drive was an unusual situation, the applicant purchased this property knowing it was a service station and that it did not meet the minimum lot size requirements for its Zoning District; therefore, it was a non conforming use by virtue of the lot size requirements. He felt what was being requested through a mechanism of a special exception was to expand the use of the property and to significantly expand the use on a substandard lot which he felt did not meet the spirit of

what the Zoning Ordinance was trying to accomplish with respect to non conforming uses that applies to lot sizes; therefore, he would vote for the motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-M-054 by MOIN-AMIN MAHMOUD, under Section 18-401 of the Zoning Ordinance to permit construction of building 10.0 feet from front lot line, on property located at 7029 Columbia Pike, Tax Map Reference 71-1 ((1)) 102A, 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 9, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-6, HC and SC.
3. The area of the lot is 21,956 square feet.
4. The BZA needs to focus on the variance request, not the previous special exception approved by the Board of Supervisors.
5. The variance request does not show any undue hardship to the applicant.
6. There is existing traffic congestion in the area.
7. The BZA does not agree with the figures presented by the applicant and felt the variance request is more in the special privilege category.

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 5-1, with Mr. Dively voting nay. Mr. McPherson was absent from the meeting

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996.

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9:00 A.M. ANTHONY M. VAITEKUNAS, VC 96-M-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.4 ft. from side lot line. Located at 4111 Mason Ridge Dr. on approx. 16,418 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((15)) 63. (Concurrent with SP 96-M-012).

9:00 A.M. ANTHONY M. VAITEKUNAS, SP 96-M-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.7 ft. from rear lot line and 1.2 ft. from side lot line. Located at 4111 Mason Ridge Dr. on approx. 16,418 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((15)) 63. (Concurrent with VC 96-M-058).

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 Vaitekunas, 4111 Mason Ridge Drive, Annandale, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996. The applicant requested a special permit for error in building location of 13.8 feet to the minimum side yard requirement and 6.8 feet to the minimum rear yard requirement for a storage shed. The applicant also requested a variance of 4.6 feet to the minimum side yard requirement for a carport.

Mr. Vaitekunas presented the request as outlined in the statement of justification submitted with the application.

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

Mr. Dively made a motion to approve VC 96-M-058 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-M-058 by ANTHONY M. VAITEKUNAS, under Section 18-401 of the Zoning Ordinance to permit construction of carport 5.4 feet from side lot line, on property located at 4111

Mason Ridge Drive, Tax Map Reference 61-3 ((15)) 63, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1996; and

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

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 16,418 square feet.
- 4. This is a minor variance request.
- 5. The lot is long and narrow which creates a hardship to the applicant.

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

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

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

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

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

1. This variance is approved for the location of the specified carport shown on the plat prepared by Alexandria Surveys, Inc., dated March 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport addition shall be architecturally compatible to the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Dively made a motion to approve SP 96-M-012 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-M-012 by ANTHONY M. VAITEKUNAS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.7 feet from rear lot line and 1.2 feet from side lot line, on property located at 4111 Mason Ridge Drive, Tax Map Reference 61-3 ((15)) 63, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is approved for the location and the specified storage shed shown on the plat submitted with this application and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated March 5, 1996, submitted with this application, as qualified by these development conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 4-1, with Mr. Hammack voting nay. Mr. Ribble was not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. ANITA & FELIMON TELLEZ, VC 96-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. from side lot line such that side yards total 30.9 ft. and additions 18.4 ft. and 24.8 ft. from rear lot line. Located at 3141 Trenholm Dr. on approx. 21,387 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((18)) 15.

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

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996. The applicant requested variances of .3 feet to the minimum side yard requirement for a garage, 9.1 feet to the total minimum side yard requirement for a structure, 6.6 feet and .2 feet to the minimum rear yard requirement for an addition.

Mr. Neuberg presented the applicant's request as outlined in the statement of justification submitted with the application.

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

Mr. Pammel moved to grant VC 96-Y-053 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 2, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-Y-053 by ANITA AND FELIMON TELLEZ, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.7 feet from side lot line such that side yards total 30.9 feet and additions 18.4 feet and 24.8 feet from rear lot line, on property located at 3141 Trenholm Drive, Tax Map Reference 46-2 ((18)) 15, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is 21,387 square feet.
4. The applicant met the nine required standards for a variance.
5. The location and configuration of the existing dwelling on the site is askew to the property lines on both sides.
6. There is a septic drainage field located in front of the existing dwelling.
7. The applicant has designed additions that minimally encroach on the yard requirements.

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

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



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

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

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

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

- 1. This variance is approved for the location of the garage and additions shown on the plat prepared by Alexandria Surveys, Inc., dated September 28, 1995, and revised through March 27, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
- 3. The 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 5-0. Mr. Kelley was not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DONALD R. HOFFMAN, VC 96-L-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line. Located at 5002 Treetop Ln. on approx. 11,329 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((11)) 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. Donald Hoffman, 5002 Treetop Lane, Alexandria, Virginia replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996. The applicant requested a variance of 1.8 feet to the minimum side yard requirement for a dwelling.

Mr. Hoffman presented his request as outlined in the statement of justification submitted with the application.

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

Mr. Ribble moved to grant VC 96-L-055 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 2, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-055 by DONALD R. HOFFMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.2 feet from side lot line, on property located at 5002 Treetop Lane, Tax Map Reference 82-3 ((11)) 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 July 9, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,329 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is narrow.
6. The addition will not go out any further to the lot line than the existing carport.

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

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

- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of the room addition shown on the plat prepared by Kenneth W. White, dated March 26, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The room addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. NILS & GLADYS ANTEZANA, VC 96-D-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed Lots 42B and 42C having a lot width of 6.0 ft. and proposed Lot 42D having a lot width of 12.0 ft. Located at 6320 Georgetown Pi. on approx. 4.04 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 22-3 ((1)) 42. (MOVED FROM 6/25/96).

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

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996 wherein the applicant was requesting variances to lot widths of 144 feet and 138 feet.. She said it was staff's belief that the application did not meet Standards, 2, 3, 4, 5, and 6 of Section 18-404. Ms. Langdon noted that staff had received three letters in opposition to the request.

Mr. Pammel said reference had been made to the Planning Commission and asked staff if that body had heard this application. Ms. Langdon said the application had not gone before the Planning Commission.

Mr. Jenkins presented the applicant's request as outlined in the statement of justification submitted with the application and focused on what he believed to be the two core issues. He distributed copies of a topographical map depicting the property and explained why he believed the application met Standards 2, 3, 4, 5, and 6.

Mr. Dively asked the speaker to address an issue raised in a letter from the Turkey Run Citizens Association stating that there was no hardship because the property could be developed with a public road. Mr. Jenkins disagreed and said if the property was developed with a public road it would create a corner lot which would require a variance.

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

Diane Darcy, Co-Chairman of the Planning and Zoning Committee of the McLean Citizens Association, agreed with the staff report that the application did not meet the standards.

Lisa Miller, attorney for the Central Intelligence Agency, stated she would like to go record that they had received notice of the public hearing and had believed that they had been incorrectly notified. She said the CIA had internal, classified documents that reflects the true owner of the adjacent land to be the National Park Service. Ms. Miller said a representative of that organization, Dan Sealy, was present to voice some opposition to the request.

Dan Sealy, Natural Resource Manager for the George Washington Memorial Parkway, and stated that the County tax maps reflect this as such. He said their major concern dealt with erosion and storm water management and it was his understanding that the Department of Environmental Management would be the department that would be reviewing the application from that standpoint.

In rebuttal, Mr. Jenkins reiterated his earlier comments and noted that consolidation is not practical and asked the BZA to grant the request.

Mr. Dively moved to grant VC 96-D-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 2, 1996.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-040 by NILS AND GLADYS ANTEZANA, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed Lots 42B and 42C having a lot width of 6.0 feet and proposed Lot 42D having a lot width of 12.0 feet, on property located at 6320 Georgetown Pike, Tax Map Reference 22-3 ((1)) 42, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1996; 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 HD.
3. The area of the lot is 4.04 acres.
4. The applicant met the nine required standards for a variance.
5. The one primary alternative that has been suggested is a public road; while that would incur a more modest variance, it is not clear that it would be a better development of the four lots.
6. The requested variance will preserve trees and does not create as much impervious road service.

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

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

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

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

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

1. This variance is approved for the subdivision of Lot 42 as shown on the plat prepared by Paciulli, Simmons and Associates, LTD., dated October, 1995, revised through March 6, 1996. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

3. If full frontage improvements are not provided at the time of site development, the applicant shall provide a 15.0 foot ancillary easement necessary for the future improvement of Georgetown Pike.
4. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance.
5. All plans for development of the property shall be reviewed and approved by the County Architectural Review Board.

Pursuant 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. The vote was 3-2, with Chairman DiGiulian, Mr. Ribble and Mr. Dively voting for the motion; Mr. Pammel and Mr. Hammack voted nay. Mr. Kelley was not present for the vote. Mr. McPherson was absent from the meeting. The motion **FAILED** because four affirmative votes are required to approve a variance application.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this variance.

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(On July 16, 1996 a motion was made by the Board of Zoning Appeals to reconsider this case, thereby making the above resolution moot.)

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Page 18, July 9, 1996 (Tape 2), Scheduled case of:

9:30 A.M. KOREAN NAZARETH CHURCH, SP 96-Y-009 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 4326 Shirley Gate Rd. on approx. 2.26 ac. of land zoned R-1 and WS. Sully District. Tax Map 56-2 ((1)) 53A and 54R.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Sarah Hall, Blankingship and Keith, P.C., 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 2, 1996 which recommended approval in accordance with the revised Development Conditions agreed to by the applicant.

Ms. Hall presented the applicant's request as outlined in the statement of justification submitted with the application.

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

Mr. Hammack moved to grant SP 96-Y-009 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-Y-009 by KOREAN NAZARETH CHURCH, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 4326 Shirley Gate Road, Tax Map Reference 56-2 ((1)) 53A and 54R, 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 9, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 2.26 acres.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4326 Shirley Gate Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Robson Group Architects dated March 6, 1996, revised through June 18, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the main area of worship shall be limited to a total of 200 seats.
6. Sixty-nine (69) parking spaces shall be provided and shall be constructed concurrent with phase 1. All parking shall be on site as shown on the special permit plat.

- 7. Existing vegetation shall be preserved and maintained as indicated on the special permit plat. There shall be no disturbance of vegetation within the limits of clearing and grading. Tree protection shall be provided along the outer edge of the clearing limits to protect existing vegetation designated to remain.
- 8. Supplemental evergreen trees shall be provided along the northern and southern lot lines to the equivalent of Transitional Screening 1 as depicted on the special permit plat. The equivalent of a row of evergreen trees as depicted on the special permit plat shall be provided along the western lot line. All trees shall be a minimum of six (6) feet in height at the time of planting. These trees shall be placed among the existing vegetation so as to cause the least amount of damage to the existing trees as possible. White pines shall compose no greater than 50% of the supplemental evergreen trees, with the remaining evergreens consisting of shade tolerant species such as hemlocks, american holly, red spruce, etc.

Evergreen shrubs, a minimum of 24 inches in height at time of planting, shall be provided along the eastern lot line between the utility easement and parking lot. These shrubs shall be supplemented with ornamental trees, a minimum of six (6) feet in height at time of planting, with a maximum mature height of 20 to 25 feet, and located no more than 20 feet on center.

Foundation plantings shall be installed along the northern, eastern and southern sides of the buildings to soften the visual impact of the church structure in conformance with the Comprehensive Plan language for the Fairfax Center Area.

Parking lot landscaping shall be provided in each of the parking lot islands except the island containing the walkway connection to the trail along Shirley Gate Road.

All transitional screening and parking lot landscaping shall be installed concurrent with Phase 1 construction. Foundation plantings may be installed as each phase is constructed. The existing vegetation and supplemental plantings shall satisfy the requirements of Transitional Screening 1.

- 9. The barrier requirement shall be waived along all lot lines.
- 10. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM).
- 11. The existing structure on site shall not be used as a dwelling once construction of the church structure has commenced. The existing structure shall be removed concurrent with phase 3 construction.
- 12. In order to achieve a maximum interior noise level of 45 dBA Ldn, the following attenuation measures shall be provided as determined necessary by DEM:
  - Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
  - Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.
  - Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
- 13. A geotechnical engineering study shall be submitted in accordance with Chapter 107 of the Fairfax County Code as determined necessary by DEM. If DEM 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 DEM shall be implemented.

- 14. The applicant shall agree to maintain in perpetuity that segment of Linguini Lane between the church property and Shirley Gate Court. The details of the agreement shall be as determined by DEM at the time of site plan review.
- 15. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
- 16. A sign permit shall be obtained for any sign proposed for this site.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless 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 4-0. Mr. Ribble and Mr. Kelley were not present for the vote. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1996. This date shall be deemed to be the final approval date of this special permit.

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The BZA took a five minute recess.

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Page 21, July 9, 1996, (Tape 2), Scheduled case of:

9:30 A.M. MICHAEL R. CADY AND LUCI E. BOBER, Appeal 96-M-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that appellant has erected an accessory structure in the front yard of a 10,000 sq. ft. lot without a Building Permit, in violation of Sect. 18-601 and Par. 12C of Sect. 10-104 of the Zoning Ordinance. Located at 3523 and 3525 Gordon St. on approx. 20,000 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (G) 18 and 19.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated July 1, 1996. He said at issue was a tent like structure on a metal frame that has been erected on

the property, but a recent inspection indicated that the structure had been removed. Mr. Shoup added that the appellant has voiced his intent to again erect the tent, therefore he was pursuing the appeal. He called the BZA's attention to a sketch prepared by staff illustrating the extension of the tent into the front yard and discussion the appellant's belief that a building permit was not needed since the structure is temporary.

Mr. Hammack asked if citizens needed a building permit to temporarily erect a tent in their back yard when having a party or at a car dealership. Mr. Shoup said building permits are required to erect tents for fairs and carnivals, but he did not know that back yard parties were regulated.

The appellant, Michael Cady, said he did not believe that a building permit was necessary because the tent could easily be removed within a two to three hour time frame. He said during the winter months he uses the tent to store an antique vehicle. Mr. Cady added that he did not want to construct a permanent garage because it would block the view from the kitchen window.

Robert E. Nipp, 3539 Gordon Street, Falls Church, Virginia, said he was the Block Chairman for the Courtland Park Citizens Association and added that he had agonized over appearing at the public hearing but believed that the neighbors had to take a stand. He referenced the prepared statement that he had submitted to the BZA in support of the Zoning Administrator's position outlining the business that is being conducted from the appellant's property.

In rebuttal, Mr. Cady said he does not operate a business out of his house nor does he have employees coming to his house. He added that the issues raised by Mr. Nipp were not relevant to the appeal.

Mr. Shoup reiterated his earlier remarks and added that the appeal involved two issues, the location of structure and the need for a building permit, and that staff believed the appellant was in violation on both counts.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said the issue before the BZA dealt with whether the appellant had erected an accessory structure in a front yard in violation of the Zoning Ordinance. He said the appellant contended that because the structure is easily assembled and disassembled that it does not require a permit, but he did not offer any documentation to substantiate that testimony. Mr. Hammack made a motion to uphold the Zoning Administration in A 96-M-017. Mr. Pammel seconded the motion. He commented that the Zoning Administrator had cited that the authority for the building permit comes from the Virginia Uniform Building Code and is based on square footage, which he believed to be the prevailing fact. The motion carried by a vote of 6-0 with Mr. McPherson being absent from the meeting. The decision became final on July 17, 1996.

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Page 22, July 9, 1996, (Tape 2), Action Item:

Approval of Minutes  
from May 7 and May 21, 1996 hearings

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Kelley were not present for the vote. Mr. McPherson was absent from the meeting.

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Page 22, July 9, 1996, (Tape 2), Action Item:

Request for Additional Time  
for Forthway Center for Advanced Studies, Inc. SPA 78-C-307-1

Jane Kelsey, Branch Chief, Special Permit and Variance Branch, noted that this item was deferred from the public hearing last week in order for the applicant to be present. Mr. Pammel said he had raised the issue based on the number of continuations that the applicant had requested.

Megan Kieffer, Planner with McGuire, Woods, Battle, and Boothe, spoke on behalf of the applicant and explained that several factors had been instrumental in the applicant's decision to delay constructing the craft cottage such as a decline in membership, a change in leadership, and the development of the adjacent property. Ms. Kieffer said in 1994 a subdivision of large single-family detached homes were built adjacent to the subject property and in proximity to the proposed location of the craft's cottage. Subsequent to that, the applicant requested and received administrative approval from staff to relocate the cottage and is currently in the process of moving forward with those plans. She pointed out that this is a non-profit organization involving volunteers, therefore it takes longer to reach a consensus since it involves a committee. Ms. Kieffer asked that the BZA grant a two year extension and assured the BZA that the cottage will be completed within that time frame.

Mr. Pammel said he was not a member of the BZA when this application was approved and asked the speaker to enlighten him as to what activities take place on site and the purpose of the organization. Ms. Kieffer said it was defined in the Zoning Ordinance as a private school of special education and is an association of about 100 adult members who get together socially to do different projects.

Mr. Hammack questioned how the relocation had occurred without revised plats coming to the BZA. Ms. Kelsey explained that Barbara Byron, Director, Zoning Evaluation Division, agent for the Zoning Administrator, reviewed the request and approved the change based on her belief that it was a minor modification. A minor modification is permitted under a fairly recent amendment to the Zoning Ordinance.

A discussion took place among the BZA members regarding the length of time that has elapsed since the approval and as to whether the use needed to be reviewed.

Ms. Kieffer noted that the applicant had filed a special permit amendment application requesting that the hours of operation be revised.

Following further discussion among the BZA members with regard to the additional time request, Mr. Pammel made a motion deny the applicant's request and schedule a new public hearing and consider the entire issue with the special permit amendment application which the speaker has stated has been filed. Mr. Dively seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 23, July 9, 1996, (Tape 2), Action Item:

Approval of Resolutions  
from July 2, 1996 hearing

Mr. Pammel moved to approved the Resolutions which carried by a vote of 4-0. Mr. Ribble and Mr. Kelley were not present for the vote. Mr. McPherson was absent from the meeting.

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Page 23, July 9, 1996, (Tape 2), Action Item:

Request for Deferral  
Jerry and Karen Stone, SP 95-S-054 and VC 95-S-094

Chairman DiGiulian noted that this case had been deferred to this date for additional information and for the submission of revised plats. Mr. Pammel made a motion to grant the applicant's request for a 60-day deferral of the decision for the above-noted applications. Jane Kelsey, Chief, Special Permit and Variance

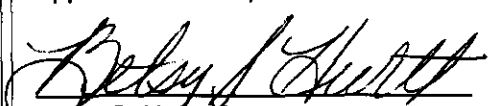
Branch, explained that the BZA had approved the applications based on the applicant reducing the size of the gazebo by one foot or obtain an easement from the Fairfax County School Board to allow the one foot extension into the School Board property. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Kelley were not present for the vote. Mr. McPherson was absent from the meeting. Ms. Kelsey suggested September 10, 1996 at 9:30 a.m. Mr. Hammack seconded the motion which by a vote of 4-0. Mr. Ribble and Mr. Kelley were not present for the vote. Mr. McPherson was absent from the meeting.

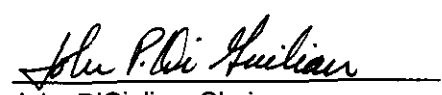
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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Teresa Wang and Betsy S. Hurtt

Approved on: September 17, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 16, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:03 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 25, July 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. JAMES M. & DEBRA L. ELLINGTON, VC 96-S-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing less than 36,000 sq. ft. Located at 6902 Newby Hall Ct. on approx. 25,000 sq. ft. of land zoned R-C (Cluster) and WS. Springfield District. Tax Map 74-2 ((3)) 7. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Ellington, 6902 Newby Hall Court, Springfield, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report prepared by Susan Langdon. The applicant requested a variance to permit construction of a swimming pool in a front yard on a lot containing less than 36,000 square feet.

Mr. Ellington presented the variance request as outlined in the statement of justification submitted with the application. He said the Homeowners Association's Architectural Review Board and the neighbors supported the application. Mr. Ellington asked the Board to waive the 8-day waiting period.

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

Mr. Hammack moved to grant VC 96-S-075 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 9, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-S-075 by JAMES M. & DEBRA L. ELLINGTON, under Section 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing less than 36,000 square feet, on property located at 6902 Newby Hall Court, Tax Map Reference 74-2((3))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 July 16, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-C.
3. The area of the lot is 25,000 square feet.
4. The applicant satisfied the nine required standards for a variance.

5. In this case, there are double front yard requirements which was the reason for the variance, but there are other factors, such as, the sanitary sewer easement and the storm drainage easement that goes across the back of this property and one easement down the side of the property.
6. The variance would not change the character of the neighborhood and it would be in harmony with the intended spirit and purpose of the Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the swimming pool shown on the plat prepared by Greenhorne & O'Mara, Inc., dated March 23, 1992, revised by William A. Blackwell, dated May 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote. Mr. Hammack moved to waive the 8-day waiting period. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 16, 1996. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 91-V-071 for church and related facilities to permit reduction in parking spaces and site modifications. Located at 8523 Fort Hunt Rd. on approx. 6.25 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((2)) A, 600, 601, 601A; 102-4 ((3)) A2. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Herbert Longhelt, 1006 Priscilla Lane, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction in parking spaces, to close both Fort Hunt Road entrances, add an entrance on Plymouth Road, and to reconfigure the Storm Water Management pond. The application was in harmony with the Comprehensive Plan and staff recommended approval.

The Board members questioned staff about the necessity of some of the development conditions. They found that the development conditions in question were required by the Department of Environmental Management or the Office of Transportation.

Mr. Longhelt presented the special permit request as outlined in the statement of justification submitted with the application and said he objected to the condition requiring transitional screening and road easements. Ms. Kelsey, Chief, Special Permit and Variance Branch, stated that most of the conditions were imposed previously and were so indicated by an asterisk. Ms. Powell explained why the condition related to a geotechnical study was recommended. That justification was in the staff report for the previous application and explained that it was to put the applicant on notice that this issue would need to be addressed at the time of site plan review.

Mr. McPherson moved to grant SPA 91-V-071-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1996 deleting 2 sentences in Condition #7 and conditions relating to the geotechnical study and ancillary easements.

Mr. Pammel made a motion that the Department of Environmental Management and/or the Office of Transportation have a staff member present at hearings when issues relating to their field of expertise arise at a public hearing. Mr. Ribble 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**

In Special Permit Application SPA 91-V-071-2 by PLYMOUTH HAVEN BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 91-V-071 for church and related facilities to permit reduction in parking spaces and site modifications, on property located at 8523 Fort Hunt Road, Tax Map Reference 102-4((2))A, 600,601,601A; 102-4((3))A2, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

Page 28, July 16, 1996, (Tape 1), PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-2,  
continued from Page 27 )

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1996; 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 6.25 acres.
4. The applicant clearly complied with the general standards necessary for the issuance of a special permit application.
5. The existence of the church over time as well as the prior applications and approvals indicated that the church had done a good job in making sure that it fits in with the neighborhood and has existed in harmony with the neighborhood for some time.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8523 Fort Hunt Road, 6.25 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated June 27, 1995, and revised through April 15, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. The Board of Zoning Appeals has no objection to the submission and approval of a minor site plan.
5. The maximum seating capacity shall be three hundred seven (307). There shall be 118 parking spaces provided as shown on the special permit plat. All parking for the use shall be on site.
6. Storm water management shall be provided on site subject to the approval of the Department of Environmental Management (DEM) in the general location shown on the special permit plat. An opening shall be provided to allow access to and maintenance of the storm water management pond. Additional safety measures may be required at the time of site plan approval.
7. The transitional screening and barrier requirements shall be modified along the western portion of the southern property line. The purpose of this screening modification shall be to permit the approximately 80 feet of existing vegetation to serve as the required buffer. The plantings shall



not preclude the provision of adequate sight distance. The size, type and location of the plantings shall be as approved by DEM. These plantings shall be deemed to satisfy the transitional screening and barrier requirements along these lot lines. The transitional screening and barrier requirements shall be waived around the perimeter of the church ballfield.

- 8. Where entrances are closed, asphalt shall be removed and landscaping installed.
- 9. No additional parking lot lighting shall be provided. The existing lights shall be shielded, if necessary, to prevent glare or nuisance light onto residentially developed properties.
- 10. All signs on the property shall conform to the provisions of Chapter 12.
- 11. Notwithstanding the area on the plat shown for future expansion, the existing vegetation shall remain to serve transitional screening and barrier requirements in that area.
- 12. The trash enclosure shall be a six-foot high board-on-board fence.

These development conditions incorporate and supersede all previous development conditions.

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

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

Mr. 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 24, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 29, July 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, SPA 87-D-051-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-D-051 for child care center, nursery school and private school of general education to permit continuation of use. Located at 1830 Kirby Rd. on approx. 5.08 ac. of land zoned R-3. Dranesville District. Tax Map 31-3 ((1)) 59.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andrew Carroll with the law firm of Land, Clark, Carroll and Mendelson, 600 Cameron Street, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested to allow continuation of the use without term. Staff recommended approval of the application with the implementation of the proposed development conditions.

Mr. Ribble asked if there would be any new construction. Mr. Hunter replied no.

Mr. Carroll, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He discussed the traffic study conducted on Kirby Road and asked for the deletion of Proposed Development Conditions #13 and #14 which pertained to right and left turn lane requirements and right of way dedication.

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

Mr. Ribble moved to grant SPA 87-D-051-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 9, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SPA 87-D-051-2 by MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, under Section 3-303 of the Zoning Ordinance to amend SP 87-D-051 for child care center, nursery school and private school of general education to permit continuation of use, on property located at 1830 Kirby Road, Tax Map Reference 31-3((1))59, 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 16, 1996; and

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

1. The applicant is the lessee of the property.
2. The present zoning is R-3.
3. The area of the lot is 5.08 acres.
4. The applicant met the 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 Sections 8-303, 8-305, and 8-307 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1830 Kirby Road containing 5.08 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 Donald J. Olivia and printed by Bengston DeBell Elkin & Titus dated May 27, 1963, revised through October 1, 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.

Page 31, July 16, 1996, (Tape 1), MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, SPA 87-D-051-2, continued from Page 30 )

4. The hours of operation for the nursery school, child care center, and private school of general education shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The maximum daily enrollment of the nursery school and child care center shall be 70 children.
6. The maximum daily enrollment of the private school of general education shall be 20 children.
7. There shall be a minimum of fourteen (14) parking spaces for the child care/ nursery school and a minimum of five (5) parking spaces for the private school of general education.
8. All existing vegetation, including that required in conjunction with the approval of SPR 87-D-051-2, which lines the periphery of the site shall be retained and shall be deemed to satisfy the requirements for transitional screening along all lot lines.
9. The barrier requirement shall be waived.
10. The outdoor play area shall be approximately 4,100 square feet and shall be located as shown on the special permit plat.
11. The Environmental Corridor (EQC) as on-site shall be preserved as private open space. Within the EQC there shall be no accessory structures except those permitted by the Comprehensive Plan, as approved by the Environment and Development Review Branch, OCP, and there shall be no grading or clearing of any vegetation except for dead or dying trees.

These development conditions incorporate and supersede all previous development conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval\* unless 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 31, July 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. WOODLEY RECREATION ASSOCIATION, INC., SPA 72-P-020 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 72-P-020 for community swimming pool to permit construction of accessory structure and change in development conditions. Located at 7421 Camp Alger Ave. on approx. 4.51 ac. of land zoned R-4. Providence District. Tax Map 60-1 ((1)) 5. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Curtis Marshall, 3306 Graham Road, Falls Church, Virginia, replied that it was.

Page 32, July 16, 1996, (Tape 1), WOODLEY RECREATION ASSOCIATION, INC., SPA 72-P-020, continued from Page 31 )

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a canopy over an existing shuffle board court and a change in the hours of operation to allow the facility to close at 9:00 p.m. rather than 10:00 p.m. The application was in harmony with the Comprehensive Plan and staff recommended approval.

Mr. Hammack said the 10:00 p.m. closing request was inconsistent with other associations of this type throughout the County and with policies that were adopted some years ago. He asked the reason for the request.

Mr. Hunter said the applicant requested the change to reflect how they currently operate. He said there was no record of complaints from the neighbors.

Mr. Marshall presented the applicant's request as outlined in the statement of justification. He requested that the Board waive the 8 day waiting period. He thanked County staff for their assistance in preparing the application.

Mr. Kelley asked why the applicant wanted to close the pool at 10:00 p.m. instead of 9:00 p.m. Mr. Marshall replied that closing at 10:00 p.m. would give them more flexibility and would not result in any other changes to the facility, but that he would not object to maintaining the previous time.

Kevin Burke, President, Woodley Recreation Association, spoke in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Kelly moved to grant SPA 72-P-020 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 9, 1996 with a change to staff's recommended development condition on closing time.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SPA 72-P-020 by WOODLEY RECREATION ASSOCIATION, INC., under Section 3-403 of the Zoning Ordinance to amend SP 72-P-020 for community swimming pool to permit construction of accessory structure and change in development conditions, on property located at 7421 Camp Alger Avenue, Tax Map Reference 60-1((1))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 July 16, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 4.51 acres.

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

Page 33, July 16, 1996, (Tape 1), WOODLEY RECREATION ASSOCIATION, INC., SPA 72-P-020, continued from Page 32)

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7421 Camp Alger Avenue on 4.51 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry Nealon and Davis dated July 11, 1973, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. There shall be 56 parking spaces on site as shown on the As Built Site Plan, uses as the Special Permit Plat.
5. A maximum of four (4) employees shall be associated with this use.
6. The hours of operation for the swimming pool shall be limited to 9:00 a.m. to 9:00 p.m.
7. During discharge of swimming pool waters, the following operational procedures shall be implemented:
  - Sufficient amount of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
  - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.
8. After-hours parties for the swimming pool shall be governed by the following:
  - Limited to six (6) per season.
  - Limited to Friday, Saturday and pre-holiday evenings. Three (3) week night parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.
  - Shall not extend beyond 12:00 midnight.
  - The applicant shall provide a written request at least (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
  - Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.
9. The total membership shall not exceed 388 family memberships, which shall be limited to the Woodley Area residents.

Page 34, July 16, 1996, (Tape 1), WOODLEY RECREATION ASSOCIATION, INC., SPA 72-P-020, continued from Page 33 )

10. All loudspeakers, lights and noise shall be directed to the site. No additional lighting shall be installed without an amendment to this special permit. The loudspeaker shall be used only for swim meets and emergencies.
11. Transitional screening shall be modified along all lot lines in order to allow the existing vegetation to satisfy this requirement. The existing seven (7) foot chain link fence shall satisfy the barrier requirement.

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 of the canopy has commenced and been diligently prosecuted. The expansion of the proposed hours may commence upon the approval of this special permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 16, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 34, July 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. ENGLSIDE BAPTIST CHURCH, SP 96-L-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 8420 Highland Ln. on approx. 29,607 sq. ft. of land zoned R-2. Lee District. Tax Map 101-3 ((4)) 33. (OUT OF TURN HEARING GRANTED)

Allen Demetri, 13350 Smoketown Road, Woodbridge, Virginia, came forward to request a deferral of the application. He said the applicant was unable to obtain a corrected plat to meet staff requirements prior to the public hearing.

Mr. Dively moved to defer the public hearing to October 1, 1996 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 34, July 16, 1996, (Tape 2), Action Item:

Request for Additional Time  
Diocesan Missionary Society of Virginia  
SP 93-S-044

Mr. Hammack moved to approve the Request for Additional Time for Diocesan Missionary Society of Virginia. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Kelley were not present for the vote. The new expiration date is September 3, 1998.

Page 35, July 16, 1996, (Tape 2), Action Item:

Request for Reconsideration  
Nils and Gladys Antezana  
VC 96-D-040

Mr. Hammack moved to approve the Request for Reconsideration. Mr. Kelley seconded the motion which carried by a vote of 4-2. Mr. Dively and Mr. Pammel voted nay and Mr. Ribble was not present for the vote. The application was scheduled for October 8, 1996 at 9:00 a.m.

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Page 35, July 16, 1996, (Tape 2), Action Item:

Approval of July 9, 1996 Resolutions

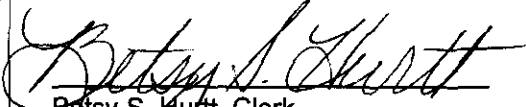
Mr. Kelley moved to approve the July 9, 1996 Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

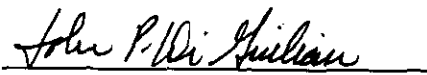
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As there was no other business to come before the Board, the meeting was adjourned at 9:05 p.m.

Minutes by: Regina Thorn

Approved on: September 10, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals





The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 23, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Phyllis Wilson, Staff Coordinator, Zoning Evaluation Division, on behalf of the applicant, HERBERT AND JACQUELIN CARTER, VC 95-V-130, requested that this case be placed at a later time on the Agenda as the applicants had not yet arrived in the Board Auditorium. Chairman DiGiulian accepted the change in the Agenda.

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A short recess was called due to a malfunction of the Backup Tape Recorder.

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Page 37, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES A. & SHARON B. KELLEY, VC 96-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a six foot high fence to remain in the front yard of a corner lot. Located at 1905 Belle Haven Rd. on approx. 17,837 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (13) 1. (MOVED FROM 6/4/96 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William C. Thomas, Jr., Esquire, with Fagelson Schonberger, Payne & Deichmeister, replied that the revised affidavit dated July 18, 1996, adding him as the applicant's representative, was correct.

Inda Stagg, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a variance of two feet in order to allow their six-foot fence, which was taller than the Ordinance's allowable four feet height, to remain in their front yard. She noted that the Board of Zoning Appeals had denied the applicants' two previous requests for the fence, one on January 20, 1993 and the other on October 23, 1993. Ms. Stagg pointed out that Appendix 4 of the Staff Report evidenced those two resolutions.

William Shoup, Deputy Zoning Administrator, stated that, after the Kelley's appeal, the Zoning Administrator filed an injunction and because there was no response, a default decree was then filed. He further explained that, subsequent to their appeal, Mr. Kelley indicated his intention to again pursue a variance and the County Attorney advised him that they would delay entering the default decree but, erroneously, the decree was entered. To clarify the BZA's position, Mr. Shoup stated that the default decree would not preclude the BZA from taking action on the variance before them this morning and if the variance was approved, the County would not enforce the default decree.

Discussion followed between Messrs. Dively, Hammack, Thomas and Shoup concerning the technicalities and legalities of pursuing and/or ignoring either the variance or the injunction. Without the County Attorney's determination, Chairman DiGiulian stated that the Kelley's application had to be brought back before the Board after the proper procedure was clarified and he then called the next case.

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Page 37, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. VIRGINIA G. RE, VC 96-M-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. from side lot line and accessory structure 10.0 ft. from rear lot line. Located at 6125 Brook Dr. on approx. 9,600 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((19)) (H) 17. (DEF. FROM 5/7/96)

At the request of the applicant, Jane Kelsey, Chief, Special Permit and Variance Branch, requested an indefinite deferral. She noted that the applicant would be required to readvertise after a revised plat was submitted.

Mr. Ribble moved for an indefinite deferral of VC 96-M-020, Virginia G. Re. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 38, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BILL AND JULIE HOWARD, VC 96-V-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.7 ft. from side lot line and 14.6 ft. from rear lot line. Located at 2109 Wakefield Ct. on approx. 10,242 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 7.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John F. Heltzel, Architect for the Howards, 9389 Forestwood Lane, Manassas, Virginia, replied that it was.

In the absence of David Hunter, the Staff Coordinator who prepared the report, Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated July 16, 1996. She explained that the applicant sought to construct a room addition which would place the structure 7.7 feet from the side lot line and 14.6 feet from the rear lot line. The Zoning Ordinance requires a 10.0 foot setback for side yards and a minimum of 20.0 feet for rear yards, she pointed out.

Mr. Heltzel explained that the subject property was exceptionally narrow and unique in its condition because of its limited build able area and the orientation of the house being extremely far to the northwest corner of the lot. He also noted that the neighborhood was quite old, circa 1930s, and the majority of the properties in the area have houses and additions to the original houses that significantly encroach into their respective side yard setbacks. Mr. Heltzel stated that strict application of the Ordinance would limit the Howard's ability to improve their property to the extent of that of their neighbors and that granting this variance would alleviate the hardship and did not provide a special privilege or convenience.

Chairman DiGiulian called for speakers from the audience either in support or in opposition to the variance request and receiving no response, he closed the public hearing.

Mr. Ribble moved to grant VC 96-V-060 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-060 by BILL AND JULIE HOWARD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.7. feet from side lot line and 14.6 feet from rear lot line, on property located at 2109 Wakefield Court, Tax Map Reference 83-3((14)) ((15))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 July 23, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,242 square feet.
4. The applicant has satisfied the nine required standards for granting a variance citing the narrowness of the lot and the unusual 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 **GRANTED** 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 24, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

The request must specify 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 31, 1996 . This date shall be deemed to be the final approval date of this variance.

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Page 40 , July 23, 1996, (Tape 1 ), Scheduled case of:

9:00 A.M. CHRISTOPHER SMITH, VC 96-H-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.9 ft. from street line of a corner lot and permit fence 5 ft. 6 in. high to remain in a front yard. Located at 10401 Hunter Station Rd. on approx. 1.07 ac. of land zoned R-E. Hunter Mill District. Tax Map 27-2 ((1)) 18.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Smith, 10401 Hunter Station Road, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated July 16, 1996. She clarified that the applicant was requesting to build an addition to be constructed 23.9 feet from the front lot line of their corner lot and to allow a 5 feet 6 inches high fence to remain in their front yard. Ms. Langdon noted that for areas zoned R-E, the Ordinance states that a fence height cannot exceed 4.0 feet and a front yard of 50.0 feet is required; therefore, a variance of 1.6 feet was requested for the fence and a variance of 26.1 feet for the addition. Ms. Langdon noted that the Smith's home was constructed in 1935, which was prior to the adoption of the Zoning Ordinance.

Mr. Smith pointed out that his home, built in the 1930s, predates the Zoning Ordinance and the house sets entirely in the set back which prevents them from making any kind of change without seeking a variance. He maintained that the character of the zoning district will not be changed, that there would be no encroachment into the sight line, that there would be no impact on adjacent properties because they have no immediate neighbors, and that only after seeking the variance for the addition did they discover that their lattice fence, which conceals an unsightly propane tank, was in violation of the Ordinance and that another variance must be granted to permit the fence to remain.

Chairman DiGiulian called for speakers either for or against the application and receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 96-H-059 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-059 by CHRISTOPHER SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 23.9 feet from street line of a corner lot and permit fence 5 feet 6 inches high to remain in a front yard, on property located at 10401 Hunter Station Road, Tax Map Reference 27-2((1))18, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 1.07 acres.
4. The applicant has satisfied the nine required standards for granting a variance.
5. The property is unique in that it was built and predates the Zoning Ordinance.
6. The addition proposed does not encroach any further into the front yard than the present structure.
7. The fence has been on the property for a long 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition and fence shown on the plat prepared by David J. Hammes, dated March 26, 1996, submitted with this application and is not transferable to other land.
2. 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.

McPherson seconded the motion which carried 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 31, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 42, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JANET T. MARTINO, SP 96-V-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.1 ft. and eave 0.0 ft. from side lot line. Located at 6307 Fort Hunt Rd. on approx. 8,283 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-3 ((30)) 10. (MOVED FROM 6/4/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Janet T. Martino, residing at 6307 Fort Hunt Road, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a special permit for an error in building location to permit her accessory storage structure, a 9.4 foot high shed, to remain 0.1 feet from the side lot line and its eave to remain 0.0 feet from the side lot line. Ms. Langdon clarified that Ms. Martino was requesting a 7.9-foot variance for the shed and 5.0 feet for the eave. She called the Board's attention to the five letters of support which were contained in their information packets.

Ms. Martino explained the layout and size of her property and stated the necessity for a place to store her lawn and garden tools which predicated the purchase of the shed. She elaborated on the quality, material, style, color and considerable expense of the shed, as well as the extensive effort expended with its erection and placement. She also noted that she had conferred with her neighbors before its purchase to assure that there was no objection and to address any concerns. Ms. Martino voiced her dismay over the capricious manner which anyone in the County can lodge a complaint against someone else without being a neighbor or even without experiencing an impact of any kind much less adverse.

Chairman DiGiulian called for speakers in support of the application.

Christy Thomas, a neighbor of Ms. Martino whose town home overlooks Ms. Martino's property, informed the Board that Ms. Martino has done numerous improvements to her property and that her home and grounds were quite lovely. Ms. Thomas voiced her hope that the Board would disregard what appeared to her as a mean-spirited complaint and allow Ms. Martino to keep her shed, without any modifications, in its present location.

Chairman DiGiulian called for speakers in opposition but received no response.

Ms. Martino responded to Mr. Ribble's question concerning other complaints about sheds in her neighborhood.

There being no further questions or comments, Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 96-V-007 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1996.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-V-007 by JANET T. MARTINO, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.1 feet and eave 0.0 feet from side lot line, on property located at 6307 Fort Hunt Road, Tax Map Reference 83-3((30))10, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

- 1. This special permit is approved for the location and the specified accessory storage structure shown on the plat submitted with this application and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated December 28, 1995, submitted

with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 44, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. HERBERT & JACQUELIN CARTER, VC 95-V-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8.5 ft., chimney 6.5 ft. and stoop 4.5 ft. from street line of a corner lot. Located at 6412 Wood Haven Rd. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2))(36) 31 and 32. (ASSOCIATED WITH SE 95-V-072) (MOVED FROM 4/23/96 AND 5/28/96)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steve Valentine, 1505 Crystal Drive #910, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, presented the staff report. She explained that on July 22, 1996 the Board of Supervisors had approved a special exception to permit fill in a flood plain in order to construct one single-family detached dwelling on the subject parcel. She noted that approval of the variance request application is required before construction can begin. Ms. Wilson explained that the applicant was requesting a front yard reduction from the required 30-foot setback to an 8.5-foot setback, for the proposed dwelling unit with an attached deck, and the variance also requested a reduction in the minimum required front yard setback, for an uncovered stoop, from 25 feet to 4.5 feet and a reduction from the required 27 foot front yard setback, for a chimney, to 6.5 feet from the front lot line.

Mr. Valentine explained that a foot path ran along the front of his property and he had no intention of impacting the path; he only sought to enhance his side yard. He responded to Mr. Hammack's questions regarding his understanding and responsibilities, as a homeowner, to build in a floodplain. Mr. Valentine affirmed that he agreed to all the development conditions.

Chairman DiGiulian called the speakers from the audience either for or against the application. Receiving no response, he closed the public hearing.

Mr. Ribble moved to grant VC 95-V-130 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1A of the staff report dated June 25, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-130 by HERBERT AND JACQUELIN CARTER, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 8.5 feet, chimney 6.5 feet and stoop 4.5 feet from street line of a corner lot, on property located at 6412 Wood Haven Road, Tax Map Reference 83-4((2))(36)31 and 32, 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 23, 1996; 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 7,000 square feet.
4. The applicant has satisfied the nine required standards for granting a variance.

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

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

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

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

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

1. This variance is approved for the location of the specific structures (dwelling, attached deck, uncovered stoop and chimney) shown on the plat prepared by R. C. Fields, Jr. & Associates dated October 12, 1995 and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

Pursuant 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

Page 46, July 23, 1996, (Tape 1), HERBERT & JACQUELIN CARTER, VC 95-V-130, continued from Page 45

Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 46, July 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES A. & SHARON B. KELLEY, VC 96-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a six foot high fence to remain in the front yard of a corner lot. Located at 1905 Belle Haven Rd. on approx. 17,837 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (13) 1.

Chairman DiGiulian called the Kelley case and recognized Mr. Hammack.

Mr. Hammack explained that the application VC 96-V-028, JAMES A. AND SHARON B. KELLEY, involved legal matters which necessitated consultation with legal counsel. He then moved that the Board of Zoning Appeals go into Executive Session for the purpose of obtaining legal counsel and briefing by staff pertaining to probable litigation or other specific legal matters regarding this case.

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

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The Board of Zoning Appeals went into Executive Session at 9:58 a.m. and reconvened at 10:18 a.m.

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Chairman DiGiulian called the Board to order and recognized Mr. Hammack.

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.

Chairman DiGiulian addressed the applicant's representative, William Thomas, Jr., Esquire, and advised him that the consensus of the BZA was that, at this time while the decree is in effect, it did not have the authority to grant the variance request and they would defer the case to allow the applicant time to seek legal remedies. Chairman DiGiulian informed Mr. Thomas that the case was deferred to October 8, 1996 at 9:00 a.m.

Mr. Thomas informed the Board that Mr. Kelley was unaware that the decree had been placed in effect, that it had only been mentioned to him in conversation. He accepted the deferral date and voiced his optimism that the decree could be vacated.

Mr. Ribble so moved that VC 96-V-028 be deferred to October 8, 1996 at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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9:30 A.M. DOUGLAS R. GROVER, SP 96-Y-014 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 18.4 ft. from side lot line. Located at 4515 Silas Hutchinson Dr. on approx. 12,363 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 481.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Douglas R. Grover, 4515 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought a special permit for modification to minimum yard requirements for this R-C lot to allow construction of a garage addition to be located 18.4 feet from a side lot line. She stated that the total variance requested was 1.6 feet.

Mr. Grover pointed out that his neighborhood enjoyed unusually large back yards. He noted that the garage's front corner would only encroach a total of 9.0 square feet leaving a distance of 42.4 feet between the two homes. Mr. Grover informed the Board that he had discussed his proposed addition with his neighbors who had no opposition and that the structure's architecture and materials would be compatible with his home. He assured the Board that the garage would not cause any drainage nor sight problems and that it had no adverse impact what-so-ever on his neighborhood.

Chairman DiGiulian called for speakers either in support or in opposition to the garage but received no response. He then closed the public hearing.

Mr. Kelley moved to grant SP 96-Y-014 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-Y-014, by DOUGLAS R. GROVER, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements on certain R-C lots to permit construction of addition 18.4 feet from side lot line, on property located at 4515 Silas Hutchinson Drive, Tax Map Reference 33-4((2))481, 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 23, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 12,363 square feet.
4. The proposed garage will be architecturally compatible with the house.
5. The applicant has met all the standards required for an R-C zoning.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-913 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat certified by Edward L. Johnson, dated February 14, 1994, and amended by Doug Grover on May 1, 1996, submitted with this application and is not transferable to other land.
3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
4. The garage addition shall be architecturally compatible with the existing dwelling.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 48, July 23, 1996, (Tape 1), Scheduled case of:

9:30 A.M. TAMBRA G. LANE, SP 96-B-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 accessory structure to remain 7.5 ft. from rear lot line. Located at 7406 Estaban Pl. on approx. 13,830 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (72) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tambra G. Lane, 7406 Estaban Place, Springfield, Virginia, replied that it was.

In the absence of Heidi Powell, who prepared the report, Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She explained that the applicant was requesting a special permit for an error in building location in order to permit a 16.1-foot high shed to remain 7.5 feet from the rear lot line. Ms. Kelsey pointed out a correction clarifying that Section 8-914 of the Ordinance was the section that the staff report should have referenced. She added that the Ordinance correction was discussed with the applicant and Ms. Lane was aware of the difference.

Ms. Lane explained the information she obtained from the zoning office and the procedure she followed regarding the requirements and restrictions considered before purchasing and installing her shed. She professed that the mistake was an honest one as she did not realize that a height stipulation could impact the setback. Ms. Lane pointed out that the area where the shed is placed causes no detrimental effect on the use and enjoyment of other's property and that it is not visible because it is nestled in a wooded area which buffers the beltway. She maintained that, if compliance to the Ordinance was mandated, it would

cause her unreasonable hardship and considerable expense. Ms. Lane requested that the Board approve her variance application.

Chairman DiGiulian called for speakers but received no response. He then closed the public hearing.

Mr. Dively moved to grant SP 96-B-015 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-B-015 by TAMBRA G. LANE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.5 feet from rear lot line, on property located at 7406 Estaban Place, Tax Map Reference 80-1((2))(72)21, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the specified accessory structure shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose, structure and use indicated on the special permit plat prepared by Kenneth W. White, Land Surveyor, dated March 11, 1996, submitted with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 50, July 23, 1996, (Tape 1), Scheduled case of:

9:30 A.M. STORAGE AMERICA, INC./PREMIER CAR RENTAL, Appeal 96-B-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating n office use on the property in conflict with the conditions associated with Special Exception SE 83-A-070 and therefore is in violation of Zoning Ordinance provisions. Located at 11325 Lee Hwy. on approx. 1.53 ac. of land zoned C-8 and WS. Braddock District. Tax Map 56-2 ((1)) 52.

Chairman DiGiulian called the appellant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Trowbridge, Esquire, speaking on behalf of the applicant's representative, A.J. Albanese, Esquire, of 4041 University Drive, Suite 301, Fairfax, Virginia, replied that it was.

William Shoup, Deputy Zoning Administrator, referenced the staff report dated July 16, 1996 stating that the issue of this appeal was whether a permitted use may be established on property encumbered by a special exception approval. As background information, he explained that in October 1983 the Board of Supervisors had approved a special exception use, SE 83-A-070, which permitted a mini-warehouse facility with contractor's offices and shops. Mr. Shoup submitted that Premier Car Rental has established an office use, noting that on April 3, 1991 a Non-Residential Use Permit (Non-Rup permit) was issued. He pointed out that an office use is permitted in a C-8 District, but that this use had not been identified on the special exception plat. Mr. Shoup affirmed that staff's position was that, because the office use was not identified on the plat, that it can not be established on the property without a special exception amendment. Mr. Shoup also pointed out that, in her April 24, 1991 letter, the Zoning Administrator had determined that the office use was not in compliance with the special exception and therefore, the approval of the Non-Rup was null and void. He clarified that there were two separate decisions made: (1) the decision that the use was noncompliant and therefore, the Non-Rup was null and void; and (2) that the current decision and Notice of Violation was that the continued use of the property is in violation of the Zoning Ordinance.

Mr. Trowbridge concurred with staff's determination that there are, indeed, two issues: one legal and one factual; he then explained the particulars of each. He submitted a binder of factual information concerning the business, one of which is contained in the record. Mr. Trowbridge elaborated on the different interpretations of the Zoning Ordinance pertaining to Code Section 2-304 and Section 9 pointing out that the restrictions and requirements dealt with special exception uses not permitted uses. He contradicted the Zoning Administrator's interpretation. He maintained that an office use was a permitted use in a C-8

district and that there was no specific condition precluding it. Mr. Trowbridge expressed his optimism that the factual issue would be resolved by reviewing the history of the special exception application and not honing in on the singular proposed use which evidenced itself on the plat. He then chronicled the site's development. Mr. Trowbridge concluded his presentation by submitting that, as a matter of law and fact, the applicant was entitled to build offices, has intended to preserve that use, and the use is in conformance and accordance with his special use permit.

Chairman DiGiulian called for speakers.

Homer Backus, identified himself as the owner of the adjacent property, Parcel #50, and stated that he had no objection to the present use. He announced, for the record, that he was willing to work with and cooperate completely with the subject property's owner with his request for approving the present use.

Mr. Shoup explained the Zoning Administrator's interpretation of Sect. 2-304, Par. 3, regarding the requirement for a special exception. He pointed out that, although the contention is that the office use is a permitted use, it cannot be established in conflict with an approved special exception. He noted that there was an intent to limit what may be allowed on an application property because it can not be open ended. Mr. Shoup maintained that it was the Zoning Administrator's position to enforce Par. 2 of Sect. 9-004 which requires compliance with approved conditions and that this policy is consistent with their other determinations. He pointed out that, as noted in the staff report, there have been two other appeals on this issue and the determinations were upheld.

In rebuttal, Mr. Trowbridge explained his understanding of Condition #2. He professed that they were in conformance with Article 2; they were in conformance with conditions for a special use; and they were in conformance with the Zoning Ordinance.

There being no further questions or comments, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator. Although he noted that the appellant's representative had made some interesting arguments that may have some merit, he believed that the Zoning Administrator's determination, in this particular instance, was consistent with the application of the Zoning Ordinance in a wide variety of special permits that have come before the BZA and the special exceptions that are dealt with by the BZA. Mr. Hammack added that he believed the Administrator's interpretation of the Ordinance was reasonable and should be given weight. He further commented that this position was consistent with actions taken with respect to other applicants in similar situations under Sect. 9-004, Par. 2 which prohibits enlargement, expansion, relocation, or modification unless there is an amendment to the special exception.

Chairman DiGiulian stated that the motion failed for a lack of a second.

Mr. Pammel made a motion to reverse the decision of the Zoning Administrator based on the fact that he agreed with the arguments of the appellant's representative that Sect. 9-004 does not preclude uses that are permitted and states that they are clearly special permit uses and requires conformance with special permit uses. He added that the Zoning Administrator's argument with respect to Item 2, the County Board of Supervisors' order that approved the special exception and states that this special exception was granted for the building and uses indicated on the plat which is submitted with the application only, was not consistent with Sect. 9-004. He added that the language in 2-304, Par. 3, Special Exception Uses, reads, "No special exception shall be required for a use that is listed as a permitted use in a district, not withstanding that such use may also be included in a use category available by special exception."

Messrs. McPherson and Ribble seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

Mr. Dively commented that in deference to the Zoning Administrator, Mr. Shoup had relied on two previous cases which appeared before the BZA and that this BZA decision seemed to be in direct opposition. He noted that there is no documentation nor case log which interprets this provision and he believed that the decisions Mr. Shoup referenced were not binding on the BZA today.

Page 52, July 23, 1996, (Tape 1 ), Action Item:

Approval of June 4, 1996 Minutes

Mr. Dively moved approval of the June 4, 1996 minutes as submitted by staff. Hearing no objection, Chairman DiGiulian so ordered.

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Page 52, July 23, 1996, (Tape 1 ), Action Item:

Deferral Request of Nabil Mansour Appeal, A 96-L-013

Chairman DiGiulian, referring to the memorandum from William Shoup, Deputy Zoning Administrator, acknowledges Mr. Shoup's recommendation to defer the Mansour appeal case to November 7, 1996 at 9:30 a.m. Mr. Pammel so moved. Mr. Hammack seconded the motion which passed unanimously by a vote of 7-0.

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Page 52, July 23, 1996, (Tape 1 ), Action Item:

Annandale Hardware and Supply Company Inc./Poong Im  
Appeal Request

Chairman DiGiulian instructed Mr. Poong Im to address the issue at hand which was whether the BZA should accept Mr. Im's request to consider his appeal.

To clarify the issue, William Shoup, Deputy Zoning Administrator, referenced his July 16, 1996 memorandum to the BZA which recommended that the appeal was not timely. He indicated that this was an appeal of a May 10, 1996 Notice of Violation letter to Mr. Im citing the appellant's operation of a U-Haul Truck Rental operation. Mr. Shoup pointed out that was actually Mr. Im's second notice for the same violation as one had been issued in June 1995. He explained that Mr. Im had appealed the '95 violation notice then withdrew his appeal and canceled the dealership arrangement with U-Haul. A new violation was issued, Mr. Shoup explained, because Mr. Im had re-established the use. Mr. Shoup maintained that Mr. Im is not entitled to an appeal consideration because this is the Zoning Administration's second determination of the same violation.

Mr. Im conceded the validity of Mr. Shoup's presentation, apologized for incurring the first violation, and submitted that it was not his intention to break the law. Mr. Im explained that only after he was again approached by U-Haul to carry its service did he reopen that business and he respectfully requested that the BZA consider his 1996 appeal.

Chairman DiGiulian called for speakers who wished to address the appeal but received no response.

Mr. McPherson submitted that each incident of a Notice of Violation gives rise to a right to an appeal and he believed that the May 1996 Zoning Enforcement Branch inspection and subsequent letter were timely. He then moved to accept Poong Im's appeal.

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

Mr. Pammel noted that after Mr. Im's first Notice of Violation, he had ceased the truck rental use and therefore, he had been in compliance with the Ordinance. He believed that these two violations, although for the same use, are two separate business activities. Mr. Pammel voiced his agreement with Mr. McPherson that the Board should view Mr. Im's case as a separate incident.

Mr. Shoup suggested a hearing date for the morning of October 29, 1996.

As the October 29th date was acceptable to the Board, Chairman DiGiulian so ordered.

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Page 53, July 23, 1996, (Tape 1 ), Action Item:

Revised Plat for VC 96-S-057  
Eugene M. and Penny F. McGrath

Mr. Hammack moved to approve VC 96-S-057 with the revised plat and the proposed development conditions dated June 25, 1996 revised July 23, 1996. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 53, July 23, 1996, (Tape 2 ), Action Item:

Approval of July 16, 1996 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Hearing no objection, Chairman DiGiulian so ordered.

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As a item of information, Jane Kelsey, Chief, Special Permit and Variance Branch, announced that on Monday, July 22, 1996 the Board of Supervisors voted to televise the Board of Zoning Appeals meetings. She noted that the first telecast would be September 10, 1996 on Cable Channel 16.


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As there was no other business to come before the Board, the meeting was adjourned at 11:06 a.m.

Minutes by: Paula A. McFarland

Approved on: September 24, 1996

  
Betsy S. Hunt, 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 July 30, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:08 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first regularly scheduled case.

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Page 55, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES L. BROWN, VC 96-V-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line. Located at 5301 Burke Dr. on approx. 28,811 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 109-4 ((2)) (E) 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. The applicant, James L. Brown, 5301 Burke Drive, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position contained in the staff report. The applicant was requesting a 2 foot variance to allow construction of an addition to be located 13 feet from the side lot line.

Mr. Brown referenced the statement of justification submitted with his application and added that the lot is a long narrow lot.

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

Mr. Ribble made a motion to grant VC 96-V-061 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 23, 1996.

(Note: BZA waived the eight day waiting period later in the public hearing.)

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-V-061 by JAMES L. BROWN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.0 feet from side lot line, on property located at 5301 Burke Drive, Tax Map Reference 109-4((2))(E)37, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 28,811 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is narrow.
6. The variance is for 2.0 feet, which is a small request.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by James L. Brown, Architect, dated April 10, 1996, revised April 29, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 57, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. EVA G. BERNSTEIN, VC 96-P-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 7.0 ft. in height to remain in front yard. Located at 2103 Arrowleaf Dr. on approx. 7,145 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-2 ((41)) 14.

Chairman DiGiulian called the applicant to the podium and noted that a request for deferral was before the Board. The applicant, Eva G. Bernstein, 2103 Arrowleaf Drive, Vienna, Virginia, replied that she had been advised that she needed to have the lot resurveyed. She requested a November hearing date.

The adjacent neighbor, Ed Ingle, 2101 Arrowleaf Drive, Vienna, Virginia, disagreed with the deferral based on the fact that the 7 foot high fence was built in violation approximately fourteen months. He added that the applicant was cited by the County in July 1995 and waited ten months before submitting the variance application.

Chairman DiGiulian questioned why a recertification was necessary. Ms. Bernstein said Mr. Ingle questioned the measurements of the fence which required that the engineer remeasure. She explained that circumstances beyond her control had prolonged her filing the variance application.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the BZA had approximately ten cases scheduled for each public hearing in September. She added that it appeared that the fence is in excess of 7 feet and the application would have to be amended to include the side and rear yards.

Mr. Hammack questioned how the applicant could file a variance if she did not appeal the Notice of Violation she received in July 1995. Ms. Kelsey said she could not respond to what occurred between the applicant and the Zoning Enforcement Branch. Chairman DiGiulian said by not appealing the Notice of Violation the applicant had admitted that the fence was in violation; therefore, she filed a variance application.

Ms. Bernstein said upon receiving the Notice of Violation she contacted the Zoning Inspector, Ms. Brown, who advised her to file a variance application.

In response to a question from Mr. Hammack as to when the application was filed, Ms. Kelsey said the application was received by staff on April 29, 1996 and accepted May 15, 1996.

Following further discussion among the BZA members, Mr. Dively made a motion that the application go forward. Mr. McPherson seconded the motion which carried by a vote of 4-3 with Mr. Dively, Mr. Hammack, Mr. Pammel, and Mr. McPherson voting aye; Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voting nay.

Heidi Powell, Staff Coordinator, presented staff's position contained in the staff report. She said the applicant was requesting a variance to allow a 7 foot high fence to remain on a corner lot.

Mr. McPherson asked for a clarification as to how the fence should be measured. Ms. Powell explained that the Zoning Inspectors measure from the lowest point on the ground to the highest point of the fence on the applicant's property. She added that the engineer had measured at several points and averaged the height.

Ms. Bernstein said when she purchased the house she approached the builder and discussed the possibility of adding a fence around the perimeter for protection since she is single and lives alone. She said this was added as part of the purchase contract, but two weeks prior to settlement the builder pointed out that the sewer easement might present a problem. Following discussions with Fairfax County Water Authority, she submitted a letter to the County absolving them from any responsibility with regard to the fence should it have to be removed to access the sewer easement. When she was cited by the County, she immediately contacted the builder who told her that the County was incorrect.

Chairman DiGiulian called for speakers in opposition. Mr. Ingle, 2101 Arrowleaf Drive, an adjacent property owner, distributed a detailed opposition letter and a chronology of events with respect to the fence which included a site map and photographs of the fence. He used the view graph to discuss the photographs showing the impact on his property. Mr. Ingle said he had discussed the 4 foot height limitation with the builder prior to the fence being constructed, but the fence was constructed 7 feet 4 inches in height 30 feet from his front door. He immediately contacted the County who issued a Notice of Violation to Ms. Bernstein on July 14, 1995.

Mr. McPherson asked if Mr. Reynolds, the Superintendent for the builder, who signed the letter from the builder, D.R. Horton, was still with the company. Mr. Ingle replied that he was.

Mr. Kelley asked what the County procedure was for dealing with a builder who deliberately constructs a fence when they are aware of the 4 foot height limitation. Ms. Kelsey said she was not aware of the procedures. Mr. Kelley said he would like to know what procedures are taken by the County when something like this occurs.

Mr. Hammack asked what the inspectors review when they go out to perform a final inspection prior to issuing a Non-Rup (Non-Residential Use Permit). Ms. Kelsey said officially she could not respond since those inspections are under the purview of the Department of Environmental Management (DEM).

A discussion took place between Mr. Pammel and staff with regard to the location of the fence and the setback. Ms. Kelsey read an except from the Zoning Ordinance in explanation to staff's findings.

Aruzu Ingle, 2101 Arrowleaf Drive, Vienna, Virginia, read a letter from Neal and Doris Boggs, owners of 2100 Arrowleaf Drive, into the record in opposition to the fence noting the lack of consideration of both the builder and the applicant.

Mr. Dively asked if staff agreed with Mr. Pammel's earlier comments with regard to the location of the fence and if not please explain. Ms. Kelsey said staff respectfully disagreed and used the view graph to point out what staff believed to be the front yard.

Mr. Kelley again asked how an occupancy permit could be issued if a violation existed on the property. Ms. Kelsey reiterated her earlier comment with regard to final site inspections being under the purview of DEM. She deferred to Susan Langdon, who had been an inspector with that department, prior to transferring to the Zoning Evaluation Division. Ms. Langdon explained the process to the BZA.

In rebuttal, Ms. Bernstein reiterated that she was never apprised by Mr. Reynolds that the height of the fence was a problem nor did he advise her to call the County to find out fence height regulations.

Per Mr. Kelley's request, staff passed out a copy of the applicant's contract with the builder for the BZA members to review.

Ms. Kelsey advised the BZA that she had discussed the issue of definition of a front yard with Mr. Shoup and he advised if the BZA were to defer this hearing for a week he would reexamine the issue.

Mr. Kelley stated for the record that the applicant's contract did not show any indication of the applicant specifying a height for the fence.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to defer action on this hearing for one week to allow the Zoning Administrator to reexamine the requirements for front yards, particularly in a PDH District, and requested that a representative of the builder be present.

Mr. Hammack seconded and amended the motion to add that the builder's representative be prepared to address the issues of the height of the fence. The motion carried by a vote of 7-0.

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Page 58, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. WAYNE NEIL & CAROL A. SCOTT, VC 96-L-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 ft. from side lot line. Located at 4709 Perch Pl. on approx. 16,294 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((5)) (11) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Carol A. Scott, 4709 Perch Place, Alexandria, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented staff's position contained in the staff report. The applicant requested a 4.1 foot variance to allow an accessory structure consisting of a garage to be located 7.9 feet from the side lot line.

Ms. Scott presented her request as outlined in the statement of justification submitted with the application. She noted the exceptional shape of the lot and added that the character of the zoning district would not be changed by the granting of the variance.

Mr. McPherson questioned if the owner of Lot 37 had offered any comments on the request and Ms. Scott said the neighbor had no objections.

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

Mr. Hammack made a motion to grant VC 96-L-074 for the reasons noted in the Resolution with a change to the Development Conditions to delete the second sentence in Condition #4.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-L-074 by WAYNE NEIL & CAROL A. SCOTT, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 feet from side lot line, on property located at 4709 Perch Place, Tax Map Reference 101-1((5))(11)36, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,294 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is narrow and located in an older neighborhood. It is a small variance.
6. The requested variance is minimal and would not change the character of the zoning district.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the accessory garage structure shown on the plat prepared by Kenneth White, dated April 18, 1996, and revised through May 14, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The accessory structure shall be architecturally compatible with the existing dwelling.
4. Frame Sheds "A" and "B" shall be relocated and the heights lowered in order to comply with Zoning Ordinance requirements.
5. The detached structure noted as "Metal Shed" on the Variance Plat shall be removed before the Final Inspection is approved for the accessory garage.

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

Mr. 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 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 61, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. STUART AND HARRIET S. SOLOMON, VC 96-S-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 6806 Hathaway St. on approx. 10,592 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((16)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Stuart Solomon, 6806 Hathaway Street, Springfield, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented staff's position contained in the staff report. The applicant requested a 10 foot variance to allow an addition to the principal structure consisting of a screened porch to be located 15 feet from the rear lot line.

Mr. Solomon presented his request as outlined in the statement of justification submitted with the application. He noted the shallowness of the lot and felt the variance request would not be detrimental to the adjacent property owner. He said he had talked with the neighbors and they had no objections.

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

Mr. Pammel moved to grant VC 96-S-072 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 23, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-072 by STUART AND HARRIET S. SOLOMON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from rear lot line, on property located at 6806 Hathaway Street, Tax Map Reference 89-2((16))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 July 30, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,592 square feet.
4. The applicant met the nine required standards for a variance.
5. The measurement from Hathaway Street to the rear lot line shows that the lot is less than 100 feet deep; therefore the lot is shallow.

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Winnant McGinty for Springfield Engineering Corporation, dated May 13, 1988 and revised through April 23, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. McPherson 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 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 62, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SHEPARD C. & HIEP LOWMAN, VC 96-P-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from rear lot line. Located at 3101 Chichester Ln. on approx. 25,468 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((7)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Shepard C. Lowman, 3101 Chichester Lane,

Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position contained in the staff report. The applicant requested a 14.9 foot variance to allow construction of an addition consisting of a greenhouse to be located 10.1 feet from the rear lot line.

Mr. Lowman presented his request as outlined in the statement of justification submitted with the application. He noted that the property is bounded by three roadways and has an unusual shape; therefore, there is no other location to put the requested addition. He stated that the adjacent neighbor had no objections to the variance.

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

Mr. McPherson moved to grant VC 96-P-063 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 23, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-063 by SHEPARD C. & HIEP LOWMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.1 feet from rear lot line, on property located at 3101 Chichester Lane, Tax Map Reference 49-3((7))1, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 25,468 square feet.
4. The lot is an unusual "butterfly" shape.
4. The lot is shallow and surrounded by three roads.
6. The applicant met the nine 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 so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of the greenhouse addition shown on the plat prepared by Harold A. Logan Associates, dated April 11, 1996, and revised through April 16, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The greenhouse addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 64, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SHARON M. HARRILL, VC 96-D-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 1523 Bal Harbor Ct. on approx. 10,046 sq. ft. of land zoned R-3. Dranesville District. Tax Map 10-2 ((3)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Sharon M. Harrill, 1523 Bal Harbor Court, Herndon, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position contained in the staff report. The applicant requested a 7.6 foot variance to allow an addition consisting of a screened porch to be located 17.4 feet from the rear lot line.

Ms. Harrill presented her request as outlined in the statement of justification submitted with the application.

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

Mr. Ribble moved to grant VC 96-D-064 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 23, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-064 by SHARON M. HARRILL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.4 feet from rear lot line, on property located at 1523 Bal Harbor Court, Tax Map Reference 10-2((3))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 July 30, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,046 square feet.
4. The applicant met the nine required standards for a variance.
5. The topography of the lot is exceptional and the backyard is shallow.
6. The variance request is small and located on one corner of the deck which faces Folly Lick Park.

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

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

not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of the screened porch addition shown on the plat prepared by Andrew Dunn, dated April 18, 1996, and revised through May 7, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The screened porch addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 46, July 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. J. CHRISTOPHER WAGNER, VC 96-D-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 43.2 ft. from front lot line. Located at 239 Springvale Rd. on approx. 2.40 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 5A. (Concurrent with SP 96-D-016).

9:00 A.M. J. CHRISTOPHER WAGNER, SP 96-D-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 41.2 ft. from front lot line. Located at 239 Springvale Rd. on approx. 2.40 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 5A. (Concurrent with VC 96-D-069).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Chris Imitatis, 9561 Bell Drive, Great Falls, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position contained in the staff report. The applicant was requesting a Special Permit for error in building location to permit an accessory structure (1½ story brick garage) to remain 41.2 feet from the front lot line. He said the applicant was also requesting a 6.8 foot variance to permit construction of an addition to be located 43.2 feet from front lot line.

Mr. Dematatis presented the applicant's request as outlined in the statement of justification submitted with the application. He noted that originally this property was a 5 acre lot that the previous owner divided into two

lots. Subsequent to the division of the property, the previous owner applied for and received a building permit to construct a three car garage. Mr. Dematatis said they were unable to determine if the garage was placed in error by the previous property owner or if the County issued a building permit in error because the site plan could not be located.

With regards to the variance request, Mr. Dematatis stated that the addition would be no closer to the lot line than the screened porch it would replace, there was no other place on the lot to put the addition, and it would not be detrimental to the adjacent property owners.

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

Mr. Kelley moved to grant VC 96-D-069 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 23, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-069 by J. CHRISTOPHER WAGNER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 43.2 feet from front lot line, on property located at 239 Springvale Road, Tax Map Reference 3-4((1))5A, 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 30, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 2.40 acres.
4. The applicant met the nine required standards for a variance.
5. The proposed addition is further away than the existing dwelling.

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

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

Page 68, July 30, 1996, (Tape 1), J. CHRISTOPHER WAGNER, VC 96-D-069 and SP 96-D-016, continued from Page 67)

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specified breakfast room and bedroom addition shown on the plat prepared by Runyon Dudley, Associates, Inc., dated March 27, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. McPherson seconded the motion which carried 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 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley made a motion to grant SP 96-D-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-D-016 by J. CHRISTOPHER WAGNER, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 41.2 feet from front lot line, on property located at 239 Springvale Road, Tax Map Reference 3-4((1))5A, 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 30, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Runyon Dudley, Associates, Inc., dated March 27, 1996, submitted with this application, as qualified by these development conditions.

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

Mr. McPherson seconded the motion which carried 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 30, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to waive the eight day waiting period for the first case heard this morning, James L. Brown VC 96-V-061. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 70, July 30, 1996, (Tape 1), RECESS:

The Board recessed at 10:36 a.m. and reconvened at 10:48 a.m.

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Page 70, July 30, 1996, (Tape 1 & 2), Scheduled case of:

9:30 A.M. RICHARD DANIEL PELL, APPEAL 96-P-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that existing establishment is a nonconforming use which may not be expanded into the rear portion of the structure. Located at 8815 Lee Hwy. on approx. 3.33 ac. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((1)) 4. (MOVED FROM 4/30/96 AT APPL'S. REQ. DEF. FROM 5/28/96 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated July 22, 1996. The main issue before the BZA was the appellant's request to extend the eating establishment use to the rear portion of the building. Mr. Shoup elaborated by stating as a nonconforming use the eating establishment had to be conducted in accordance with Section 15-103 of the Zoning Ordinance and among those provisions is a requirement that a nonconforming use can not be expanded; however, there is an exception which states "...such a use may be extended to occupy a portion of a building that was manifestly arranged or designed to accommodate such a use on the effective date of the Zoning Ordinance". Mr. Shoup further explained that these provisions also state "any discontinuation of a nonconforming use for a period of two years or more or the replacement of a nonconforming use results in the loss of the nonconforming rights". He felt evidence showed that the rear portion of the building was converted from a dance hall use to a tourist home and rooming house use, until that portion was gutted by a fire in February of 1995. Mr. Shoup felt the rear portion of the building was not arranged, designed, nor intended as a eating establishment on the effective date of the Zoning Ordinance. It was staff's position that any nonconforming right to use this portion of the building as an eating establishment had long since been negated and the appellant could no longer claim such a right.

The appellant's representative, Jack Brown, presented the arguments forming the basis for the appeal. The appellant's position was that they do not agree with staff's interpretation of Section 15-103 of the Zoning Ordinance and felt they were not enlarging the building, only improving the seating capacity inside. He said the dance hall was established in the 1940's and he had interviewed several patrons who confirmed that it was also used as an eating establishment by serving sandwiches etc. to its customers along with alcohol. In closing, Mr. Brown stated the appellants would bring the building up to current building code requirements, it would be an increase in revenue for the County, and they would improve and beautify the exterior of the structure; thereby, restoring the building to its original purpose.

The appellant, William Pell, 8815 Lee Highway, spoke in support of his appeal. He stated that he was remodeling the building; therefore, there would be no structural changes. Mr. Pell said the current parking facility can handle the enlargement of the business and would not increase congestion in the area.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to uphold the Zoning Administrator because he had not heard compelling evidence that the usage of the rear portion of the property had been continuous since the 1930's. He felt it seemed as if it had changed in its nature and had not been a continuing use; therefore, he believed Mr. Shoup's opinion was well founded. Mr. Pammel seconded the motion. The motion failed by a vote of 3-4 with Mr. Dively, Mr. Pammel and Mr. Hammack voting aye; Chairman DiGiulian, Mr. McPherson, Mr. Ribble and Mr. Kelley voted nay.

Mr. McPherson made a motion to reverse the Zoning Administrator because he felt the documentation showed the property had a long history with the County and relationship with the community. He said the arguments put forward by staff were appropriate; however, under the guidelines given to them for reviewing these sort of situations he felt the position that staff had taken was inappropriate in this case. Mr. Ribble seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. McPherson, Mr. Ribble and Mr. Kelley voting aye; Mr. Dively, Mr. Pammel and Mr. Hammack voting nay.

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Page 71, July 30, 1996, (Tape 2), Information Item:

Out of Turn Hearing Request  
for SPA 81-S-064, Luck Stone Corporation

Mr. Hammack said he felt the out of turn hearing request was a reasonable one. He questioned staff on how many cases were already on the agenda for September 24, 1996.

In response, Jane Kelsey, Chief, Special Permit and Variance Branch, said there were 10 applications currently scheduled. Ms. Kelsey also noted that after consultation with Susan Langdon, Senior Staff Coordinator, she advised she was in the process of preparing the Annual Report which necessitates meetings with both the State and County agencies; therefore, staff requested the out of turn hearing request not be granted for September.

Chairman DiGiulian felt this was a minor application and questioned why they could not hear the report at a later date. Ms. Kelsey responded that if the BZA granted the out of turn request they would have to issue the report after the hearing was held.

Mr. Kelley moved to grant the request because he felt the application would be fairly routine and there had been little opposition in the past. Mr. Ribble seconded the motion which carried by a vote of 7-0. The hearing was scheduled for September 24, 1996.

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Page 71, July 30, 1996, (Tape 2), Information Item:

Approval of July 23, 1996 Resolution

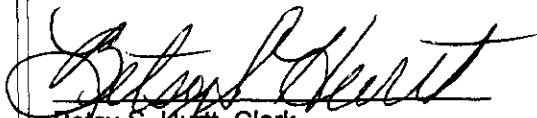
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 11:03 a.m.

Minutes by: Teresa M. Wang

Approved on: November 12, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 6, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

The Board members met with Cable Programming at 8:30 a.m.

Chairman DiGiulian called the meeting to order at 9:12 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 13, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. YAHYA M. AL-HUSSAIN, ABDULLAH BIN AL-HUSSEIN, MOHAMMAD AL-HUSSEIN AND ALHASSAN A. AL-HUSSAIN, VC 96-P-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 1 having a lot width of 57.0 ft. Located on the E. side of Central Ave., approx. 200 ft. N. of its intersection with Electric Ave. on approx. 40,923 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((1)) 78B. (IN ASSOCIATION WITH RZ 93-P-015) (MOVED FROM 8/13/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kendrick Sanders, 3905 Railroad Avenue, #200N, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The Board of Supervisors approved the associated rezoning application RZ 93-P-015 on August 5, 1996. Staff could not conclude that the application met the nine required standards for a variance. Ms. Wilson said, as approved by the Board of Supervisors, the subject property could be developed with two dwelling units irrespective of the approval of the requested variance.

The applicant's agent, Ken Sanders, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Sanders discussed the history of the subject property. He referenced a memo submitted to the Board pertaining to measuring lot width. Staff and the applicant disagreed on how to measure lot width according to the building restriction line. Mr. Sanders said the applicant had not formally debated the issue because they felt the variance was a reasonable request.

Mr. Pammel said he agreed with the applicant's perception of the lot width issue.

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

Mr. Hammack moved to grant VC 96-P-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-025 by YAHYA M. AL-HUSSAIN, ABDULLAH BIN AL-HUSSEIN, MOHAMMAD AL-HUSSEIN AND ALHASSAN A. AL-HUSSAIN, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 1 having a lot width of 57.0 feet, on property located on the east side of Central Avenue, approximately 200 feet north of its intersection with Electric Avenue, Tax Map Reference 39-3((1))78B, 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 6, 1996; and

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

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-4.
- 3. The area of the lot is 40,923 square feet.
- 4. 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 **GRANTED** with the following limitations:

- 1. This variance is approved for the subdivision of one lot into three lots, proposed Lot 1 having a lot width of 57.0 feet as shown on the Generalized Development Plan/Variance plat prepared by Paciulli, Simmons & Associates, LTD. dated November, 1995, as revised through June 20, 1996, 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 Ordinance 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 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 variance. The request must specify 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 14, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. UPPER OCCOQUAN SEWAGE AUTHORITY, VC 96-Y-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit increase in building height of two buildings. Located at 14631 Compton Rd. on approx. 471.12 ac. of land zoned R-C and WS. Sully District. Tax Map 64-4 ((1)) 5, 6, 15 through 22; 65-3 ((1)) 75, 77, 78; 73-2 ((1)) 2, 3A; 74-1 ((1)) 1. (IN ASSOCIATION WITH SEA 90-S-007)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Millard H. Robbins, Jr., 14631 Compton Road, Centreville, Virginia, replied that it was.

Lorrie Kirst, Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The variance request was to allow the dewatering and drying building to be 82.0 feet tall and the lime storage building to be 78.0 feet tall. The Board of Supervisors approved the associated Special Exception application on August 5, 1996.

The applicant's agent, Millard Robbins, presented the variance request as outlined in the statement of justification submitted with the application. He said the Board of Zoning Appeals had approved both buildings for the requested heights but they had made technological changes which required additional approval.

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

Mr. Pammel moved to grant VC 96-Y-070 for the reasons set forth in the Resolution, subject to the Development Conditions contained in the staff report dated August 6, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-Y-070 by UPPER OCCOQUAN SEWAGE AUTHORITY, under Section 18-401 of the Zoning Ordinance to permit increase in building height of two buildings, on property located at 14631 Compton Road, Tax Map Reference 64-4((1))5, 6, 15, through 22; 65-3((1))75, 77, 78; 73-2((1))2, 3A; 74-1((1))1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1996;  
and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 471.12 acres.
4. The applicant presented testimony indicating compliance with the required standards for a variance.
5. The unusual circumstances of the facility involved and the need to have the additional height for the efficient operation of a public utilities system justifies granting the variance.

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

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

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

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

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

1. This variance is approved for the location of the specific dewatering and drying building (U) and lime storage building (H/2) shown on the plat prepared by CH2M Hill and certified by Jack E. Rinker, dated May 3, 1996 with revisions through July 26, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained to any construction and final inspections shall be approved.



3. If SEA 90-S-007 is not approved by the Board of Supervisors, this variance approval shall be deemed 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 construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried 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, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel suggested that Zoning Administration consider possible amendments to the Ordinance that would cover the circumstances of public utility facilities under unique situations rather than having to go through the variance process.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if that was a formal motion. Chairman DiGiulian said it was only a suggestion from Mr. Pammel.

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Page 27, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. NVR HOMES, INC., SP 96-S-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 dwelling to remain 19.9 ft. from street line of a corner lot. Located at 7831 Preakness Ln. on approx. 13,507 sq. ft. of land zoned R-2. Springfield District. Tax Map 97-1 ((8)) 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. Tracy Steele, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubely, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant request a special permit based on error in building location. The amount of the error is 5.1 feet.

Ms. Steele presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Steele requested a waiver of the 8 day waiting period if the application was granted.

Mr. Kelley asked how many similar applications had been submitted by NVR Homes in the last five years. Ms. Steele replied she was not aware of any similar applications submitted by NVR Homes.

Skip Cozzi, NV Homes, came forward to address Mr. Kelley's question. He said he wasn't aware of any applications submitted by NV Homes in the last five years.

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

Mr. McPherson moved to grant SP 96-S-018 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-S-018 by NVR HOMES, INC., under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 19.9 feet from street line of a corner lot, on property located at 7831 Preakness Lane, Tax Map Reference 97-1((8))12, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the dwelling shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John E. Krobath, Land Surveyor, dated May 22, 1996, submitted with this application, as qualified by these development conditions.

Page 19, August 6, 1996, (Tape 1), NVR HOMES, INC., SP 96-S-018, continued from Page 78

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

Mr. Pammel seconded the motion which carried by a vote of 7-0. Mr. McPherson 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 August 6, 1996. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley asked to have a report prepared by staff pertaining to the number of applications submitted by NVR Homes and its subsidiaries in the last five years.

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Page 19, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JUDITH Z. BROOKS, VC 96-D-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.26 ft. from side lot line. Located at 850 Dolley Madison Blvd. on approx. 1.48 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((22)) 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. William Doggett, 7315 Wisconsin Avenue, Bethesda, Maryland, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.74 feet to the minimum side yard requirement.

The applicant's agent, Mr. Doggett, presented the variance request as outlined in the statement of justification submitted with the application.

The BZA members and Mr. Doggett discussed placing the storage shed elsewhere on the property.

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

Mr. Ribble moved to deny VC 96-D-066 for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-066 by JUDITH Z. BROOKS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.26 feet from side lot line, on property located at 850 Dolley Madison Boulevard, Tax Map Reference 31-2((22))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 6, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.48 acres.
4. The lot has drainage and topographical problems, but there is another place to put the addition.
5. The variance requested was for convenience.
6. The applicant created a self imposed 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**.

Mr. McPherson seconded the motion which carried 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, 1996.

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Page 80, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JUANITA M. HAYDEL, SP 96-Y-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 11.3 ft. from side lot line. Located at 3405 Valewood Dr. on approx. 20,549 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 94. (Concurrent with VC 96-Y-073).

9:00 A.M. JUANITA M. HAYDEL, VC 96-Y-073 Appl. under Sect(s).18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from side lot line. Located at 3405 Valewood Dr. on approx. 20,549 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 94. (Concurrent with SP 96-Y-017).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Juanita Haydel, 3405 Valewood Drive, Oakton, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 2.8 feet to the minimum side yard requirement and to allow a 3.7 foot modification for an addition to remain 11.3 feet from the side lot line.

The Chairman asked was the portion in the rear of the carport going to remain. Mr. Hunter replied that it would be used for storage.

Ms. Haydel presented the requests as outlined in the statement of justification submitted with the application. She noted that other variances had been granted in the neighborhood and that the application would not have a detrimental impact on the property.

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

Mr. Kelley moved to grant SP 96-Y-017 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-Y-017 by JUANITA M. HAYDEL, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 11.3 feet from side lot line, on property located at 3405 Valewood Drive, Tax Map Reference 46-1((8))94, 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 6, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is granted only for the addition (carport and storage) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated March 13, 1996, revised through April 25, 1996 submitted with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1996. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley moved to grant VC 96-Y-073 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-Y-073 by JUANITA M. HAYDEL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.2 feet from side lot line, on property located at 3405 Valewood Drive, Tax Map Reference 46-1((8))94, 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 6, 1996; and

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

- 1. The applicant is the owner of the land.

- 2. The present zoning is R-2.
- 3. The area of the lot is 20,549 square feet.
- 4. The applicant met the required standards for a variance.
- 5. The property was acquired in good faith.
- 6. Several other variances have been granted in the 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 **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specified garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated March 13, 1996, revised through April 25, 1996 submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The garage addition shall be architecturally compatible with the existing dwelling.

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

Page 84, August 6, 1996, (Tape 1), JUANITA M. HAYDEL, SP 96-Y-017 and VC 96-Y-073, continued from Page 83 )

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 84, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. GEORGE J. MCPHERSON, JR., VC 96-D-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard of a lot containing less than 36,000 sq. ft. Located at 1320 Round Oak Ct. on approx. 11,030 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-2 ((19)) 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. Michele Rosati with the law firm of Lawson and Frank, replied that it was.

Mr. McPherson stated for the record that he and the applicant were not related and did not know one another.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure in a minimum required front yard of a lot containing less than 36,000 square feet.

Ms. Rosati presented the variance request as outlined in the statement of justification submitted with the application. She presented photographs to the Board.

Paul Herndon, 1319 Round Oak Court; Ilene Manfredi, 1315 Round Oak Court; and Susan Houston, 1312 Round Oak Court, came forward to support the application.

The following spoke in opposition: Roberta Tankle, 1310 Round Oak Court; Ray Voyten, 1330 Round Oak Court; Jerry Tankle, 1310 Round Oak Court; Sally Rutherford, 5810 Bent Twig Road; Clarence Hill Jr., 1322 Mary Ridge Drive; and Judith Tharrington, 1350 Round Oak Court. The speakers were concerned about the applicant violating the cluster zoning concept and the subject application setting a precedent in the neighborhood.

Ms. Rosati addressed the speakers' concerns in her rebuttal.

Mr. Pammel asked staff how many lots on the property did not meet the minimal lot standards and asked if this was the only one in the development that didn't meet the requirement.

Mr. Hunter said staff would research the question.

Mr. Pammel moved to defer VC 96-D-068 to August 13, 1996 to allow staff time to research the answer to his question. Mr. Hammack seconded the motion which carried by a vote of 6-1 with Mr. Kelley voting nay.

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Page 84, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. MICHAEL D. & ALISON G. BENTLEY, VC 96-Y-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.6 ft. from rear lot line. Located at 5533 Cedar Break Dr. on approx. 8,536 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 54-1 ((11)) (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. Michael Bentley, 5533 Cedar Break Drive, Centreville, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.4 feet to the minimum rear yard requirement.

Mr. Bentley presented the variance request as outlined in the statement of justification submitted with the application. He submitted photographs of the subject property and noted letters in support of the application.

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

Mr. Dively moved to grant VC 96-Y-078 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-Y-078 by MICHAEL D. & ALISON G. BENTLEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.6 feet from rear lot line, on property located at 5533 Cedar Break Drive, Tax Map Reference 54-1((11))(6)16, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1996; and

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

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-3 and WS.
- 3. The area of the lot is 8,536 square feet.
- 4. The variance requested was relatively moderate.
- 5. The property is shallow.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Kenneth White, dated May 1, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 86, August 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. EVA G. BERNSTEIN, VC 96-P-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 7.0 ft. in height to remain in front yard. Located at 2103 Arrowleaf Dr. on approx. 7,145 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-2 ((41)) 14. (Deferred from 7/30 for additional testimony)

Chairman DiGiulian noted that the subject application was deferred to have the contractor and his superintendent present and to obtain an interpretation from staff. He asked the applicant if the contractor was present.

Heidi Powell, Staff Coordinator, said a request that the builder be present was sent via registered mail and first class mail and also telephone calls were made but she had received no response.

At that moment the builder walked in and was asked to state his name and address for the record.

Gregory S. Reynolds, 6811 Bobwhite Lane, Spotsylvania, Virginia, superintendent for D.R. Horton said he was the project superintendent at the time of the Bernsteins' building process.

Jane Kelsey, Chief, Special Permit and Variance Branch, commented that staff was prepared to present the interpretation request at the Board's leisure.

Mr. Hammack said the Board received a letter dated July 12, 1996 signed by Mr. Reynolds as site superintendent of D.R. Horton and in the letter Mr. Reynolds said that he had informed Ms. Bernstein of the County fence height requirements several weeks prior to the construction of the fence. He asked Mr. Reynolds how he made Ms. Bernstein aware of the height requirements.

Mr. Reynolds said he was notified by Mr. Ingle who owns the house behind the Bernsteins. Mr. Ingle informed Mr. Reynolds of the telephone number of the zoning office that would specify the fence height requirement. After listening to it several times, he passed the phone number on to Ms. Bernstein. He said he remembered distinctly giving the number to her son on site so he could listen to it before the fence was constructed on the property.

Mr. Hammack asked Mr. Reynolds how they came up with the height to construct the fence on her property. Mr. Reynolds said the decision was made by someone in the division office, that it was not his decision. Mr. Reynolds said he brought the matter to the attention of the company, that the fence would be in violation, he said the fence was put in Ms. Bernstein's contract by the sales person and he was instructed by his superiors to install the fence according to contract. He said his superiors was supposedly informed that the fence was not in violation. He said they were mislead because the fence was not in violation of location but in height.

Ms. Powell said staff met with the Zoning Administrator's office regarding the issue of the definition of a front yard. The Zoning Administrator's office determined that a front yard is defined as the area between the front lot line and the point of the principle building closest to the front lot line.

Ms. Bernstein said that she was never notified that her fence was in violation. She said she never indicated the height of the fence but only where the fence should be located.

Darren Bernstein, 2103 Arrowleaf Drive, said he had conversations with Mr. Reynolds and that he did not recall him indicating the height of the fence would be in violation.

Aruzu Ingle, 2101 Arrowleaf Drive, came forward to reaffirm the letter submitted by her husband. The Chairman said that the Board received the letter and that it would be incorporated into the record.

Mr. Pammel moved to deny VC 96-P-065 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-065 by EVA G. BERNSTEIN, under Section 18-401 of the Zoning Ordinance to permit fence 7.0 feet in height to remain in front yard, on property located at 2103 Arrowleaf Drive, Tax Map Reference 39-2((41))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 August 6, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-4.
3. The area of the lot is 7,145 square feet.

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

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

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

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

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

Mr. McPherson seconded the motion which carried 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, 1996.

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Page 88, August 6, 1996, (Tape 1), Scheduled case of :

9:30 A.M. SANDRA F. & LEONARD P., III, WISHART, VC 96-S-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 11.9 ft and addition 5.0 ft. from side lot line. Located at 10602 Donovan's Hill Dr. on approx. 36,229 sq. ft. of land zoned R-1. Springfield District. Tax Map 87-2 ((10)) 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. Leonard P. Wishart, 10602 Donovan's Hill Drive, Fairfax Station, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances of 15.0 feet and 8.1 feet to the minimum side yard requirements.

Mr. Wishart presented the variance request as outlined in the statement of justification submitted with the application. He said the neighbors supported the application. Mr. Wishart requested that the Board waive the 8 day waiting period.

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

Mr. McPherson moved to grant VC 96-S-067 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-S-067 by SANDRA F. & LEONARD P., III, WISHART, under Section 18-401 of the Zoning Ordinance to permit construction of deck 11.9 feet and addition 5.0 feet from side lot line, on property located at 10602 Donovan's Hill Drive, Tax Map Reference 87-2((10))17, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1996; and

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

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 36,229 square feet.
- 4. 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

Page 90, August 6, 1996, (Tape 1), SANDRA F. & LEONARD P., III, WISHART, VC 96-S-067, continued from Page 89)

all reasonable use of the subject property, or

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition and deck shown on the plat prepared by Christopher Consultants, Ltd., dated November 30, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition and deck shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson made a motion to waive the 8 day waiting period. 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 August 6, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 90, August 6, 1996, (Tape 1), Scheduled case of :

9:30 A.M. LEE GRAHAM CORPORATION, SPA 95-P-041 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 95-P-041 for community swimming pool and tennis courts to permit site renovations, building additions and decrease in land area. Located at 7319 Lee Hwy. on approx. 7.70 ac. of land zoned R-4 and HC. Providence District. Tax Map 50-1 ((1)) 50. (IN ASSOCIATION W/RZ 96-P-014) (MOVED FROM 11/7/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. R. Lin Lemon, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Leslie Johnson, Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicant requested to delete 2 acres of land from the application and to construct numerous improvements on the site. With the implementation of the Proposed Development Conditions, staff supported the request with the exception of the lighted tennis courts. The applicant

Page 91, August 6, 1996, (Tape 1), LEE GRAHAM CORPORATION, SPA 95-P-041, continued from Page 90 )

disagreed with staff on the requirement of interparcel access to the shopping center.

Mr. Lemon, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He discussed the concerns with Proposed Development Conditions 6, 7, and 8. Mr. Lemon presented a petition signed by the adjacent neighbors, immediately in back of the tennis courts, supporting lighted tennis courts.

Steve McLaughlin, president of Lee Graham Corporation, spoke in support of the application. He said the neighbors did not want interparcel access to the shopping center and they were in support of lighted tennis courts.

Lisa Downing, President, Bellsford Landing Condominium Association also spoke in support of the application stating that the neighbors felt the lighted tennis courts would improve security for the condominium complex. She said the neighbors were concerned about the increased traffic to the shopping center that would be caused by the interparcel access.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 95-P-041 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report dated July 31, 1996 further revised by the applicant dated August 1, 1996, as amended. Mr. Pammel seconded the motion for purposes of discussion. Mr. Kelley was opposed to interparcel access but noted that it was included in the proposed conditions. He said the BZA could delete it, but a recommendation to require interparcel access could come from the Planning Commission or the Board of Supervisors.

Mr. Kelley moved to amend the motion by removing proposed Condition #15 pertaining to interparcel access. Mr. Dively seconded the motion to amend the condition. Mr. Pammel said he opposed the motion because he felt that interparcel access was necessary. The motion carried by a vote of 4-2 with Mr. Pammel and Mr. McPherson voting nay. Mr. Ribble was not present for the vote.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SPA 95-P-041 by LEE GRAHAM CORPORATION, under Section 3-403 of the Zoning Ordinance to amend SP 95-P-041 for community swimming pool and tennis courts to permit site renovations, building additions and decrease in land area, on property located at 7319 Lee Highway, Tax Map Reference 50-1((1))50, 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 6, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4 and HC.
3. The area of the lot is 7.70 acres .

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

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

- \*1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.
- \*2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis, dated April 1, 1996, revised through July 8, 1996 and approved with this application, as qualified by these development conditions.
- \*3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- \*4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. A minimum of 120 parking spaces shall be provided for the use. All parking for the use shall be on site as shown on the special permit plat.
6. The hours of operation shall be limited to the following:
  - Tennis Courts - 8:00 a.m. - 9:00 p.m. Sunday through Thursday  
8:00 a.m. - 10:00 p.m. Friday and Saturday
  - Swimming Pool - General hours of operation: 11:00 a.m. to 9:00 p.m.;
  - Lap swim only: 6:00 a.m. to 7:30 a.m.;
  - Swim team practice: 7:30 a.m. to 11:00 a.m.
  - Competition meets: No earlier than 9:00 a.m.
  - After-hours parties may be held with the following restrictions:
    - a. Parties shall be limited to ten (10) per season.
    - b. Parties shall be limited to Friday, Saturday and pre-holiday evenings. Four (4) week night parties may be permitted per year, provided they shall not exceed 11:00 p.m.
    - c. Parties shall not exceed 12:00 midnight.
7. Lights for the tennis courts shall be mounted on the sides of the courts and directed and/or shielded so as to minimize glare impacts on the adjoining properties. They shall not exceed twenty-four (24) feet in height. Lights will not be turned on before 8:00 a.m. and be turned off by 9:00 p.m. Sunday through Thursday and by 10:00 p.m. Friday and Saturday.
8. There shall be no whistles, bullhorns, sirens or amplified music allowed prior to 9:00 a.m. except on Saturdays during the summer months that have competition meets. On those Saturdays, amplified announcements and music may occur between 8:30 a.m. and 9:00 a.m.
9. The existing vegetation shall be deemed to satisfy the transitional screening requirement along the northern and southern lot lines provided that supplemental landscaping to consist of evergreen trees and under-story plantings shall be provided to the west and south of the tennis courts as necessary to meet the purpose and intent of Transitional Screening 1 as determined by DEM.
10. The existing fencing shall be deemed to satisfy the barrier requirement along the northern, southern and western lot lines provided that wooden slat inserts are provided in the chain link fence along the western perimeter of the pool area to provide the appearance of wood fencing.



11. The proposed landscaping coupled with existing vegetation along the western property boundary and north of the parking area serving the tennis courts as shown on Sheet 2 of the SP Plat shall be deemed to satisfy the Transitional Screening requirement along the western property boundary and north of the parking area serving the tennis courts. In the event, DEM requires the proposed travel aisle providing vehicular access to the tennis courts be 24 feet rather than 20 feet, the applicant shall demonstrate to the satisfaction of DEM that the remaining landscaping provided along the travel aisle coupled with the landscaping provided on the adjacent residential property subject to RZ 96-P-014 meets the intent of Transitional Screening 1.
12. A fabric or mesh wind screen shall be installed along the interior of the tennis court fencing to provide an additional visual screen of the tennis facility.
13. Dedication of right-of-way to 60 feet from centerline along the Route 29 frontage of the site shall be provided to the Board of Supervisors in fee simple. Such dedication shall be provided at the time of site plan approval or upon demand by VDOT or the County, whichever first occurs. The applicant shall also provide all ancillary easements necessary, as determined by DEM, for future improvements to Route 29.
14. An ingress/egress easement to provide public access across the travel aisle along the northern property boundary shall be recorded at the time of site plan approval.
15. The proposed clubhouse/bathhouse shall be residential in appearance and shall be compatible with the proposed residential development to the west. The maximum building height shall not exceed 30 feet in height. Building materials shall be limited to face brick, architectural pre-cast stone or stucco, wood siding or other building material which appears residential in character.

The above conditions supercede those conditions previously imposed with the approval of SP 95-P-041.

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 himself 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 Section 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 not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 93, August 6, 1996, (Tape 1), Scheduled case of :

9:30 A.M. CAPITOL WHOLESALE, INC., Appeal 96-V-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a wholesale trade establishment and a storage yard without valid site plan and Non-RUP approvals, in violation of Zoning Ordinance provisions. Located at 7300 Telegraph Square Dr. on approx 5.00 ac. of land zoned I-4 and I-5. Mt. Vernon District. Tax Map 108-1 ((1)) 3D. (MOVED FROM 7/2/96)

Page 94, August 6, 1996, (Tape 1), CAPITOL WHOLESALE, INC., Appeal 96-V-016, continued from Page 93

Mr. Pammel moved that the Board accept the withdrawal of A 96-V-016, Capitol Wholesale Inc., Mr. McPherson seconded the motion.

Chairman DiGiulian asked if the motion included the conditions contained in the withdrawal letter.

Mr. Pammel asked if it was the County's position that the violation letter was withdrawn making the violation moot.

Jane Kelsey, Chief, Special Permit and Variance Branch, said William Shoup, Deputy Zoning Administrator, could not be present but that he had informed her that the applicant and staff had worked out all the issues. Ms. Kelsey said she could not specifically answer the question and requested a deferral to next week's hearing.

Mr. Dively moved to defer A 96-V-016 to August 13, 1996 for more information. Mr. Kelley seconded the motion. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 94, August 6, 1996, (Tape 2), Action Item:

Approval of June 18, 1996 Minutes

Mr. McPherson moved to approve the minutes from the June 18, 1996 hearing. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 94, August 6, 1996, (Tape 2), Action Item:

Request for Intent to Defer  
Shedquarters Inc. Appeal A 96-V-005

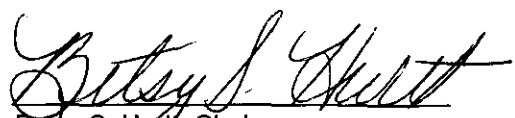
Mr. Dively moved to defer A 96-V-005 to November 12, 1996 at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

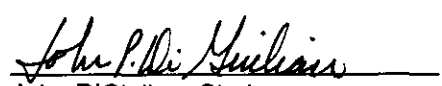
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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Regina Thorn

Approved on: September 24, 1996

  
Betsy S. Hurt, 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 August 13, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Susan Langdon, Senior Staff Coordinator, was present in the absence of Jane Kelsey, Chief, Special Permit and Variance Branch.

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Page 95, August 13, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ALLEN AND PATRICIA MORELL, VC 96-Y-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from front lot line of a corner lot and accessory structure to remain in a front yard of a lot containing less than 36,000 sq. ft. Located at 3900 Bokel Dr. on approx. 10,431 sq. ft. of land zoned R-3 (Cluster) and HC. Sully District. Tax Map 35-3 ((7)) 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. Patricia Morell, 3900 Bokel Drive, Chantilly, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant was requesting two variances. The first involved a 5.0 foot variance in order to construct a sun room addition and the second request was for approval to allow a child's playhouse and play equipment to remain in the front yard. Ms. Powell noted that the applicant had submitted a revised plat which accurately reflects the building restriction line.

Ms. Morell said they live on a corner lot located on a pipestem and when going through the permit process they learned the lot has three front yards which makes it very difficult to construct anything on the lot. She explained that they bought their house, which was a model home, approximately thirteen and a half years ago with a sun room which was damaged during the severe winter weather. Ms. Morell said the sun room they propose constructing would be 6 feet deeper than the original one therefore it required a variance. The second variance request was for a play structure which has already been built and they would like the structure to remain in its present location.

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

Mr. Hammack made a motion to approve VC 96-Y-076 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 6, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-Y-076 by ALLEN AND PATRICIA MORELL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from front lot line of a corner lot and accessory structure to remain in a front yard of a lot containing less than 36,000 square feet, on property located at 3900 Bokel Drive, Tax Map Reference 35-3((7))45, 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 13, 1996;

and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster) and HC.
3. The area of the lot is 10,431 square feet.
4. The applicant presented testimony indicating that they had met the nine required standards for the granting of a variance.
5. The lot has an unusual shape as it has three front yards and one side yard.
6. The variance for the sun room is minimal and the play house is well set back from the walk in the area that is considered a front yard.

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

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

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

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

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

1. This variance is approved for the location of the addition (sun room) and the child's playhouse shown on the plat prepared by William E. Ramsey, Land Surveyor, dated July 31, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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9:00 A.M. JAMES W. SWING, VCA 96-S-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. from side lot line. Located at 5807 Hill St. on approx. 20,899 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((1)) 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. James W. Swing, Cold Point Road, Clifton, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant's statement of justification had indicated that the request involved a 2.1 foot variance in order to construct a one car garage addition; however, after talking to the applicant, staff learned that the request involved an addition to the dwelling. Mr. Hunter added that on April 2, 1996, the BZA granted VC 96-S-008 to permit construction of an addition 7.6 feet from the southern lot line and 18.3 feet, 22.6 feet and 16.1 feet from the front lot line. He explained that this variance was needed due to an engineering error that occurred on the original variance plat.

Mr. Swing explained that the engineer's computational error on the north side of the lot was discovered during the grading process. He said the footprint of the proposed addition and garage has not changed but due to the error the encroachment has changed requiring a variance of 2.1 feet.

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

Mr. Pammel made a motion to approve VCA 96-S-008 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 6, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Amendment Application VCA 96-S-008 by JAMES W. SWING, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.9 feet from side lot line, on property located at 5807 Hill Street, Tax Map Reference 77-1((1))11, 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 13, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 20,899 square feet.
4. The applicant presented testimony indicating compliance with the nine required standards for the granting of a variance.
5. The subject property is one of the lots in the County that is nonconforming with respect to the 5-acre zoning as it only an acre and a half in size.
6. The width of the lot is relatively narrow.

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

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

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

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

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

1. This variance is approved for the location of the one car garage addition shown on the plat prepared by Rice Associated, PC, dated December 18, 1995, and revised through May 28, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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9:00 A.M. HEATHER GRADISON, VC 96-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.0 ft. from street line of a corner lot and 31.4 ft. from other street line 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.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Heather J. Gradison, 5001 Millwood Lane, NW, Washington, D.C. replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant was requesting a variance of 6.0 feet to one street line of a corner lot and a variance of 3.6 feet from the other street line of a corner lot in order to construct a garage addition.

Ms. Gradison said the lot is a corner lot with two front yards and sited on very busy streets. She said the house was built in the 1960s with a very small basement garage which is inadequate to house the newer style cars. Ms. Gradison noted that the variance was minimal. With respect to staff, Ms. Gradison added that as former chairman of the Interstate Commission she had been fully prepared to deal with a huge bureaucracy but the staff she dealt with during the process were fantastic. She added that the staff who assisted her through each step of the notification process was pleasant and professional.

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

Mr. Kelley made a motion to approve VC 96-D-079 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated August 6, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-079 by HEATHER GRADISON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 29.0 feet from street line of a corner lot and 31.4 feet from other street line of a corner lot, on property located at 1044 Douglass Drive, Tax Map Reference 21-4((12))1, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 13, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13,472 square feet.
4. The applicant has met the nine required standards for the granting of a variance.
5. The proposed location is the only reasonable location for such a garage in order for it to function properly.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Charles Matta, Architect, dated May 14, 1996, and revised through May 21, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.



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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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9:00 A.M. CASWELL & ANNE HOBBS, VC 96-V-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.5 ft. from front lot line. Located at 2005 Belle Haven Rd. on approx. 7,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (13) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Gregory D. Butenhoff, 5934 Atteentee Road, Springfield, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant was requesting a variance of 5.5 feet in order to construct a second story addition containing a bathroom and closet.

Mr. Butenhoff said the applicant was proposing to construct a second story bath on the top of an existing structure, the addition will be no closer to the lot line than the existing structure, and noted the pie shape of the lot which restricts the type of addition that can be added. Mr. Butenhoff added that other variances have been approved in the neighborhood including one on the subject property.

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

Mr. Ribble made a motion to approve VC 96-V-080 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 6, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-V-080 by CASWELL AND ANNE HOBBS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 24.5 feet from front lot line, on property located at 2005 Belle Haven Road, Tax Map Reference 83-3((14))(13)14, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 13, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,600 square feet.
4. The applicant has met the nine required standards for the granting of a variance in particular the shape of the lot as testified to by the applicant's agent.
5. The addition will be no closer to the front lot line than the existing structure and only one corner of the addition requires a variance.

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

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

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

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

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

1. This variance is approved for the location of the second story addition shown on the plat prepared by R. A. Schoppet, Architect, dated May 31, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

Page 103, August 13, 1996, (Tape 1), CASWELL & ANNE HOBBS, VC 96-V-080, continued from Page

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request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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Page 103, August 13, 1996, (Tape 1), Scheduled case of:

9:30 A.M. FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-3 Appl. under Sect(s) 3-203 of the Zoning Ordinance to amend SP 81-C-093 for community recreation facility to permit change in development conditions. 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 called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark A. Hubel, 12817 Dwight Street, Herndon, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant was requesting an amendment to Condition Number 5 of their existing special permit which limits the hours of operation for the pool to 8:00 a.m. to 9:00 p.m. The applicant was proposing to change the opening hour to 7:30 a.m. for six weeks out of the swimming season. Ms. Stagg said staff was proposing an additional modification to a previous development condition in order to correct an administrative error pertaining to the tennis courts hours of operation during the month of October, which overlap in the existing development conditions as outlined in the staff report.

Mr. Hubel explained that the request only involved a half hour time span for six weeks out of the swim season and that there would be no changes to the pool property nor to the tennis courts. He said the membership has grown and this request will accommodate the needs of the growing families with a minimal impact to the community.

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

Mr. Dively made a motion to approve SPA 81-C-093-3 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 6, 1996.

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#### COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Amendment Application SPA 81-C-093-3 by FOX MILL WOODS SWIM AND TENNIS CLUB, under Section 3-203 of the Zoning Ordinance to amend SP 81-C-093 for community recreation facility to permit change in development conditions, on property located at 2634-A Black Fir Court, Tax Map Reference 26-3((10))F2, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 13, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 5.12 acres.
4. The request is very modest and a very well formulated one.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2634-A Black Fir Court (5.12 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 Associated Engineers, Inc. dated March 31, 1982, and revised through January 27, 1983, 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 number of family memberships shall not exceed 300.\*
5. 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.
6. No children under the age of 12 shall be permitted to use the pool prior to 8:00 a.m.
  7. No whistle, bell, buzzer, or starter clock shall be used prior to 8:00 a.m.
  8. There shall be thirty-two (32) parking spaces provided for the swimming pool and tennis courts on site as shown on the As-Built Site Plan.\*
  9. Lighting of the tennis courts shall be in accordance with the following:
    - ▶ The combined height of the light standards and fixtures shall not exceed twenty (20) 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 tennis court lights shall be regulated by a key control system and an automatic shutoff device to insure 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.\*
10. 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 with written proof that all contiguous property owners have agreed,\*
  - ▶ Shall not extend beyond 12:00 midnight,\*
  - ▶ The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity,\*
  - ▶ Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season,\*
  - ▶ Requests shall be approved only if there are no pending violations of the conditions of the Special Permit. Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.\*
11. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:
- ▶ All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Serviced Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.\*
  - ▶ If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.\*
12. A walkway shall be maintained from Black Fir Court to the facility.\*
13. 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.\*

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

Page 106, August 13, 1996, (Tape 1), FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-3, continued from Page 105

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this special permit. The Board of Zoning Appeals waived the eight day waiting period.

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Page 106, August 13, 1996, (Tape 1), Scheduled case of:

9:30 A.M. CAPELLI HAIR, SKIN & NAILS, SP 96-M-010 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a massage parlor. Located at 6112 Arlington Blvd. on approx. 10.62 ac. of land zoned C-7 and SC. Mason District. Tax Map 51-4 ((1)) 2B. (OUT OF TURN HEARING GRANTED) (DEFERRED FROM 5/21/96 AND 6/25/96 FOR NOTICES)

When Chairman DiGiulian called this case, there was no response. The Staff Coordinator, David Hunter, said he would try to contact the applicant and noted that she was aware of the scheduled public hearing date. The BZA moved the case to the end of the agenda to allow staff an opportunity to contact the applicant to determine if it was her intent to appear before the BZA and present her request.

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Page 106, August 13, 1996, (Tape 1), Scheduled case of:

9:30 A.M. HENRY W. TARRING, Appeal 96-Y-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is allowing the operation of a contractor's office and shop on property which is zoned R-1, in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3306 West Ox Rd. on approx. 3.76 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((5)) 1.

Henry W. Tarring, 3306 West Ox Road, Herndon, Virginia, asked a procedural question relating to the number of votes needed to overturn the Zoning Administrator and said it appeared that he was at a disadvantage since a full Board was not present. Chairman DiGiulian explained that four votes were needed to overturn the Zoning Administrator's decision and as a matter of policy the Board did not defer a case based on a member being absent because there was no way to determine when a full Board would be present.

William Shoup, Deputy Zoning Administrator, presented the Zoning Administrator's decision as outlined in the staff report dated August 1, 1996. He explained that the issue in the appeal was that the appellant was operating a business out of his property. Mr. Shoup said it was staff's position that the business activities constitutes a contractor's office/shop as defined in the Zoning Ordinance and therefore is in violation of Par. 5 of Sect. 2-302.

Mr. Tarring said he filed the appeal based on erroneous statements contained in the March 27, 1996 Notice of Violation. He read a statement into the record from his son, Todd Tarring, addressing some of the issues raised in the March letter. Mr. Tarring submitted photographs to the BZA depicting the various types of equipment stored on the property and discussed several of the photographs. He stated that his son, Todd, owns the business known as Clean Cut of Northern Virginia, but that it is not operated from 3306 West Ox

Road. Mr. Tarring said his son resided at 14491 Rustling Leaves Lane, Centreville, and maintained a business office at that location. He asked that the staff report be stricken from the record.

In response to questions from the BZA regarding whether any of the equipment shown in the photographs is used at other locations and whether a business is operated at his property, Mr. Tarring said some of the equipment is used at other sites. He said at one time some of the business equipment was stored on the West Ox Road property but it has been removed. Mr. Tarring said the employees come as friends as well as employees, but he maintains that there has never been an office operated from his property.

Mr. Pammel asked if the business had a valid Fairfax County business license and asked what address was shown on that license. Mr. Tarring said the address shown on the license was 14491 Rustling Leaves Lane, Centreville. Todd Tarring came forward to verify the address and said that is where he had operated the office, but he has since relocated his business to Loudoun County.

Mr. Dively said it was his understanding that staff could not accept an anonymous complaint. Mr. Shoup explained that sometimes an anonymous complaint comes to staff via a member of the Board of Supervisors and staff responds to that complaint using the name of the Board of Supervisors.

Chairman DiGiulian called for speakers.

Richard Snyder, a member of the Camberley West Homeowners Association Board of Directors, objected to a business venture being operated in a residential neighborhood. He added that based on the information that has been brought to him there is a business being operated from 3306 West Ox Road. Mr. Dively asked the speaker if he personally had witnessed employees/trucks coming and going from the site. Mr. Snyder replied that he had not.

Nancy Zivney, 3351 Wilbury Road, Herndon, Virginia, used the view graph to show the location of her lot. She said she has witnessed employees/trucks coming and going from the appellant's property and noted how the business has expanded since she purchased her property. Ms. Zivney objected to the operation of a business in a residential neighborhood and was concerned that it would impact her property value.

In closing, Mr. Shoup said when looking at the overall issue it becomes apparent that the equipment stored on the appellant's property goes well beyond what is normally used to maintain a residential lot and that staff has seen landscaping materials being stored on the site. He added that Todd Tarring has stated that employees do come to the West Ox property and a telephone number is listed for the business at this address. Mr. Shoup said he believed this was ample evidence to support staff's determination that there is a contractor's office being operated from the site.

In rebuttal, Mr. Tarring reiterated his earlier comments.

Mr. Kelley said he was generally sympathetic to the appellant, but he did question how he could argue that there was not a business being operated at the West Ox address when there is a telephone listing for the business at that address. Todd Tarring said the only way he could obtain a listing for the business in the yellow pages was to register as a home business so he used his father's address at West Ox. He added that he also had another telephone listing at his residence in Centreville.

Mr. Pammel asked where he stored his business equipment. Todd Tarring replied that it was stored at his father's address at West Ox Road.

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

Mr. Hammack said he believed there was sufficient evidence to support staff's determination that a contractor's office was being operated at the West Ox Road address and both the father and son have testified that there is common ownership in the equipment and that vehicles have been stored at the site. He made a motion to uphold the Zoning Administrator in Appeal 96-Y-025. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. McPherson being absent from the meeting. The decision became final on August 13, 1996.

Page 108, August 13, 1996, (Tape 1), Scheduled case of:

9:30 A.M. SHEDQUARTERS, INC., Appeal 96-V-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the denial of minor site plan by the Department of Environmental Management. Located at 6027 Richmond Hwy. on approx. 33,538 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) pt. 57. (DEF. FROM 5/7/96)

Chairman DiGiulian said the BZA had issued an intent to defer this appeal at its August 6th public hearing. William Shoup, Deputy Zoning Administrator, suggested a deferral date to the morning of November 12, 1996. Mr. Ribble so moved. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting. Mr. Pammel suggested that this be the last deferral. Chairman DiGiulian pointed out that staff was supporting the request. Mr. Shoup explained that the appellant was working closely with the Department of Environmental Management and hopefully the issue would be resolved.

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Page 108, August 13, 1996, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM A. STEWART, III, Appeal 96-M-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a storage yard and junk yard on property zoned R-2 in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3414 Holly Rd. on approx. 1.0 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 9.

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the staff report dated August 1, 1996. He said the appellant was cited for operating a contractor's office/shop on the site, for maintaining a storage/junk yard, for parking commercial vehicles and construction equipment on site, and for violating the use limitations of his Home Occupation Permit. Mr. Shoup noted that the only issue under appeal related to the determination that he is maintaining a storage/junk yard. He said it was staff's determination that the appellant is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance.

The appellant's attorney, Timothy Hyland, 11320 Random Hills Road, Fairfax, Virginia, spoke on Mr. Stewart's behalf. He referenced his letter dated July 2, 1996 which contained the grounds for the appeal and was attached to the staff report as Attachment 7. Mr. Hyland said the appeal was very limited as the appellant was not contesting that there is a contractor's office on the site. He said the issue before the BZA was whether the appellant was using his property for a junk/storage yard and proceeded to read excerpts from the Zoning Ordinance defining such uses. Mr. Hyland asked that the BZA overrule the Zoning Administrator's determination.

Mr. Hammack asked if the speaker had seen the photographs showing the commercial vehicles stored on the property. Mr. Hyland said the appellant was not disputing that issue, but pointed out that having commercial vehicles on the site did not make it use a storage yard.

The following citizens came forward to speak on behalf of the appellant: Annie Rofgard (no address given); Mark Mills, 3605 Balin Court, Annandale, Virginia; and, Laverna Lipp, 8104 Collins Street, Annandale, Virginia. The citizens spoke about what wonderful neighbors the Stewarts have been and the vast improvements they have done to their property including the beautiful landscaping. They added that the commercial equipment stored on the property has no visual impact on the neighborhood as it cannot be seen when driving by the Stewarts property, and pointed out that the appellant's property is bordered by commercial property. Ms. Lipp submitted a petition containing eleven signatures in support of the appellant into the record.

In closing, Mr. Shoup summarized his earlier comments and noted that the junk yard issue comes from the scrap material that is being stored on the property and that he believed there is evidence to support the Zoning Administrator's determination and asked that the BZA uphold that finding.

In rebuttal, Mr. Hyland disagreed with staff's finding as to what constituted a storage yard and said the appellant has stated that he uses the materials stored on his property and until someone can prove otherwise the material cannot be construed as scrap.



Mr. Dively pointed out that one of the photographs depicts a front end loader being stored on the property. Mr. Hyland said that equipment has been removed from the property. In response to a question from Mr. Dively as to what the purpose the scrap materials serve, Mr. Hyland deferred to Mr. Stewart.

Mr. Stewart came forward and explained there are pieces of pipe stored on the property which he plans to use to install play ground equipment for his children. He said he is the ultimate recycler and he will find a way to use the materials in projects around his house.

Mr. Pammel said this was a difficult situation and that he appreciated the comments from the neighbors on behalf of the appellant, but the issue before the BZA was whether the storing of the materials on site violates the Zoning Ordinance. He said based on the photographs and the evidence presented he would conclude that there is a storage building and materials on the property and make a motion to uphold the Zoning Administrator. Mr. Hammack seconded the motion which failed by a vote of 2-4 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting nay.

Chairman DiGiulian said although the appellant had admitted that he had operated a business from the site in the past, he did not believe that the evidence proved that there is a storage yard on the appellant's property.

Mr. Dively made a motion to reverse the Zoning Administrator's determination. Mr. Kelley seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting aye; Mr. Hammack and Mr. Pammel voting nay. This decision became final on August 13, 1996.

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9:00 A.M. GEORGE J. MCPHERSON, JR., VC 96-D-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard of a lot containing less than 36,000 sq. ft. Located at 1320 Round Oak Ct. on approx. 11,030 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-2 ((19)) 46. (DEF. FROM 8/6/96 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian noted that this application was deferred from August 6, 1996 for additional information. Mr. Pammel said staff's response to his inquiry indicated that the property was developed under the R-17(cluster) provisions under the prior Ordinance which required a minimum lot size requirement of 10,500 square feet; therefore, the property did meet the standard at that time.

The applicant's attorney, Michele Rosati with the law firm of Lawson and Frank, pointed out that although the lot is a little smaller than those in the immediate vicinity there are other similar size lots. She believed the real hardship was the fact that the subject property was hemmed in by two pipestems and has two front yards.

Staff had no further comments in addition to those presented at the August 6th public hearing.

Mr. Pammel made a motion to approve VC 96-D-068 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 30, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-068 by GEORGE J. MCPHERSON, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard of a lot containing less than 36,000 square feet, on property located at 1320 Round Oak Court, Tax Map Reference 31-2((19))46, 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 6, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 11,030 square feet.
4. The request is reasonable.
5. The lot is unusual as it was subdivided under the prior Zoning Ordinance and met the side setbacks at that time.
6. This request is to add an addition in the only location where an addition could be reasonably located.
7. By definition, the addition will be in the side yard although it appears to be in the rear yard but practically speaking it is the only place where such an addition could be constructed.
8. The lot has three front yards.

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

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

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

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

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

1. This variance is approved for the location of sun room addition shown on the plat prepared by Huntley, Nyce and Associates, dated August 25, 1995, and revised through March 29, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The sun room addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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9:30 A.M. CAPITOL WHOLESALE, INC., Appeal 96-V-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a wholesale trade establishment and a storage yard without valid site plan and Non-RUP approvals, in violation of Zoning Ordinance provisions. Located at 7300 Telegraph Square Dr. on approx 5.00 ac. of land zoned I-4 and I-5. Mt. Vernon District. Tax Map 108-1 ((1)) 3D. (MOVED FROM 7/2/96. DEF. FROM 8/6/96 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian asked if it was correct that the appeal had been withdrawn. William Shoup, Deputy Zoning Administrator, said that was correct but that it was his understanding that a question arose at the BZA's August 6th public hearing as to whether compliance had been obtained. He said the appellant has now striped the parking lot and discontinued the use of one of the buildings as they were required to do; therefore, Zoning Enforcement has deemed the appellant to be in compliance and the appellant has withdrawn the appeal. In a response to a question from Mr. Ribble, Mr. Shoup said no further action was required by the BZA.

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9:30 A.M. CAPELLI HAIR, SKIN & NAILS, SP 96-M-010 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a massage parlor. Located at 6112 Arlington Blvd. on approx. 10.62 ac. of land zoned C-7 and SC. Mason District. Tax Map 51-4 ((1)) 2B. (OUT OF TURN HEARING GRANTED) (DEFERRED FROM 5/21/96 AND 6/25/96 FOR NOTICES)

(The BZA had passed over this case earlier in the agenda to allow the applicant to be present.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lucia Burgess, 5861 Banning Place, Burke, Virginia, replied that it was. She apologized for not being present when her case was first called as she had been detained in traffic.

Page 112, August 13, 1996, (Tape 2), CAPELLI HAIR, SKIN & NAILS, SP 96-M-010, continued from  
Page 111 )

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant was requesting special permit approval in order to operate a massage parlor for massage therapy as an accessory use in a 8 x 10 foot room within an existing beauty salon. Mr. Hunter said staff recommended approval of SP 96-M-010 subject to the implementation of the Development Conditions contained in the staff report with the barrier and transitional screening requirements modified as noted.

Ms. Burgess said she opened her full service salon in November 1994 and would like to be able to offer this very popular service to her clients. She added that many salons in the area currently offer this service.

Mr. Ribble made a motion to grant SP 96-M-010 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 14, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-M-010 by CAPELLI HAIR, SKIN AND NAILS, under Section 4-703 of the Zoning Ordinance to permit massage parlor, on property located at 6112 Arlington Boulevard, Tax Map Reference 51-4((1))2B, 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 13, 1996; and

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

1. The applicant is the lessee of the land.
2. The present zoning is C-7 and SC.
3. The area of the lot is 10.62 acres.
4. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-908 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6112-E & F Arlington Boulevard containing 3,000 square feet within the Willston Center II Shopping Center, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on parcel 2B 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 site plan prepared by Huntley, Nyce & Associates dated November 2, 1983, revised through August 16, 1984 consisting of Sheet 3 of 10, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is granted for the operation of massage therapy in an 8 by 10 foot area within a commercial beauty shop in accordance with applicable County and State requirements which govern massage parlors.
5. The hours of operation shall be limited to Sundays 12-5 p.m, Monday, 10 a.m. to 5 p.m, Tuesday through Friday, 10 a.m. to 8 p.m. and Saturdays 9 a.m. to 6 p.m.
6. There shall be a maximum of two (2) employees associated with this special permit use.
7. The number of parking spaces shall be provided as shown on the site plan/special permit plat in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be Determined by the Director, Department of Environmental Management.
8. Pursuant to the approval of PCA 78-M-156, the transitional screening and barrier requirements and the interior and peripheral parking lot landscaping requirements were modified; consequently, no additional screening or barrier are required.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1996. This date shall be deemed to be the final approval date of this special permit. The Board of Zoning Appeals waived the eight day waiting period.

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Page 113, August 13, 1996, 1996, (Tape 2), Information Item:

Approval of May 28, and July 2, 1996 Minutes

Mr. Dively made a motion to approved the minutes as submitted. Hearing no objection, the Chair so ordered.

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Page 113, August 13, 1996, 1996, (Tape 2), Information Item:

Out of Turn Hearing Request from Golf Park, Inc. et al

Mr. Kelley asked staff for the earliest possible date as he did not believe the application was complicated since it only involved the lighting of an existing golf course.

Susan Langdon, Senior Staff Coordinator, said there were currently eight cases on September 24th. Mr.

Page 114, August 13, 1996, 1996, (Tape 2), GOLF PARK, INC. ET AL, continued from Page )

Kelley made a motion to grant the applicant's request and schedule the application for September 24th. Mr. Ribble seconded the motion. Mr. Pammel noted that the application would probably generate a lot of controversy. Mr. Kelley said he believed it was a clear cut application since the major work had been done in the previous application. Ms. Langdon asked if the BZA would like to schedule the application for a night meeting. Mr. Pammel said he would prefer to do so. Mr. Kelley's motion to schedule the application for September 24th carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 114, August 13, 1996, 1996, (Tape 2), Information Item:

Out of Turn Hearing Request from Shaneyfelt, VC 96-V-106

Mr. Dively made a motion to grant the applicant's request and schedule the application for September 24th. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 114, August 13, 1996, 1996, (Tape 2), Information Item:

Approval of August 6, 1996 Resolutions


Mr. Hammack made a motion to accept the Resolution as submitted. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

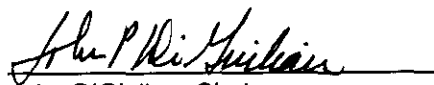
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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Betsy S. Hurtt

Approved on: October 1, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 10, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 115, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ANTHONY C. & MICHAELYN A. MILIDANTRI, VC 96-V-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.7 ft. from rear lot line. Located at 9112 Wood Spice Ln. on approx. 13,787 sq. ft. of land zoned PDH-1. Mt. Vernon District. Tax Map 106-2 ((9)) 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Anthony C. and Michaelyn A. Milidantri, the applicants, 9112 Wood Spice Lane, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow an addition, a screened porch, to be located 15.7 feet from the rear lot line. Ms. Langdon explained that the required rear lot line for a PDH-1 District was 25 feet and therefore, the Milidantri's were requesting a variance of 9.3 feet.

Mr. Milidantri informed the Board that his neighbors had no objection to his requested addition. He noted that his house was placed at an odd angle on the lot and one side has a severe slope. He informed the Board that their neighborhood Architectural Review Board would not approve any structure on the sloped side. Mr. Milidantri summarized that, with the shape and topography of his lot, his home's placement on the lot, and the fact that their Architectural Review Board would not allow any addition on one side of their house, it is mandated that the porch must be built off the rear of the house.

Ms. Langdon responded to Mr. Hammack's hypothetical question regarding whether a screened-in-porch could have been built by the original owner/builder as part of the initial construction and if it would have required a variance. She explained that the developer had the porch on the development plan which was approved by the Board of Supervisors and it could have been constructed by-right.

Chairman DiGiulian called for speakers from the audience either in favor or in opposition to the addition but received no response. He then closed the public hearing.

Mr. Ribble moved to grant VC 96-V-085 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-V-085 by ANTHONY C. AND MICHAELYN A. MILIDANTRI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.7 feet from rear lot line, on property located at 9112 Wood Spice Lane, Tax Map Reference 106-2((9))67, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

Page 116, September 10, 1996, (Tape 1), ANTHONY C. & MICHAELYN A. MILIDANTRI, VC 96-V-085, continued from Page 115 )

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-1.
3. The area of the lot is 13,787 square feet.
4. The exceptional shallowness of the lot with its topographic conditions and sheer slopes that mandate construction only in a limited area.
5. The adjacent property to the rear is wooded and will not be developed.

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

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

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

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

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

1. This variance is approved for the location of screened porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 20, 1996, submitted with this application and is not transferable to other land.



- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The screened porch shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 117, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SHEKAR & CHARU NARASIMHAN, VC 96-P-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.83 ft. from front lot line and stairs 19.0 ft. from front lot line. Located at 8100 Cedar St. on approx. 21,826 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 33B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charu Narasimhan, of 8100 Cedar Street, Dunn Loring, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting two variances, one which would require a 12.17 foot variance to allow an addition consisting of a covered porch; and the second to allow a set of stairs to extend into the front yard necessitating a 6 foot variance.

Bruce Hutchinson, the applicants' representative and Architect, explained that the Narasimhan's lot has an unusual triangle shape with a large drainage easement placed on one side of their lot which causes the house to be placed towards the lot's front and right up to the minimum restriction line. He stated that the covered porch would allow visitors to be protected from the weather and the stairs are proposed on the side to minimize the impact into the front yard.

Mr. Hutchinson responded to Mr. Hammack's questions concerning the size of the porch and its covered foyer and the lot's adjoining neighbors.

Mr. Hammack noted that the lot already had several additions, some of which were substantial.

Chairman DiGiulian called for speakers. Receiving no response, he closed the public hearing.

Noting that he had serious reservations about the application because of the size of the requested variances, Mr. Hammack acknowledged that the proposed addition was quite large; it had a substantial encroachment towards Cedar Street and; that the Narasimhans, in his view, failed to provide sufficient justification for the size of the variance. Mr. Hammack then moved to deny VC 96-P-083 stating that the applicants had not presented testimony indicating compliance with the nine required standards for variance applications.

Mr. Pammel seconded the motion which failed by a vote of 2-4 with Mr. Hammack and Mr. Pammel in favor of denying the variance requests and Messrs. Dively, Kelly, Ribble, and the Chairman, Mr. DiGuilian opposed to its denial; Mr. McPherson was absent from the meeting.

Acknowledging that he understood Mr. Hammack's reservations, Mr. Dively proposed an alternate motion to approve VC 96-P-083. Stating that the lot is a very oddly configured one, that it is quite narrow at one end and is pie-shaped, Mr. Dively said that he believed the Narasimhans had a significant hardship to overcome. Mr. Dively then moved to approve VC 96-P-083 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-083 by SHEKAR AND CHARU NARASIMHAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.83 feet from front lot line and stairs 19.0 feet from front lot line, on property located at 8100 Cedar Street, Tax Map Reference 39-4((1))33B, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1996; 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 21,826 square feet.
4. The lot is unusually narrow; it is pie-shaped.
5. The applicants must overcome a significant hardship with the lot's configuration and constraints.

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of the addition (covered porch) and stairs shown on the plat prepared by Donald Mori, dated March 21, 1989, and revised by Bruce Hutchinson through May 30, 1996 submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved;
- 3. The addition and stairs shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 with Messrs. Dively, DiGiulian, Kelley and Ribble voting yes; Messrs. Hammack and Pammel voting nay; Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CYNTHIA DONOVAN, VC 96-Y-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 14415 North Slope St. on approx. 9,269 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((10)) (3A) 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. Cynthia Donovan, 14415 North Slope Street, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a variance of 9 feet in order to permit the construction of an addition.

Cynthia Donovan stated that the proposed screened-porch addition would allow them to enjoy their rear yard area out of the evening heat and without a problem with bugs from the creek which runs behind their lot. She noted that only one neighbor would have just a slight view of their rear yard and the porch but there would be minimal impact if any.

Chairman DiGiulian called for speakers. Receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 96-Y-086 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-Y-086 by CYNTHIA DONOVAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.0 feet from rear lot line, on property located at 14415 North Slope Street, Tax Map Reference 54-1((10))(3A)26, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster) in the WS (Water Supply Overlay District).
3. The area of the lot is 9,269 square feet.
4. The exceptional shallowness of the lot.
5. The proposed addition would face common open space.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition (screened porch) shown on the plat prepared by Jack E. Rinker, Certified Professional Engineer, dated June 4, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 121, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PEDRO DE LEON, SP 96-P-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 shed to remain 2.0 ft. from rear lot line and 2.7 ft. from side lot line. Located at 2858 Graham Rd. on approx. 7,310 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 123.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the public hearing on this scheduled case could not be heard because the notices were not in order. She stated that several attempts to reach the applicant had been made but to no avail.

Chairman DiGiulian called the De Leon's representative to the podium to identify herself for the record.

Olivia Cedillo, 13641 Orchard Drive, Clifton, stated that she represented the DeLeons. She explained that they did not realize notices were to have been sent advising the neighbors of the public hearing; she stated

Page 122, September 10, 1996, (Tape 1), PEDRO DE LEON, SP 96-P-019, continued from Page )

that they had not received the necessary information from the County.

Ms. Kelsey interjected that certified letters were mailed to the DeLeons and return-receipts were received which indicated that the DeLeons had received the County's notices and instructions. She also noted that staff had been unable to reach the applicant by phone. Because of these reasons, Ms. Kelsey said that staff recommended a deferral to October 29, 1996 at 9:00 a.m.

Mr. Ribble so moved on the rescheduled public hearing date which was seconded by Mr. Hammack and passed unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

Chairman DiGiulian requested staff to assist Ms. Cedillo in preparing their notices and Ms. Kelsey consented.

Mr. Dively requested that the DeLeon case have no more continuances after October 29th.

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Page 122, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CAROLYN SUE BOWERS, VC 96-V-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structures 4.0 ft. from side lot lines and 4.0 ft. from rear lot line. Located at 9024 Charles Augustine Dr. on approx. 21,780 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((2)) (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. Carolyn Sue Bowers, the applicant, residing at 9024 Charles Augustine Drive, Alexandria, replied that it was.

In the absence of Inda Stagg, the Staff Coordinator who prepared the staff report, Jane Kelsey, Chief, Special Permit and Variance Branch, presented the report. She explained that the applicant was requesting permission to construct two accessory structures on either side of her rear lot line which would require a variance of 6 feet for the rear yard and 8 feet for the side yards.

Mrs. Bowers said that she and her husband sought to enhance their property and preserve their neighborhood as this house was to be their retirement home. She called the Board's attention to the large scale landscape plan pointing out the many mature hardwood trees and the extensive landscaping they had done which includes walkways and numerous diversified plantings. Mrs. Bowers stated that the two sheds would encroach upon the landscaping and trees if they had to be placed in accordance with Ordinance requirements. She also noted that the sheds, with their colonial motif, were architecturally compatible with their house and that all their neighbors unanimously supported the design.

In response to Mr. Dively's question, Mrs. Bowers explained their reasons for requesting two sheds noting the importance of symmetry, proportion, and aesthetics as well as the necessity for accommodation.

Chairman DiGiulian called for speakers. Receiving no response, he closed the public hearing.

Mr. Kelley moved to deny VC 96-V-089 stating that he believed that the applicant had not met the nine required standards for variance and noting that the lot was substantial and would accommodate a single shed. He also stated that he did not see any compelling hardship suffered by the Bowers.

Mr. Dively seconded the motion which carried unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

Mr. Hammack commented that Mrs. Bowers' plan was a good plan with much truth in her reasoning but, it was unfortunate that her plan was not in compliance with the Ordinance.

Page 123, September 10, 1996, (Tape 1), CAROLYN SUE BOWERS, VC 96-V-089, continued from Page 122

Commenting that the apparent confusion over shed height restrictions often seemed to cause applicants difficulty with meeting the requirements, Mr. Pammel moved to have staff review the Ordinance requirements regarding shed heights and prepare a report for the BZA's review.

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

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Page 123, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SARAH L. MERNISSI, SP 96-V-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 11.9 ft. from side lot line. Located at 1120 Cameron Rd. on approx. 13,125 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2((12)) 34. (Concurrent VC 96-V-082).

9:00 A.M. SARAH L. MERNISSI, VC 96-V-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.9, 8.9 ft. and 11.9 ft. from side lot line. Located at 1120 Cameron Rd. on approx. 13,125 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2((12)) 34. (Concurrent with SP 96-V-021).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah L. Mernissi, 1120 Cameron Road, Alexandria replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He explained that the special permit application was to allow a reduction to the minimum lot requirements based on an error in building location to permit a dwelling to remain 11.9 feet from a side lot line. Mr. Hunter further explained that Mrs. Mernissi's variance request was to permit construction of additions, an open porch, trash bin and an enclosed carport addition, onto the house. These additions, Mr. Hunter pointed out, will place the structures 7.9, 8.9, and 11.9 feet from a side lot line requiring variances of 7.1, 6.1, and 3.1 feet from the side yard requirement.

Mrs. Mernissi explained that when she and her husband sought to maximize their home's floor area and improve the kitchen, they discovered that they needed a special permit for a room that had been enclosed for several years as well as variances for the requested additions. She detailed her renovation plans noting that there were no alternatives for placing the additions except as shown on the plat due to County easements which run through their lot. Mrs. Mernissi pointed out that many of her neighbors have enclosed screened porches and closed-in carports so this request was compatible with the neighborhood.

Chairman DiGiulian called for speakers but received no response. He then closed the public hearing.

Mr. Ribble moved to grant SP 96-V-021 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-V-021 by SARAH L. MERNISSI, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 11.9 feet from side lot line, on property located at 1120 Cameron Road, Tax Map Reference 102-2((12))34, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

Page 124, September 10, 1996, (Tape 1), SARAH L. MERNISSI, SP 96-V-021 and VC 96-V-082, continued from Page 123

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is granted only for the dwelling indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated May 2, 1996 submitted with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this special permit.



Page 125, September 10, 1996, (Tape 1), SARAH L. MERNISSI, SP 96-V-021 and VC 96-V-082, continued from Page 124)

Mr. Ribble then moved to grant VC 96-V-082 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-082 by SARAH L. MERNISSI, under Section 18-401 of the Zoning Ordinance to permit construction of additions 7.9, 8.9 feet and 11.9 feet from side lot line, on property located at 1120 Cameron Road, Tax Map Reference 102-2((12))34, 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 10, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13,125 square feet.
4. The lot is extremely narrow.
5. There is an easement along one side of the lot which constrains the applicant from building in that direction.

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

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

Page 126, September 10, 1996, (Tape 1), SARAH L. MERNISSI, SP 96-V-021 and VC 96-V-082, continued from Page 125

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

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

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

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

1. This variance is approved for the location of the specified open porch, trash bin and carport addition (enclosed carport) shown on the plat prepared by Alexandria Surveys, Inc., dated May 2, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 with Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 126, September 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CHESTER W. & MARY ELLA HUGHES, VC 96-M-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 25 having lot width of 10.0 ft. Located at 3817 Glenbrook Rd. on approx. 2.02 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 25.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Gibb, Esquire, the attorney and agent for the Hughes, with the law firm of Mackall, Mackall & Gibb, 4031 Chain Bridge Road, Fairfax, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He explained that the Hughes sought to subdivide their large lot, 2.02 acres, into two and that this would require a variance of 140.00 feet. He noted that staff was concerned about the proliferation of pipestem lots in the area and that it was staff's opinion that the approval of this application would continue the undesirable precedent of properties being subdivided by way of a variance.

Ms. Gibb explained that the Hughes want to remain in their home and plan to sell the other lot to Mr. Kevin Harnich who would build his home and reside there. She pointed out that the applicants have lived there for 46 years.

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Due to a technical difficulty with the sound system, Chairman DiGiulian recessed the Board at 10:03 a.m. and reconvened at 10:17 a.m.

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Ms. Gibb detailed the neighborhood's history noting that resubdividing is consistent with the Zoning Ordinance and Comprehensive Plan and only two lots remained unsubdivided, one of which is the Hughes' property. She also pointed out that the property has an unusual shape in that it is long and narrow. Ms. Gibb's informed the Board that strict application of the Zoning Ordinance rendered an unusual hardship on the Hughes, one which is not shared by others, in that it would restrict reasonable use of their property. She explained that the Hughes are both elderly, in their 70s, that the rear side of their lot is too large for them to maintain, that their property taxes are steep, and that Mr. Hughes is blind and needs familiar surroundings.

Chairman DiGiulian called for speakers.

Kevin Harnisch, 3825 Prince William Drive, Fairfax, stated that he planned to purchase and build his home on the Hughes' rear lot. He briefly explained his philanthropic contributions and volunteer work substantiating his community ties and spoke highly of the neighborliness of and affection for the Hughes.

John Coscia, 3896 Glenbrook Road, Fairfax, spoke in favor of the proposal citing his and his neighbors sincere affection for the Hughes' and the Harnisches and urged that the Board approve the variance request.

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

Mr. Dively moved to grant VC 96-M-084 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-M-084 by CHESTER W. AND MARY ELLA HUGHES, under Section 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots, with proposed Lot 25 having a width of 10.0 feet, on property located at 3817 Glenbrook Road, Tax Map Reference 58-4((9))25, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.

3. The area of the lot is 2.02 acres.
4. The Fairfax County Policy does not oppose pipestem driveways and the applicants' neighborhood has already established an ample precedent.
5. The property is long and narrow.
6. The proposed two lots present no density problems and they are substantially over the minimum required area.
7. The applicants do have the right to the reasonable use and enjoyment of their property.

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

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

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

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

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

1. This variance is approved for the subdivision of one (1) lot into two (2) lots, proposed Lot 25 having a lot width of 10.00 feet as shown on the plat prepared by Walter Phillips, Inc. and dated December 4, 1995, revised through June 4, 1996.
2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and individual deeds to each lot and with the covenants, running with the land and, to assure that future owners are aware of these restrictions.

Page 129, September 10, 1996, (Tape 1), CHESTER W. & MARY ELLA HUGHES, VC 96-M-084, continued from Page 128

3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual, as determined by the Department of Environmental Management (DEM).
4. Prior to subdivision plan approval, a tree save/tree preservation plan showing the limits of clearing and grading shall be submitted for review and approval by DEM implemented. This plan shall identify, locate and preserve individual mature, large and/or specimen trees and tree save areas on the site to the greatest extent possible as determined by DEM.

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

Mr. Ribble seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 129, September 10, 1996, (Tape 2), Scheduled case of:

9:30 A.M. DONALD WEBBER, VC 96-L-081 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 6001 randon Ave. on approx. 18,272 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((3))(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. Donald Webber, 6001 Brandon Avenue, Springfield, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought to construct an accessory structure, a shed and workshop, which would be placed 3 feet from a side lot line thus a 7 foot variance was requested.

Mr. Webber called the Board's attention to his plat, pointing out the stormwater drainage easement which runs through his property and the fact that his corner lot fronts on two streets, which essentially presents him with two front yards, along with complicated Ordinance restrictions and requirements. He explained that the two existing smaller structures would be razed after the new shed is built. He proposed that, not only was it more aesthetic to place the shed towards the rear lot line but that there really was no other place. Mr. Webber informed the Board that his neighbors had no objection to the shed.

Discussion followed between the Board members and Mr. Webber regarding the setbacks and concluding that the wall of the building would be 4 feet from the far side lot line and its eave would set 3 feet from the side lot line.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 96-L-081 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-L-081 by DONALD WEBBER, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 feet from side lot line, on property located at 6001 Brandon Avenue, Tax Map Reference 80-4((3))(6)1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution: **\*(THE BOARD CLARIFIED THAT THE WALL OF THE BUILDING SHALL BE FOUR (4) FEET FROM THE LOT LINE AND THE EAVE THREE (3) FEET FROM THE LOT LINE.)**

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 18,272 square feet.
4. The unusual situation of the lot, in that it has two front yards because it faces two thoroughfares.
5. There is a substantial area in the rear devoted to storm drainage sewer easements.

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

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

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

Page 131, September 10, 1996, (Tape 2), DONALD WEBBER, VC 96-L-081, continued from Page 130 )

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

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

1. This variance is approved for the location of the shed/workshop shown on the plat prepared by Rice Associates, dated April 28, 1988, revised June 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The existing sheds located on the subject property shall be removed at the time of the final building inspection on the approved shed/workshop.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 5-1 with Mr. Hammack opposed; Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 131, September 10, 1996, (Tape 2), Scheduled case of:

9:30 A.M. JAMES D. GEREN, D.D.S., Appeal 96-V-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination Defer to that the appellant is operating a dental office in the R-2 District in violation of Par. 5, Sect. 2-302 of the Zoning Ordinance. Located at 2212 Sherwood Hall Ln. on approx. 16,809 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1((26))3.

William Shoup, Deputy Zoning Administrator, explained that there was a request for a deferral of this application and that the notices were not in order which necessitated a deferral, therefore, staff recommended December 3, 1996, at 9:30 a.m., to hear the case. In response to Mr. Dively's question, Mr. Shoup indicated that the applicant's attorney was present to answer questions.

William C. Thomas, Jr., Esquire, represented the appellant, and stated that they had requested a deferral far in advance of this scheduled hearing because his client was awaiting an eminent lease to be finalized possibly by the end of the week. He submitted that no notices were prepared because it was their understanding that the hearing date was administratively deferred to the December date.

In response to Chairman DiGiulian's question, Mr. Shoup acknowledged that staff had no objection to the deferral because the appellant had demonstrated good faith and staff sought only to resolve the matter.

Chairman DiGiulian called for speakers either in support or in opposition to the deferral but received no response.

Page 132, September 10, 1996, (Tape 2), JAMES D. GEREN, D.D.S., Appeal 96-V-007, continued from Page 131

Mr. Pammel voiced his concern over the fact that the case has already been deferred once and he questioned the right of Doctor Geren to operate his business under a special permit granted to the former property owner.

After a discussion among the Board members concerning issues relating to the merits of the case, Chairman DiGiulian reminded the Board that the case could not be heard.

Mr. Ribble then moved to defer Appeal 96-V-007, JAMES D. GEREN, to the morning of December 3, 1996.

Mr. Dively seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 132, September 10, 1996, (Tape 2), Scheduled case of:

9:30 A.M. KIM C. AND FRANCES C. SHELTON, Appeal 96-D-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are keeping four (4) dogs on a lot containing 10,044 sq. ft. in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 6518 Chesterfield Ave. on approx. 10,044 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2((13))14.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in his memorandum dated August 22, 1996. He noted that the issue of this appeal was the number of dogs, Scottish Terriers, being kept on the Shelton's property. Quoting Ordinance requirements regarding the allowable number of animals (dogs) on a certain sized lot, Mr. Shoup referred to his April 5, 1996 letter which issued the appellants a Notice of Violation. He pointed out that the Sheltons' basis of appeal appeared to challenge the Zoning Ordinance language, as it applied to their particular situation, commenting that the issues raised by the appellants were issues better heard in a special permit application by the BZA. Mr. Shoup commented that staff had advised the Sheltons of this fact but they chose to go forward with their appeal.

Kim C. Shelton conceded that he had received Mr. Shoup's August memorandum but did not recall being advised to seek a special permit versus an appeal. In response to Chairman DiGiulian's question, he acknowledged that they did have four dogs at their home. Mr. Shelton submitted that the expense to apply for a special permit was substantial; therefore, he first sought the appeal process.

Discussion followed between Messrs. DiGiulian, Dively, Shelton, and Shoup regarding what course of action may be pursued and with what consequences.

Mr. Shoup stated that staff would work with the Sheltons as staff works with all applicants in situations like this if they diligently pursue remedying the violation.

Frances C. Shelton commented that it would appear as if they had not had a say in this matter. She reiterated that they believed their dogs presented no problem to the neighborhood.

Mr. Dively commented that the Board understood that this was an emotional issue for the Sheltons but the keeping of four dogs on property the size of the Sheltons' was a clear violation of the Zoning Ordinance and that really was the sticking point of the case.

The Shelton's reiterated that they were before the Board of Zoning Appeals because they erroneously understood that the appeal process was the next procedural step and now they would like to pursue a special permit application to resolve the issue.



Page 133, September 10, 1996, (Tape 2), KIM C. AND FRANCES C. SHELTON, Appeal 96-D-026, continued from Page 132

Discussion followed between Messrs. Dively, Kelly and DiGiulian regarding the appropriate action the Sheltons should take, whether or not a continuance can be granted and, whether or not the Sheltons should be cited for violation of the Ordinance.

Mr. Dively then moved to defer the Shelton's case for ninety (90) days which was seconded by Mr. Ribble and carried by a 5-1 vote with Mr. Hammack opposed; Mr. McPherson absent from the meeting.

Mr. Shoup suggested a hearing date for the morning of December 3, 1996 which the Board accepted.

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Page 133, September 10, 1996, (Tape 1), Scheduled case of:

9:30 A.M. LEE CASSEL, CASSEL'S SPORT PARK, Appeal, A 96-W-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination concerning the amount of retail sales space permitted as an accessory use to a proposed indoor soccer/volleyball complex, and as an associated use to a proposed establishment for production and manufacturing assembly.

William Shoup, Deputy Zoning Administrator, referred to his September 3, 1996 memorandum in which he noted the appellant's request for a deferral in order to consider possible modifications which would moot the appeal. He pointed out that no violation was involved with this appeal but rather a general determination of which staff recommended a deferral date to the morning of November 7, 1996.

Mr. Ribble so moved and the motion was seconded by Mr. Hammack and passed unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 133, September 10, 1996, (Tape 2), Action Item:

Approval of Minutes  
June 11, 1996; June 15, 1996; July 16, 1996

Mr. Hammack made a motion to approve the Minutes for the BZA meetings on June 11, 1996, June 15, 1996, and July 16, 1996, as submitted by staff.

The motion was seconded by Mr. Ribble which carried unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 133, September 10, 1996, (Tape 2), Action Item:

Request for Additional Time  
Hrair Kazanjian, VC 93-L-063

Mr. Pammel stated that staff has recommended the approval of thirty (30) months of additional time for VC 93-L-063 to the date of March 8, 1999 for purposes of implementing the variance and he, therefore, so moved.

Mr. Ribble seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 137, September 10, 1996, (Tape 2), Scheduled case of:

Appeal Acceptance Request  
Thomas S. Greig

William Shoup, Deputy Zoning Administrator, noted his August 26, 1996 memorandum and stated that staff recommended that the appeal acceptance be denied because the appeal was filed too late and the incorrect format which staff received was incomplete and had insufficient filing fee payment. He explained that the Ordinance's submission requirements for a proper appeal and its fee were stipulated in Mr. Greig's notice of violation letter.

Discussion followed between Messrs. Dively, DiGiulian, Hammack and Pammel concerning the acceptance of Mr. Greig's submission and staff's requirements.

Mr. Dively, commenting that the Board of Zoning Appeals ought to be "citizen friendly", moved to accept Mr. Greig's appeal request.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Messrs. Hammack and Pammel opposed; Mr. McPherson absent from the meeting.

Mr. Shoup recommended the evening of November 19, 1996 to hear the appeal and this was seconded by Mr. Ribble and carried by a vote of 4-2 with Messrs. Hammack and Pammel opposed; Mr. McPherson absent from the meeting.

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Page 137, September 10, 1996, (Tape 2), Action Item:

Out of Turn Hearing Request  
Mark and Patricia Roth, VC 96-D-116 and SP 96-D-032

Mr. Pammel questioned staff as to the soonest date this item could be heard and after being advised by Jane Kelsey, Chief, Special Permit and Variance Branch, that it would be October 29, 1996, he commented that he believed that the applicants do have a hardship because there has been some misunderstanding regarding procedures and it is evident that the Roth's have a desperate need to resume remodeling.

Discussion followed between Ms. Kelsey, Chairman DiGiulian, and Mr. Pammel concerning adequate time to allow the cases to be properly advertised.

Mr. Pammel then moved grant an Out of Turn Hearing on October 22, 1996 for VC 96-D-116 and SP 96-D-032, Mark and Patricia Roth.

Mr. Ribble seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 137, September 10, 1996, (Tape 2), Action Item:

Out of Turn Hearing Request  
Ok Cha Ha, SP 96-M-030

Because there appeared to be no justification for this request, Mr. Ribble moved to deny the Out of Turn Hearing Request for Ok Cha Ha, SP 96-M-030.

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

Page 135, September 10, 1996, (Tape 2), Action Item:

Revised Plats for Jerry D. & Karen Stone, SP 95-S-054

David Hunter, Staff Coordinator, referred to his September 5, 1996 memorandum, and informed the Board of the history of the Stone's special permit and their gazebo's encroachment onto school property.

William Thomas, Jr., Esquire, the attorney and representative for the Stone's, explained that Mr. Stone had understood the retaining wall, against which the gazebo was built, was on his property and after learning about the building error, sought to remedy the situation by drastically modifying the gazebo, cutting off one entire side. Mr. Williams informed the Board that documents from the School Board to authorize a license permitting the encroachment were forthcoming.

Mr. Pammel suggested an extension of the deadline for submitting revised plats in order to enable the applicants time to receive permission from the School Board allowing the encroachment.

Mr. Ribble recommended a 90-day extension, to a date of December 10, 1996, and he so moved.

The motion was seconded by Mr. Pammel and carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

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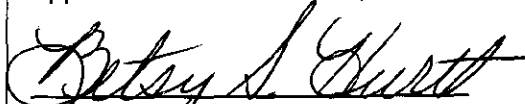
Before the meeting was adjourned, Mr. Pammel requested staff to submit larger, and clearly printed maps to the BZA for easier identification of lot locations, etc.

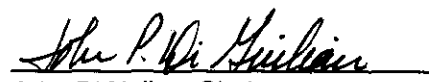
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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Paula A. McFarland

Approved on: November 26, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 17, 1996. The following Board Members were present: Vice Chairman John Ribble; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; and, James Pammel. Chairman John DiGiulian was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:02 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 137, September 17, 1996, (Tape 1), Scheduled case of:

8:00 P.M. LUIS & AURORA GONZALES, VC 96-D-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1-A having a lot width of 110.17 ft. Located at 10865 Wolfe Hill Ln. on approx. 5.00 ac. of land zoned R-E. Dranesville District. Tax Map 7-1 ((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. The applicant's agent, Ali Mirtaghavi, with Landtech Engineering, 10169 New Hampshire Avenue, Silver Spring, Maryland, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position as outlined in the staff report. The applicants requested permission to subdivide one existing lot into two lots, with proposed Lot 1A having a lot width of 110.17 feet. It was staff's judgment that the application did not meet Standards 2, 3, 4, 5, 6 and 8.

Mr. Mirtaghavi commented on various issues raised in the staff report and pointed out that there was adequate frontage on Wolfe Hill Lane, but unfortunately Wolfe Hill Lane is not a public maintained road which is a requirement for subdivision. He said the granting of the variance will not change the character of the area and noted that other variances have been approved in the area.

The applicant, Mr. Gonzales, explained they would like to subdivide the lot into two to alleviate the hardship involved with the financial upkeep of the large lot.

Mr. Hammack said it had been his understanding that the applicants would like to subdivide the lot into two in order to build a second house for other family members. Mr. Gonzales said it was their intentions to build the second house for themselves.

There were no speakers in support of the application and the following came forward to oppose the request.

Marion Schneck, 61 Utterback Store Road, Great Falls, Virginia, represented himself and three other families, the McBrides, the Whites, and the Roots, who live on the road. He agreed with the staff report and said he believed the granting of a variance would be for convenience.

Carl Mergele, 629 Utterback Store Road, Great Falls, Virginia, objected to the creation of a pipestem lot and that he believed such a granting would change the character of the area.

Mr. Mirtaghavi said they understood the speakers concerns but pointed out that if Wolfe Hill Lane was a paved road a variance would not be necessary.

A discussion took place between the Board and staff with regard to the lot size that was required under the previous Zoning.

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

Mr. Hammack made a motion to deny VC 96-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**

In Variance Application VC 96-D-092 by LUIS & AURORA GONZALES, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1-A having a lot width of 110.17 feet, on property located at 10865 Wolfe Hill Lane, Tax Map Reference 7-1((6))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.00 acres.
4. This kind of case is always difficult where more density would be permitted under the existing Ordinance than under the Ordinance that existed when the lot was subdivided.
5. A lot of factors come into play in this case in this case since there is frontage on a private road.
6. The Board is aware that if development is on a public road, which meets the public requirements, you might be able to have a division that is requested as a matter of right, but it is not.
7. The existing development on the lot satisfies the minimum of the Ordinance requirements and this is a case where staff is correct in their finding that the applicant has not satisfied the nine requirements; in particular number 2, in that there is no exceptional size or topographical conditions that do not exist on other lots in the area. The overview shows a number of large lots and the area is developed in that kind of a pattern.
8. The applicant has reasonable use of the property and has not satisfied the requirements of Number 6.
9. When looking at the application, the environmental considerations have not been addressed.
10. The way the lot configuration has been done is a highly undesirable division of the 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

Page 139, September 10, 1996, (Tape 2), LUIS & AURORA GONZALES, VC 96-D-092, continued from Page 138

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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. McPherson seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 1996.

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Page 139, September 17, 1996, (Tape 1), Scheduled case of:

8:00 P.M. CHARLES L. DEBARR, VC 96-V-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.2 ft. from side lot line and accessory structure to remain in front yard on a lot containing less than 36,000 sq. ft. Located at 7605 McCloud Ct. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 254.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles L. DeBarr, 7605 McCloud Court, Lorton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position as outlined in the staff report. She said the applicant requested two variances with the first request being for a variance of 8.8 feet in order to construct a garage. The second request was for approval to allow a gazebo to remain in the front yard of a lot containing less than 36,000 square feet. Ms. Langdon said the dwelling on Lot 253 is located 25.0 feet from the shared lot line. She noted a correction to the staff report on Page 2 under "Background", under the fourth bullet, which stated that a garage was approved 11.9 feet from a side lot line when it was actually approved 4.0 feet.

Mr. DeBarr said they purchased the property in 1969 with no intentions of staying for a prolonged period of time. He said they now plan to remain in the house after they retire and would like to make it as comfortable as possible. Mr. DeBarr explained that on the side of the dwelling they propose adding the garage there is a chimney and a stairway entrance into the kitchen; therefore, the size cannot be reduced and still be serviceable.

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

Mr. McPherson made a motion to grant VC 96-V-088 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 10, 1996.

Mr. Pammel said he did not have a problem with the gazebo, but that he did believe the garage addition would be too close to the shared lot line.

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Mr. Hammack said he rarely supports a variance so close to a lot line, but in this instance the dwelling on the abutting lot is approximately 25 feet from the shared lot line which he believed will allow adequate distance from the proposed addition and the adjacent dwelling.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-088 by CHARLES L. DEBARR, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.2 feet from side lot line and accessory structure to remain in front yard on a lot containing less than 36,000 square feet, on property located at 7605 McCloud Court, Tax Map Reference 108-1((2))254, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The house location is unusual in that it is off center as far as the lot is concerned.
5. The closest the variance comes to the side lot line is 3.2 feet and then increases gradually as it goes to the rear of the property.
6. The applicant has presented testimony indicating compliance with the standards for the granting of the variance and incorporate those findings set forth in the staff report.

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

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



Page 141, September 17, 1996, (Tape 1), CHARLES L. DEBARR, VC 96-V-088, continued from Page 140)

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

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

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

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

1. This variance is approved for the location of garage addition and gazebo shown on the plat prepared by Sikes Surveys, P.C., dated June 7, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

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

Mr. Dively seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 141, September 17, 1996, (Tape 1), Scheduled case of:

8:00 P.M. JANET LAVALLE & RICHARD AURORA, VC 96-H-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from rear lot line. Located at 13025 Piney Glade Rd. on approx. 10,628 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((18)) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard and Jane Lavalle Aurora, 13025 Piney Glade Road, Herndon, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position as outlined in the staff report. He said the applicant requested a variance of 8.1 feet in order to construct a screened porch to be located 16.9 feet from the rear lot line.

Mr. Aurora referenced the statement of justification submitted with the application which addressed each of the standards noting the exceptional shallowness and shape of the pipestem lot. He added that the neighborhood is constructed in a woodland setting which has encourage many of the neighbors to add screened porches. He stated that the two abutting neighbors who would be the most impacted had submitted letters in support of the request.

Mr. McPherson asked the speaker to point out the location of the lots owned by the neighbors who had written letters in support and Mr. Aurora pointed out Lots 20 and 22.

There were no speakers either in support or in opposition and Vice Chairman Ribble closed the public hearing.

Mr. Hammack said it appeared that the noted rear yard was actually a side yard. Mr. Hunter said the subject property fronts on Piney Glade Road and noted that the yard is determined by measuring the lot line the most opposite the shortest street line.

Mr. Pammel made a motion to grant VC 96-H-087 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 10, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-087 by JANET LAVALLE & RICHARD AURORA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.9 feet from rear lot line, on property located at 13025 Piney Glade Road, Tax Map Reference 25-1((18))21, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 10,628 square feet.
4. The applicant has presented testimony meeting the nine prescribed criteria for the granting of a variance; specifically, the unusual shape of the lot and the fact that the house is situated towards the rear of the parcel making it difficult to locate the addition of a screened porch without a variance.

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of screened porch addition shown on the plat prepared by Kenneth W. White, dated May 24, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The screened porch addition shall be architecturally compatible with the existing dwelling.

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

Mr. McPherson 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 September 25, 1996. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. DAVID L. & JUDITH A. BALLARD, SP 96-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 1.0 ft. from side lot line. Located at 2126 McKay St. on approx. 15,754 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-1 ((8)) 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. David L. and Judith A. Ballard, 2126 McKay Street, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position as outlined in the staff report. He said the applicant requested a modification of 11.0 feet for an error in building location to permit an storage shed to remain 1.0 feet from the side lot line.

Mr. and Mrs. Ballard said they purchased their house in 1989 with the intent of upgrading the two dilapidated sheds on the lot with a new structure. They were not aware that the shed location was in violation until they received a Notice of Violation from the Zoning Enforcement Branch. The Ballards pointed out that the shed was in place for approximately five years before the complaint was filed, the two neighbors who are the most impacted have no problem with the shed, and to relocate the shed would require removing several large trees.

Mr. Hammack questioned what generated the complaint. Mr. Ballard explained that he believed it came about from a dispute over the neighbors' children placing a portable basketball hoop in the street. He said one of the elderly neighbors asked him for his help since the children were playing basketball at night and obstructing traffic. When the neighbor was contacted by the Virginia Department of Transportation (VDOT) about the basketball hoop, the neighbor then filed the complaint against the Ballards.

There were no speakers either in support or in opposition and Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant SP 96-D-022 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated September 10, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-D-022 by DAVID L. & JUDITH A. BALLARD, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.0 foot from side lot line, on property located at 2126 McKay Street, Tax Map Reference 40-1((8))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 September 17, 1996; 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.
3. The applicants replaced a deteriorating shed and it is has been in place for five years.
4. The applicants' testimony indicated that this might have been generated by a neighborhood dispute and the Board does not resolve neighborhood disputes.

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

1. This Special Permit is approved for the location of the accessory structure (storage shed) shown on the plat prepared by Peter F. Moran, dated October 9, 1995, and revised through May 15, 1996, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 145, September 17, 1996, (Tape 1), Information Item:

Approval of July 9, 1996 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 145, September 17, 1996, (Tape 1), Information Item:

Hunter Mill Defense League Request for Reconsideration of Out of Turn Hearing granted to Golf Park, SPA 91-C-070-2

Mr. Kelley made a motion that the BZA retain its original date of October 8th. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the BZA had granted the applicant's request for an out of turn hearing and scheduled a public hearing for September 24th. Following a meeting with staff, the applicant requested a hearing date of October 8th to allow him an opportunity to submit additional information to address staff's concerns. Ms. Kelsey said however staff had not yet received that information.

Vice Chairman Ribble asked what type of information staff had requested. Ms. Kelsey said it dealt with the levels of glare and projection of the proposed lights and the type and size of the proposed special events.

Mr. McPherson seconded Mr. Kelley's motion.

Page 146, September 17, 1996, (Tape 1), GOLF PARK, SPA 91-C-070-2, continued from Page 145)

Following a discussion among the BZA members, Mr. Kelley said it was a fairly simple request for an out of turn hearing although it was not a simple decision regarding whether to grant the application.

Mr. Kelley's motion carried by a vote of 4-2 with Vice Chairman Ribble, Mr. Dively, Mr. Kelley, and Mr. McPherson voting aye; Mr. Hammack and Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

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Page 146, September 17, 1996 (Tape 1), Information Item:

Out of Turn Hearing Request for  
SP 96-M-034, First Pentecostal Church of God, LaBiblia

Mr. Pammel made a motion to grant the applicant's request for an out of turn hearing as there was nothing controversial since the applicant was merely requesting to return the property to the original church use. Mr. Kelley seconded the motion and noted that the problems which existed in the applicant's previous application does not exist in this application. Mr. Pammel asked staff for a suggested hearing date. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA of the number of cases that were presently scheduled for each public hearing date.

David Hunter, Staff Coordinator, noted for the record that the applicant has been cited with a Notice of Violation by the Zoning Enforcement Branch.

The motion to grant the out of turn hearing for November 7th carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 146, September 17, 1996, (Tape 1), Information Item:

Approval of September 10, 1996 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the BZA about their scheduled meeting with the County Attorney's office with respect to the question raised at a previous public hearing concerning citizen testimony being allowed in enforcement cases.


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As there was no other business to come before the Board, the meeting was adjourned at 9:00 p.m.

Minutes by: Betsy S. Hurtt

Approved on: October 22, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 24, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 141, September 24, 1996, Scheduled case of :

9:00 A.M. CHARLES AND PHYLLIS YOSHIDA, VC 96-D-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.5 ft. from side lot line. Located at 1907 Miracle Ln. on approx. 9,200 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 40-1 ((9)) 44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Yoshida, 1907 Miracle Lane, Falls Church, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.5 feet to the minimum side yard requirement.

Mr. Yoshida presented the variance request as outlined in the statement of justification submitted with the application. He noted the letters submitted to the BZA by the adjacent neighbors in support of the application.

In response to Mr. Hammack's questions, Mr. Yoshida replied that the house was 18 years old and that he did not know whether the deck had been a part of the original construction.

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

Mr. Hammack moved to grant VC 96-D-093 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-093 by CHARLES AND PHYLLIS YOSHIDA, under Section 18-401 of the Zoning Ordinance to permit construction of deck 1.5 feet from side lot line, on property located at 1907 Miracle Lane, Tax Map Reference 40-1((9))44, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 9,200 square feet.
4. The applicant met the nine required standards for a variance.
5. Although the residence is placed well to the rear of the property it is actually at the side and there is no other location the deck could be constructed and be usable.
6. Construction of the deck causes no interference with the maintenance of the property or the deck.

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

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

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

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

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

1. This variance is approved for the location of the addition (deck) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated June 17, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The deck shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996. This date shall be deemed to be the final approval date of this variance.



Page 149, September 24, 1996, Scheduled case of :

9:00 A.M. EUGENE J. CULLINANE, VC 96-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from front lot line. Located at 1004 Dogue Hill Ln. on approx. 36,149 sq. ft. of land zoned R-1 and HD. Dranesville District. Tax Map 22-3 ((8)) 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. Paula Morris, the applicant's agent, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 22.0 feet to the minimum front yard requirement. She informed the Board that Liz David from the Fairfax County Architectural Review Board was present to answer any questions.

Ms. Morris presented the applicant's request as outlined in the statement of justification submitted with the application. She submitted drawings of the subject property to the Board. Ms. Morris said the goal of the project was to save as many mature trees as possible and that the owner was willing to grant a conservation easement the County.

Mr. Ribble asked staff if the proposed swimming pool required a variance. Staff replied that they had not reviewed the pool but that it probably would require a variance.

Chairman DiGiulian called for speakers.

Joe Kaempfer, 6400 Georgetown Pike, came forward to speak in support of the application. He presented a petition signed by the entire neighborhood supporting the application.

Chairman DiGiulian closed the speakers.

Mr. Pammel moved to grant VC 96-D-094 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-094 by EUGENE J. CULLINANE, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 feet from front lot line, on property located at 1004 Dogue Hill Lane, Tax Map Reference 22-3((8))5, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and HD.
3. The area of the lot is 36,149 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot has an unusual configuration.
6. The mature trees on the property will be preserved.

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

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

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

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

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

1. This variance is approved for the location of the dwelling shown on the plat prepared by Paula Maria Morris, dated May 25, 1996, and revised through June 4, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. A conservation easement acceptable to the County shall be provided to ensure the protection of the tree stand outside the drainage field.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 151, September 24, 1996, Scheduled case of :

9:00 A.M. MOHAMMAD A. SEDAGHATPOUR, VC 96-D-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yard. Located at 261 Golden Woods Ct. on approx. 1.74 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((12)) 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. Mohammad A. Sedaghatpour, 261 Goldenwood Court, Great Falls, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 2.0 feet to the maximum height requirement for an existing fence.

Mr. Sedaghatpour presented the variance request as outlined in the statement of justification submitted with the application. He said the fence was not detrimental to the adjacent property owners. Mr. Sedaghatpour informed the Board of the financial and personal hardships suffered by his family.

Mr. Dively asked what was the purpose of a 6.0 foot fence as opposed to a 4.0 foot fence. Mr. Sedaghatpour replied that his family had problems with stray dogs. He said the contractor advised him that dogs can probably jump a 4.0 foot fence and the contractor suggested a 6.0 foot fence for that reason.

Chairman DiGiulian called for speakers.

Randy Nichols, 270 Golden Woods Court, came forward to speak in opposition. He said the fence was an aberration to the neighborhood. Mr. Nichols said the fence was built in disregard to the zoning laws and is not in character with the neighborhood. He submitted a photograph of the fence to the Board.

Mr. Sedaghatpour addressed the speaker's concerns in his rebuttal. He said it took nine months to build the fence and that he received no complaints during that time.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 96-D-095 for the reasons set forth in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-095 by MOHAMMAD A. SEDAGHATPOUR, under Section 18-401 of the Zoning Ordinance to permit fence 6.0 feet in height to remain in front yard, on property located at 261 Golden Woods Court, Tax Map Reference 8-2((12))3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 1.74 acres.
4. A financial hardship is not a requirement for a variance.

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996.

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Page 152, September 24, 1996, Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-7 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit building addition and site modifications. Located at Bull Run Post Office Rd. and Lee Hwy. on approx. 212.47 ac. of land zoned R-C, WS and NR. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, pt. 17, 33A, pt. 38 and pt. 39; 64-1 ((4)) 7A. (OUT OF TURN HEARING GRANTED)

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

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested two additions, a bin and sand separator and a totally enclosed water/oil separator system. Staff recommended approval with the implementation of the proposed development conditions. Ms. Langdon verbally corrected a date in Development Condition #39.

Mr. Spence presented the applicant's request as outlined in the statement of justification submitted with the application. He explained the purpose of the additions and said a professional removal company would remove the oil. Mr. Spence said the parking that was previously on the north side was moved to the south side of the property.

Mr. Ribble asked Mr. Spence if the applicant agreed to the correction of the date in the Staff Report. Mr. Spence said staff corrected it to the proper date.

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

Mr. Kelley moved to grant SPA 81-S-064-7 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SPA 81-S-064-7 by LUCK STONE CORPORATION, under Section 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit building addition and site modifications, on property located at Bull Run Post Office Road and Lee Highway, Tax Map Reference 64-1((1))1,4,13,14,15, pt. 17, 33A, pt. 38 and pt. 39; 64-1((4))7A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS and NR.
3. The area of the lot is 212.47 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-105 the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Thomas D. Rust, dated April 1992, revised through August 1996, and approved with this application, as qualified by these development conditions.\*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*

4. A grading plan for the 28.97 acre expansion area approved pursuant to SPA 81-S-064-5 shall be submitted to the Department of Environmental Management (DEM) for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 20603 of the Zoning Ordinance.\*
5. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the 28.97 acre expansion area. This landscape plan shall provide for the following screening and landscaping on the berm located along the periphery of the expansion area.\*

For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided. Evergreen trees used to fulfill this requirement shall have a planted height of six (6) feet, and deciduous trees used to fulfill this requirement shall have a minimum caliper of two (2) inches at the time of planting. Specific species and location of plantings shall be as determined by the Urban Forestry Branch, DEM and shall reflect attempts to ensure continuity with the plantings on the existing berms north of the expansion area.

The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Branch, DEM. To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.\*

6. The existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway shall be designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management. The agreements reflected in the letter of September 25, 1992 may be used to fulfill this requirement as may be acceptable to DEM.\*
7. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 week nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.\*
8. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.\*
9. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded by the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway or the design and/or implementation of public improvements on adjoining property to the west, the required right-of-way dedication may be increased as may be shown to be necessary by the Office of Transportation in an amount not to exceed 158 feet.\*

If shown to be necessary, the amount of any additional right-of-way over 112 feet shall be determined by the BZA in conjunction with the annual review of this use required by Sect. 8-104 of the Zoning Ordinance. Notwithstanding any notes on page 2 of SPA 81-S-064-1, in order to screen the quarry from Lee Highway all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.\*

10. There shall be no access to the northern section of the quarry from Route 28. All access for excavation and/or parking of vehicles for on-site and/or off-site vehicles shall be by the tunnel under Route 29.
11. The applicant shall screen the recyclable concrete coming to the site for mud, dirt, trash and other construction debris. No loads shall be accepted if found to be contaminated with the aforementioned material.\*

12. Stockpiling and recycling of concrete on this site shall be approved for spent concrete obtained only from customers of the quarry and hauled by the same vehicles which deliver stone products to the customer.\*
13. All landscaping and screening required in previous approvals of this use shall be maintained as follows:

Landscaping and screening shall be maintained in accordance with the landscape plan submitted to the Urban Forestry Branch in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway.

The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be maintained at the level of Transitional Screening 3.

To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.

The shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance shall be maintained in a healthy condition and any dead or dying trees shall be replaced as needed. The trees shall be a minimum of 6.0 feet in height and shall serve to soften the visual impact of the use. The number and type of any replacement trees shall be determined by the Urban Forestry Branch.\*

14. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.\*
15. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC.\*
16. Berms on the portions of the site governed by the previous approval of SPA 81-S-064-4, shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with the landscape plan submitted and approved by the Urban Forestry Branch in SPA 82-V-064-2.\*
17. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.\*
18. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of \$2,000 per acre for the 134 unrestored acres shall be continued for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DEM.\*
19. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.\*
20. Blasting in the existing quarry and in the expansion area shall be regulated as follows:

In the existing quarry millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess

of 1,000 pounds. Blasts not exceeding 15,000 pounds with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site when in compliance with the standard operating procedure approved under SPA 81-S-064-4.

The above referenced blasting procedures, followed in the existing quarry, shall be followed in the expansion area subject to the following additional provisions:

Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

Each such notice shall be given at least 24 hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

Any blast within 200 feet for the pipeline shall adhere to the following minimum delays:

- 17 milliseconds between decks in a hole
- 25 milliseconds between holes.

The following information shall be forwarded to Trans Continental following each blast that occurs within 200 feet of the pipeline.

- A diagram or pattern of the shot
- Maximum pounds per delay of explosives in the shot
- Depth of the holes in the shot
- Type of explosives used
- Type of delays used
- Seismography reading and location
- Blasting records for the entire site shall be made available to County staff.\*

21. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.\*
22. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.\*
23. The Zoning Enforcement Branch of the Zoning Administration Division, Office of Comprehensive Planning, shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.\*
24. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.\*
25. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.\*
26. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.\*
27. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.\*
28. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m. , Monday through Friday only.
29. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.\*



30. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.\*
31. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.\*
32. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.\*
33. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.\*
34. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.\*
35. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the special permit plat may be used to fulfill this requirement.\*
36. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, and alkalinity.\*
37. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.\*
38. The water/oil separator system shall be a totally closed system. There shall be no discharges of water, oil or other waste from the facility. Sludge materials which are removed in the cleaning of the facility shall be disposed of in accordance with applicable local, state and federal requirements.
39. Special Permit Amendment, SPA 81-S-064-7, is granted for a period of five (5) years from the date of approval, December 9, 1992, with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.\*

These development conditions incorporate and supersede all previous development conditions. Previously imposed conditions are marked with an asterisk.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996. This date shall be deemed to be the final approval date of this special permit.

9:00 A.M. MR. AND MRS. L. SHANEYFELT, VC 96-V-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.11 ft. from front lot line. Located at 6125 Vernon Tr. on approx. 10,254 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (7) 17. (OUT OF TURN HEARING GRANTED)

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

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.89 feet to the minimum front yard requirement.

Mr. Pierce presented the applicant's request as outlined in the statement of justification submitted with the application. He submitted a letter supporting the application from an adjacent neighbor. Mr. Pierce requested a waiver of the 8-day waiting period.

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

Mr. Dively moved to grant VC 96-V-106 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-V-106 by MR. AND MRS. L. SHANEYFELT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 23.11 feet from front lot line, on property located at 6125 Vernon Terrace, Tax Map Reference 83-3((14))(7)17, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,254 square feet.
4. The variance request was modest.
5. Seven variances had been granted in the area, two were front yard variances which constitutes a precedent for the Board to follow.
6. The actual encroachment is only 3.84 feet closer than the house.
7. 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 **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the kitchen addition shown on the plat prepared by Harold Lee Pierce, dated received July 25, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Dively moved to waived the 8 day waiting period and Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TRUSTEES OF ANNANDALE CHURCH OF CHRIST, SP 96-M-024 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 4709 Ravensworth Rd. on approx. 1.99 ac. of land zoned R-1. Mason District. Tax Map 71-1 ((9)) 12A.

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 Robson, the applicant's agent, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a two-story addition to the rear of the existing sanctuary. Staff recommended approval with the implementation of the proposed development conditions.

Mr. Robson presented the applicant's request as outlined in the statement of justification submitted with the application. He said the staff report accurately outlined the applicant's proposal. Mr. Robson said the applicant met with the neighbors to address any concerns they may have had.

Chairman DiGiulian called for speakers.

Robert Bermingham, 7421 Carmine Street, came forward to speak in opposition to the application. He said the addition would invade his privacy and quality of life.

Mr. Ribble asked the speaker how long he had lived at that address. He replied he had been a resident at that address since the 1960s.

Mr. Robson addressed the speaker's concern in his rebuttal. He said the addition was within the County height requirement and because of the situation of the property, developing otherwise would be hard.

Mr. Hammack moved to grant SP 96-M-024 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-M-024 by TRUSTEES OF ANNANDALE CHURCH OF CHRIST, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 4709 Ravensworth Road, Tax Map Reference 71-1((9))12A, 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 24, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.99 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. 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4709 Ravensworth Road containing 1.99 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 Robson Group Architects dated June 12, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. There shall be a minimum of 50 parking spaces provided as shown on the special permit plat. All parking shall be on site.
6. The maximum number of seats shall be 200.
7. Transitional Screening 1 shall be modified to that shown on the special permit plat along the northern and southern property lines, to allow the parking lot to encroach into the transitional screening yards. Transitional screening shall be waived along the eastern and western lot lines.
8. The barrier requirement shall be waived along the eastern and western lot lines.
9. Signs shall be permitted in accordance with Article 12, Signs.
10. Any proposed lighting of the parking lot areas shall be in accordance with the following:
 

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

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. CHRISTOPHER R. AND PAMELA B. KLOMAN, SP 96-D-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.1 ft. from side lot line and 3.7 ft. from rear lot line. Located at 1403 Kurtz Rd. on approx. 22,653 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((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. Christopher Kroman, 1403 Kurtz Road, McLean, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification of 9.9 feet to the minimum side yard requirement and a modification of 5.9 feet to the minimum rear yard requirement.

Mr. Kroman presented the special permit request as outlined in the statement of justification submitted with the application. He said the occupant to the rear of the property was the complainant and had since moved. Mr. Kroman received a Notice of Violation, that he appealed to the BZA which caused him to apply for a special permit.

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

Mr. Pammel moved to grant SP 96-D-023 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-D-023 by CHRISTOPHER R. AND PAMELA B. KLOMAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.1 feet from side lot line and 3.7 feet from rear lot line, on property located at 1403 Kurtz Road, Tax Map Reference 30-2((14))19, 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 24, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This Special Permit is approved for the location of an accessory structure (shed) shown on the plat prepared by Rice Associates, dated June 5, 1996, and revised through March 14, 1996, submitted with this application and is not transferable to other land.
- 2. The existing deck shall be removed, or modified so that it does not extend further than 6 feet into the minimum required front yard. This removal or modification shall occur within 6 months of the final approval of the Special Permit.

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 5-0-1. Mr. Hammack abstained from the vote and Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 163, September 24, 1996, Scheduled case of :

9:30 A.M. THOMAS S. GRIEG (LYLES ROAD), Appeal 96-L-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is allowing the outside storage of items in an amount which exceeds 100 sq. ft. in area and which is not properly screened, in violation of Par. 24 of Sect. 10-102. Located at 6537 Lyles Rd. on approx. 28,863 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 90-1 ((2)) 98.

Thomas Grieg, 19630 Lan Shell Drive, Fort Myers, Florida, approached the podium to state his name and address for the record.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated September 17, 1996. He said the subject at issue was the outside storage of miscellaneous items. Mr. Shoup said Zoning Inspectors had observed items such as batteries, windows, and firewood in the rear yard of the property. He said the appellant had removed some items, but that some items were visible from the first floor of the adjacent property and were not properly screened.

Mr. Pammel asked if compliance was being achieved. Mr. Shoup replied that they were removing some items and that they could properly screen the items from the adjacent neighbor.

Mr. Greig presented the arguments forming the basis for the appeal. He said the property was currently being cleaned and that the neighbors could not see the yard. He said they had removed most of the vehicles and they would deplete the firewood during the winter months. Mr. Greig said he had already complied with several requests from the County.

In response to Mr. Ribble's question, Mr. Greig replied that someone is living on the property.

Mr. Ribble asked how much firewood had to be removed to be in compliance. Mr. Shoup said storage was not to exceed 100 square feet.

The Board members discussed the definition of storage as defined in the Ordinance. Discussions continued about what was considered a storage item.

Mr. Dively said the issue was whether the appellant complied with the 100 square feet of outside storage. He said the wording of the Ordinance was not vague, and firewood was a stored item. He felt this was not a borderline application.

Chairman DiGiulian closed the public hearing.

Mr. Ribble said he agreed with Mr. Dively. He said he understood the arguments and moved to continue the hearing to March 25, 1997. Mr. Ribble said by that time the firewood should be depleted. Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mr. Dively voting nay. Mr. McPherson was absent from the meeting.

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Page 164, September 24, 1996, (Tape 2), Action Item:

Approval of July 23, 1996 and August 6, 1996 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 164, September 24, 1996, (Tape 2), Action Item:

Request for Change of Permittee  
The Fairfax Centre Alliance Church, SPA 84-C-024-2

Mr. Pammel moved to approve the Change of Permittee from Mid-Atlantic District of the Christian and Missionary Alliance to the Fairfax Centre Alliance Church. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 164, September 24, 1996, (Tape 2), Action Item:

Retention of Outside Counsel

Mr. Hammack moved to approve the Retention of Outside Counsel to represent the BZA with regard to In Chancery 154893 and At Law 154962. Mr Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 165, September 24, 1996, (Tape 2), Action Item:

Request for Reconsideration  
Luis Gonzalez, VC 96-D-092

Mr. Hammack moved to deny the Request for Reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 165, September 24, 1996, (Tape 2), Action Item:

Approval of September 17, 1996 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Mr. Dively moved that Board of Zoning Appeals go into Executive Session with the County Attorney's Office regarding Zoning Enforcement Litigation Cases. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

Mr. Dively 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson 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 11:10 a.m.

Minutes by: Regina Thorn

Approved on: October 29, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 1, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 167, October 1, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MR. & MRS. JOE CORTEZ, VC 96-V-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.0 ft. and 10.0 ft. from side lot line. Located at 9003 Greylock St. on approx. 11,307 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (6) 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. Joe Cortez, 9003 Greylock Street, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation, as contained in the staff report dated September 24, 1996. She stated that the applicants sought to construct two additions, a screened-porch/family room, requiring a 2-foot variance and a garage requiring a 4-foot variance.

Mr. Cortez explained that the additions requested would be architecturally compatible with the existing dwelling and had the support of their neighbors. He also noted that the proposed additions would come no closer to the side lot lines than their existing house.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Hammack moved to grant VC 96-V-098 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-098 by MR. AND MRS. JOE CORTEZ, under Section 18-401 of the Zoning Ordinance to permit construction of additions 8.0 feet and 10.0 feet from side lot line, on property located at 9003 Greylock Street, Tax Map Reference 111-1((3))(6)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 October 1, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,307 square feet.
4. The proposed additions will not extend any closer to the lot line than the existing dwelling.

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

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

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

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

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

1. This variance is approved for the location of additions (screened porch/family room and garage) shown on the plat prepared by John B. Kelso, AIA, Architect, dated June 12, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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. McPherson seconded the motion which carried by a unanimous vote of 6-0 with Mr. Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 169, October 1, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOHN P., II AND DORIS M. FOWLER, VC 96-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 8969 Colesbury Pl. on approx. 22,774 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((14)) 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. John P, II and Doris M. Fowler, 8969 Colesbury Place, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated September 24, 1996. He explained that the applicants wanted to construct a two-story addition consisting of a garage enlargement with a bedroom over top. Mr. Hunter said that a 5-foot variance was being requested.

John Fowler stated that he needed an addition onto his garage because it would afford him a much-needed work space area with a room overhead. He pointed out the unusual positioning of his home which restricted where any addition could be placed. He also noted that this improvement would upgrade his home and that there was no opposition with his neighbors.

Chairman DiGiulian called for speakers either in support or in opposition of the variance but received no response. He then closed the public hearing.

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Mr. Pammel moved to grant VC 96-P-099 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-099 by JOHN P., II AND DORIS M. FOWLER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.0 feet from side lot line, on property located at 8969 Colesbury Place, Tax Map Reference 58-4((14))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 October 1, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 22,774 square feet.
4. The unusual location of the existing house on the lot precludes any flexibility for providing additions on either side.
5. The variance had been previously granted for an encroachment to within ten (10) feet of a side lot line.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the two-story addition (garage and bedroom) shown on the plat prepared by Dewberry and Davis, dated April 10, 1996 and revised by J.P. Fowler II, received June 10, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage and bedroom addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 171, October 1, 1996, (Tape 1), Scheduled case of:

9:00 A. M. MICHAEL WEISSKOPF, SP 96-Y-025 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 14.7 ft. from side lot line. Located at 6504 Trillium House Ln on approx. 13,342 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((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. The applicant, Michael Weisskopf, of 6504 Trillium House Lane, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He noted that a variance of 5.3 feet was being requested.

Mr. Weisskopf explained that when he had bought the house there had been an option to build a sun room but that initial option has since expired. At this time, he said, he wanted to build a sun room and this addition would actually be indented into the existing house which will place it further from the lot line than his home.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. McPherson moved to grant SP 96-Y-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-Y-025 by MICHAEL WEISSKOPF, under Section 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 14.7 feet from side lot line, on property located at 6504 Trillium House Lane, Tax Map Reference 53-3((4))(2)35, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C (WSPOD).
3. The area of the lot is 13,342 square feet.
4. The proposed addition is no closer to the side lot line than as it currently exists and it would have been approved had it been included during the original construction of the house.

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. 8-913 of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of the sun room addition shown on the plat submitted with this application and is not transferable to other land.

- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Alexandria Surveys dated April 12, 1995 submitted with this application, as qualified by these development conditions.
- 3. A Building Permit shall be obtained and final inspections shall be approved for the sun room.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 unanimously 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 9, 1996 . This date shall be deemed to be the final approval date of this special permit.

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Page 172, October 1, 1996, (Tape 1), Scheduled case of:

9:00 A. M. JOSEPH TYSZKIEWICZ, VC 96-P-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.1 ft. from rear lot line. Located at 2805 Liberty Ave. on approx. 3,507 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 15.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's architect and agent Robert Byrnes, of 1100 Princess Street, Alexandria, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought to construct a kitchen addition which would require a rear lot variance of 13.9 feet. She brought the Board's attention to the fact that County aerial photographs of the site dating from 1937 showed that the structures currently on the property were there then and, therefore, they predated the original Zoning Ordinance.

Mr. Byrnes pointed out that the lot was quite small which greatly restricted the allowable buildable area and that the current structure did not have a kitchen. He noted that the structure needed fortifying as it has been vacant and derelict for a while and that, with the house renovations, a kitchen was to be built.

Chairman DiGiulian called for speakers and received no response. He closed the public hearing.

Mr. Kelley moved to grant VC 96-P-097 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-P-097 by JOSEPH TYSZKIEWICZ, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.1 feet from rear lot line, on property located at 2805 Liberty Avenue, Tax Map Reference 50-2((9))15, Mr. Kelley moved that the Board of Zoning Appeals adopt the



following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 3,507 square feet.
4. The existing dwelling predates the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the kitchen addition shown on the plat prepared by Robert C. Byrnes, Architect, dated July 11, 1996, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Dively seconded the motion which carried unanimously 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 9, 1996. This date shall be deemed to be the final approval date of this variance.

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- 9:00 A. M. JAMES R. STIDD, VC 96-V-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from side lot line. Located at 8020 Candlewood Dr. on approx. 14,452 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1((28))(B)4A. (Concurrent with SP 96-V-026).
- 9:00 A. M. JAMES R. STIDD, SP 96-V-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. from side lot line. Located at 8020 Candlewood Dr. on approx. 14,452 sq. ft. of land zoned R-3. Mt. Vernon Dist. Tax Map 102-1((28))(B)4A. (Concurrent with VC 96-V-096).

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 R. Stidd, 8020 Candlewood Drive, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant had two requests before the BZA; the special permit request was to allow a reduction in the minimum yard requirement, based on an error, to permit a 9.7-foot high shed to remain 2.9 feet from a side lot line which required a modification of 9.1 feet; and the variance proposal was to construct a garage addition which required a .4-foot variance.

Addressing the Board, Mr. Stidd explained that, before he built his shed four years ago, he had received and based his shed design from the County building requirements. He noted that he was not given specific guidelines on height determination and because his shed is built on a slope, its gabled roof is the structure's highest point. Mr. Stidd stated that only after applying for a variance to enclose his carport did he learn the County's procedures for measuring elevation and was dismayed to discover that his shed was bound by the set-back requirement. He pointed out that his neighbors had no objection to the structure's height or location and that his property's side lot line has an irregular shape due to a roadway with a dog-leg turn. He affirmed that his variance and special permit request were justified because he had consulted the County prior to the shed's construction, because the requested variance was modest, and because his lot has a unique and irregular shape.

Chairman DiGiulian called for speakers and received no response. He then closed the public hearing.

Mr. Ribble moved to grant SP 96-V-026 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-V-026 by JAMES R. STIDD, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 feet from side lot line, on property located at 8020 Candlewood Drive, Tax Map Reference 102-1((28))(B)4A, 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 1, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified storage shed shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated April 30, 1996, submitted with this application, as qualified by these development conditions.

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

Mr. McPherson seconded the motion which carried unanimously 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 9, 1996. This date shall be deemed to be the final approval date of this special permit.

Mr. Ribble then moved to grant VC 96-V-096 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-096 by JAMES R. STIDD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.6 feet from side lot line, on property located at 8020 Candlewood Drive, Tax Map Reference 102-1((28))(B)4A, 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 1, 1996; 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 14,452 square feet.
4. The lot is an unusual shape.
5. This is a modest request to enclose the existing carport.

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

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

Page 177, October 1, 1996, (Tape 1), JAMES R. STIDD, VC 96-V-096 and SP 96-V-026, continued from Page 176 )

will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of the specified garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 30, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible to the existing dwelling.

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

Mr. McPherson seconded the motion which carried unanimously 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 9, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 177, October 1, 1996, (Tape 1), Scheduled case of:

9:30 A. M. ENGLSIDE BAPTIST CHURCH, SP 96-L-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 8420 Highland Ln. on approx. 29,607 sq. ft. of land zoned R-2. Lee District. Tax Map 101-3 ((4)) 33. (OUT OF TURN HEARING GRANTED) (DEF. FROM 7/16/96 FOR APPLICANT TO SUBMIT REVISED PLAT)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent for the applicant, Allan R. Demetri, 13350 Smokeburn Road, Lynchburg, Virginia, replied that it was.

David Hunter, the Staff Coordinator, presented the staff report. After a brief explanation of the Church's proposal, Mr. Hunter noted that a revised special permit plat had been submitted which addressed staff's previous concerns about screening and mitigating the impacts of the proposed use from the adjacent residential properties. Because all of staff's concerns were addressed, Mr. Hunter stated that the proposal was in harmony with the Comprehensive Plan and was in conformance with applicable Zoning Ordinance requirements.

In response to Mr. McPherson, Mr. Hunter clarified the hours of operation and indicated where the residential units adjacent and contiguous to the church were located.

Chairman DiGiulian called upon Mr. Demetri for his presentation but he requested that the Pastor of the Engleside Baptist Church come forward and address the Board.

Minister Robert W. Perdue, 13341 Paramount Lane, Woodbridge, gave a brief history of the church and Christian school since its establishment in 1970. He explained that they have outgrown their present facility and that they proposed to move their nursery school into a separate facility to be run independently. He informed the Board that the church was presently engaged in negotiations to purchase property in the neighborhood as their intention is to relocate the entire facility within the next five years. In response to Chairman DiGiulian, Pastor Perdue said that they agreed with the proposed development conditions dated September 24, 1996.

Chairman DiGiulian called for speakers in support of the proposal.

Bruce Cumming, 8500 Rosemont Circle, Woodlawn Estates, Alexandria, said that his homeowners association unanimously supported the church's proposal.

Robert Franca, 1402 Olde Towne Road, Alexandria, said that he was one of the surveyors of the church's plat and that he had students at the school. He affirmed that the church needed more room and requested the Board's approval.

Chairman DiGiulian called for speakers in opposition.

Bob Eucker, 8416 Highland Lane, Alexandria, voiced his opposition to the church's proposal. He said that, as an adjacent neighbor, he would be most affected by the intensified use. He stated that he has watched the facility grow and expand over the years and he believes that the church's property is not large enough to accommodate yet another expansion and increased student enrollment; that, in his opinion, it was time to say, "No more."

In response to Mr. Ribble's question, Mr. Eucker clarified that he had no problem with the church's current intensity, that he had always felt that they were good neighbors, he was just concerned over any increase in the use, the property was not large enough.

Robert B. Swink, 8529 Highland Lane, Alexandria, voiced his concern over property values falling due to trailers being placed on the church property. He cited his real-estate experience to justify his concern. He maintained that he believed the church to have always been a good neighbor, but over the years he's seen temporary structures, trailers and modular units, placed which are supposed to be "temporary" and they are there still.

In rebuttal, Pastor Perdue acknowledged that the facility was overcrowded and this situation would be rectified. He clarified the number of students they expected to enroll and indicated in which facility each age group would be placed. Pastor Perdue assured that all necessary screening and buffering would be done to mitigate impact on their neighbors. He professed that their modular units would be aesthetically correct with the neighborhood.

Mr. Hunter, citing zoning issues, explained to Mr. Hammack the reasons why this special permit before the BZA was a separate permit and not an amendment to the existing permit. Discussion followed between Board members, Dively, Hammack and McPherson, and Mr. Hunter regarding the special permit implications of a child care center and nursery school and the number of allowable students.

There being no further questions or comments, Chairman DiGiulian closed the public hearing.

Mr. Dively commented that he had serious reservations about the existing application. He stated that, in his opinion, the application should be heard in conjunction with an amendment to the special permit. He concurred with Mr. Eucker's comment that one can only put so much on a piece of property and already, he believed, that there was too much going on at the site. Mr. Dively then moved to deny the special permit application, SP 96-L-013.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-L-013 by ENGLSIDE BAPTIST CHURCH, under Section 3-203 of the Zoning Ordinance to permit a child care center and nursery school, on property located at 8420 Highland Lane, Tax Map Reference 101-3((4))33, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 1996; and

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

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 29,607 square feet.
- 4. Other problems were brought out during the public hearing which indicated that this application should be heard in conjunction with an amendment to the current special permit to allow the Board an opportunity to review the overall use.
- 5. The lot may right now be at the breaking point and there is only so much that can be put on one piece of property. The applicant seems to be aware of that fact since they are talking about the use in the terms of temporary.
- 6. The proposed screening is insufficient to properly buffer the church from its residential neighbors.

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. 3-203 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1996.

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Page 179, October 1, 1996, (Tape 1), Action Item:

Request for Change of Permittee for SP 95-Y-003  
Ridgeview Country Club Limited Partnership TO Fairfax Golf Club, L.L.C.

Mr. Hammack moved to approve the request for the change of permittee. Mr. Pammel seconded the motion which carried unanimously by a vote of 7-0.

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Page 179, October 1, 1996, (Tape 1), Action Item:

Out-of-Turn Hearing Request  
VCA 95-D-007, Kevin Fischer & Frances A. Mooney

Page 180, October 1, 1996, (Tape 1), KEVIN FISCHER & FRANCES A. MOONEY, VCA 95-D-007, continued from Page 179)

Mr. Dively noted that there was evidence of hardship for the applicants, and therefore, he moved to accept their request for an out-of-turn hearing with the new hearing date of November 19, 1996. Messieurs Dively and Ribble seconded the motion which carried unanimously by a vote of 7-0.

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Page 180, October 1, 1996, (Tape 1), Action Item:

Approval of Resolutions  
September 24, 1996 Meeting


Mr. Hammack moved to approve the September 24, 1996 resolutions. Mr. Pammel seconded the motion which carried by a unanimous vote of 7-0.

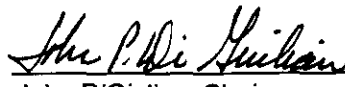
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As there was no other business to come before the Board, the meeting was adjourned at 9:55 a.m.

Minutes by: Paula A. McFarland

Approved on: December 10, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 8, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 181, October 8, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES A. & SHARON B. KELLEY, VC 96-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a six foot high fence to remain in the front yard of a corner lot. Located at 1905 Belle Haven Rd. on approx. 17,837 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (13) 1. (MOVED FROM 6/4/96 FOR ADDITIONAL INFORMATION. DEF. FROM 7/23/96)

Chairman DiGiulian called for the scheduled case and received no response. Inda Stagg, Staff Coordinator, asked that the Board move this case to the end of the agenda to allow counsel to be present since there was a legal issue involved. Mr. Dively so moved and Mr. Pammel seconded the motion which carried by a vote of 4-0. Messrs. Hammack, Kelley, and Ribble were not present for the vote.

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Page 181, October 8, 1996, (Tape 1), Scheduled case of:

9:00 A.M. LAURA E. HILL, VC 96-M-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from side lot line. Located at 3030 Sleepy Hollow Rd. on approx. 23,841 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 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. The applicant's agent, Bill Reames, with Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report. The applicant requested a variance of 2.0 feet in order to construct a sun room 18.0 feet from the side lot line. Ms. Stagg noted that the primary structure, the applicant's home, was constructed 17.8 feet from the side lot line in 1949 and was zoned Suburban Residential which only required a minimum side yard of 15.0 feet.

Mr. Reames explained that the room will be constructed over an existing patio and knee wall; therefore, there will be no additional foundation work. He added that the applicant is allergic to bees and recovering from cancer.

Chairman DiGiulian said it appeared that the proposed structure would be no closer to the side lot line than the existing structure. Mr. Reames said that was correct.

Mr. McPherson asked for a clarification with regard to the ownership of the property. Mr. Reames said he believed the applicant was the owner.

Ms. Stagg said she knew a question had arisen with regard to ownership, but the County's tax records reflect the applicant as the sole owner of the property.

Chairman DiGiulian called for speakers to the application.

The applicant, Ms. Hill, said she believed the proposed enclosure would enhance the appearance of the property without adding square footage to the lot.

Leo James Hill referenced a document that he had presented last week and asked that any action be delayed until such time as his name could be removed from all financial records.

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

Mr. Pammel made a motion to grant VC 96-M-105 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 1, 1996.

Mr. Dively seconded the motion and noted that it appeared the applicant was the sole owner of the property. He pointed out that if there were any claims involving other parties those issues were distinct from the variance issue.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-105 by LAURA E. HILL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.0 feet from side lot line, on property located at 3030 Sleepy Hollow Road, Tax Map Reference 51-3((6))64, 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 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 23,841 square feet.
4. The applicant has presented testimony indicating compliance with the nine prescribed criteria, specifically that the setback from the side line requested in this application is the current setback from the side line of the existing structure, therefore there will be no further encroachment into the side yard than presently exists.
5. The ownership of the property appears clearly to be in the name of the applicant and any dispute between the applicant, Patio Enclosures, and other parties are logically and distinct from the variance request before the BZA.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition (Sun room) shown on the plat prepared by Kenneth White, dated June 12, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition (sun room) shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 183, October 8, 1996, (Tape 1), Scheduled case of:

9:00 A.M. S.W. AND REBECCA HALL, VC 96-B-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. from rear lot line. Located at 5401 Quincy Marr Dr. on approx. 10,940 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-3 ((9)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Bill Reames with Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. The applicant requested a variance of 11.7 feet in order to construct an addition consisting of the enclosure of the existing patio in its current location, 13.3 feet from the rear lot line.

Mr. Reames said the lot has a peculiar shape with the house setting well back on the lot and pointed out that the proposed structure will be no closer to the lot line than the existing structure.

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

Mr. McPherson made a motion to grant VC 96-B-104 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 1, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-B-104 by S.W. AND REBECCA HALL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.3 feet from rear lot line, on property located at 5401 Quincy Marr Drive, Tax Map Reference 68-3((9))1, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,940 square feet.
4. This particular lot has a odd shape and is located on the side of a cul-de-sac.
5. The addition will be no closer to the lot line than the existing patio.
6. Other variances have been granted behind the subject property on Stanhope Place.
7. The request will be consistent with the spirit and intent of the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of addition (patio enclosure) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated June 4, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Dively seconded the motion which carried by a vote of 5-0-1 with Mr. Hammack abstaining. 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 October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 185, October 8, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MARCUS L. WINTER, VC 96-B-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from side lot line. Located at 9221 Nester Rd. on approx. 18,632 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 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. Marcus L. Winter, 9221 Nester Road, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested a variance of 3.7 feet to allow a garage addition 11.3 feet from the side lot line.

Mr. Winter said he would like a garage to provide security for his family since his job requires that he travel extensively. He added that approximately 45 percent of the houses in his neighborhood already have double garages/carports; therefore, the granting of the variance would not be precedent setting. Mr. Winter submitted statements into the record from his neighbors supporting the request.

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

Mr. Kelley made a motion to grant VC 96-B-100 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 1, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-B-100 by MARCUS L. WINTER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.3 feet from side lot line, on property located at 9221 Nester Road, Tax Map Reference 58-4((22))17, 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 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 18,632 square feet.
4. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by Dewberry and Davis, dated June 12, 1996 and revised through July 2, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 187, October 8, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CLEVELAND AND GLORIA B. DAFFIN, VC 96-Y-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from rear lot line. Located at 6552 Palisades Dr. on approx. 4,500 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-4 ((3)) (4) 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. The applicant's agent, Robert V. Swieger, with Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested a variance of 8.0 feet to allow an addition consisting of the enclosure of an existing deck to be located 12.0 from the rear lot line.

Mr. Swieger cited the narrowness of the lot and said the enclosure of the deck would not encroach any further into the rear lot than the existing deck.

There were no speakers and Mr. Dively made a motion to grant VC 96-Y-107 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 1, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-Y-107 by CLEVELAND AND GLORIA B. DAFFIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.0 feet from rear lot line, on property located at 6552 Palisades Drive, Tax Map Reference 65-4((3))(4)85, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-5 and WS.
3. The area of the lot is 4,500 square feet.
4. The lot is small and shallow.
5. The request is simply for an enclosure with no further encroachment into the rear yard.

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

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

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

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

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

1. This variance is approved for the location of enclosed deck shown on the plat prepared by Kenneth W. White, dated April 2, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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



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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 189, October 8, 1996, (Tape 1), Scheduled case of:

9:30 A.M. LARRY & JUANITA ELLIS, VC 96-S-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.7 ft. from rear lot line. Located at 9398 Tucker Woods Ct. on approx. 1,932 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 88-2 ((25)) (2) 43A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Bill Reames, with Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The applicant requested a variance of 3.3 feet to allow enclosure of an existing deck into a sun room to be located 16.7 feet from the rear lot line.

Mr. Reames said the addition would be constructed on top of an existing deck; therefore, it will be no closer to the lot line. He explained that the townhouses are staggered but because of the placement of the applicant's house to the rear of the lot the addition requires a variance whereas the neighbor did not.

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

Mr. Ribble made a motion to grant VC 96-S-103 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 1, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-103 by LARRY AND JUANITA ELLIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.7 feet from rear lot line, on property located at 9398 Tucker Woods Court, Tax Map Reference 88-2((25))(2)43A, 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 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 1,932 square feet.
4. The applicant has met the nine required standards for the granting of a variance, in particular the shallowness and narrowness of the lot.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the sun room addition shown on the plat prepared by Kenneth W. White, dated June 4, 1996, and revised through July 3, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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The Chairman noted there were approximately ten minutes before the next scheduled case; therefore, the Board would consider the Information Items.

Page 191, October 8, 1996, (Tape 1), Information Item:

Request for Intent to Defer from Donald E. Crump and Chesley Crump

Mr. McPherson made a motion that the Board issue an intent to defer the Crump Appeal to January 14, 1997 as suggested by staff. Mr. Dively seconded the motion which carried by a vote of 6-0-1 with Chairman DiGiulian abstaining.

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Page 191, October 8, 1996, (Tape 1), Information Item:

Approval of October 1, 1996 Resolutions

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

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The Board recessed at 9:25 a.m. and reconvened at 9:33 a.m. and proceeded with the regularly scheduled agenda.

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Page 191, October 8, 1996, (Tape 1), Scheduled case of:

9:30 A.M. RECONSIDERATION HEARING - NILS & GLADYS ANTEZANA, VC 96-D-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed Lots 42B and 42C having a lot width of 6.0 ft. and proposed Lot 42D having a lot width of 12.0 ft. Located at 6320 Georgetown Pi. on approx. 4.04 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 22-3 ((1)) 42.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Mark G. Jenkins, P.C. 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, prefaced the presentation of the staff report by saying a public hearing was held on this application on July 9, 1996, and a motion to grant failed and subsequently this Reconsideration hearing was granted. She called the Board's attention to the minutes of the previous hearing, a copy of the applicant's revised statement, as well as several letters in support and opposition to the request, which were submitted following the previous public hearing. Ms. Langdon outlined the applicant's request and said staff did not believe the applicant has met Standards 2, 3, 4, 5, and 6.

Mr. Jenkins discussed the physical conditions of the property which he believed justified the granting of the variance and added that since the previous public hearing four letters in support of the request have been submitted to the Board from the neighbors who would be the most impacted. He called the Board's attention to a copy of a public street layout which conceptually showed why the request is the minimal variance that will afford the applicant relief. Mr. Jenkins stressed the peculiar circumstances and its relationship to the surrounding properties and said the granting of the variance will not set a negative precedence.

In response to a question from Mr. Pammel, Mr. Jenkins replied that the applicants have owned the property since 1973.

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

Frank Crandall, 900 Turkey Run Road, McLean, Virginia, represented the Turkey Run Citizens Association and McLean Citizens Association and referenced the documents submitted by the Associations prior to the previous public hearing. He expressed concern with environmental issues in particular storm water

Page 192, October 8, 1996, (Tape 1), RECONSIDERATION HEARING - NILS & GLADYS ANTEZANA, continued from Page 191 )

VC 96-D-040 management. Mr. Crandall pointed out that the property is located at one of the entrances to the Langley Historic District which would negatively impact the District and set an undesirable precedent.

In rebuttal, Mr. Jenkins said the applicant must meet the criteria set forth in the Public Facilities Manual and said he has discussed the request with the Architectural Review Board of the Langley Historic District and will continue to work with the ARB.

Mr. Pammel asked what the minimum lot area in the R-1 District is and Ms. Langdon replied 36,000 square feet. Mr. Pammel then asked staff if they were any pending proposals on Lot 46, which is located immediately to the west. Ms. Langdon replied that to her knowledge there were none.

Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant VC 96-D-040 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 2, 1996.

Mr. Hammack said he opposed the motion at the previous public hearing and he would again oppose the motion as he believed the applicant was attempting to maximize the density and that he believed pipestem lots to be undesirable.

Mr. Pammel agreed with Mr. Hammack's comments as he believed the granting of a variance would be merely for a convenience to obtain the maximum density.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-040 by NILS AND GLADYS ANTEZANA, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed Lots 42B and 42C having a lot width of 6.0 feet and proposed Lot 42D having a lot width of 12.0 feet, on property located at 6320 Georgetown Pike, Tax Map Reference 22-3((1))42, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and HD.
3. The area of the lot is 4.04 acres.
4. The applicant has stated facts that are sufficient to warrant the granting of the variance.
5. Although the staff report brings up several concerns, they are outweighed by the unusual shape of the lot
6. People who purchased property 20 years ago and come in years later and request a variance should not be required to keep what they purchased 20 years ago.
7. The location of the property prevents it from being consolidated in any meaningful manner.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the subdivision of Lot 42 as shown on the plat prepared by Paciulli, Simmons and Associates, LTD., dated October, 1995, revised through March 6, 1996. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
3. If full frontage improvements are not provided at the time of site development, the applicant shall provide a 15.0 foot ancillary easement necessary for the future improvement of Georgetown Pike.
4. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance.
5. All plans for development of the property shall be reviewed and approved by the County Architectural Review Board.

Pursuant 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.

Page 194, October 8, 1996, (Tape 1), RECONSIDERATION HEARING - NILS & GLADYS ANTEZANA, continued from Page 193

Mr. Ribble seconded the motion which carried by a vote of 5-2 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, Mr. McPherson, and Mr. Ribble voting aye; Mr. Hammack and Mr. Pammel voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 194, October 8, 1996, (Tape 1-2), Scheduled case of:

9:30 A.M. GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, SPA 91-C-070-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for outdoor recreation use to permit building additions, site modifications, increase in hours of operation, change in development conditions and special events. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((8)) A, 1A, 2, 3, 4 and 5; 18-4 ((1)) 23 and 26. (OUT OF TURN HEARING GRANTED. MOVED FROM 9/24/96)

Mr. Hammack said due to the number of speakers who have expressed an interest in speaking to the application and the fact that the Board has heard a similar application in the not too recent past, he would move that the Board modify the speaking limitations to allow individuals two minutes, individuals representing a civic organization three minutes, and the applicant ten minutes to make his presentation with two minutes for rebuttal.

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

Mr. Pammel disclosed that he had in the past had a financial interest with the applicant approximately four years ago, but that he would participate in the public hearing since the required time period had passed.

The applicant, Mr. Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, reaffirmed the affidavit. He asked that the public hearing not be held but be continued to a date certain to allow him an opportunity to address the concerns raised in the staff report and to work with the citizens.

Mr. Hammack pointed out that the applicant had requested an expedited hearing and that he believed the Board should proceed with the public hearing. Mr. Ribble said if that was a motion he would second for purposes of discussion.

Mr. Kelley said it appeared that the staff report was incomplete in areas where the applicant has failed to submit information to staff and that he found it inexcusable since the applicant had requested and been granted an expedited hearing. He pointed out that the applicant could have submitted a request for a continuation two weeks ago and he also would like to proceed.

The motion carried by a vote of 7-0.

Inda Stagg, Staff Coordinator, presented the staff report noting that the report was based on the applicant's special permit plat dated July 30, 1996 and added that the applicant had submitted a revised plat just last week, which has not yet been evaluated by staff. The applicant requested building additions, site modifications, increase in hours of operation, special events, and changes in Development Conditions. In addition, the applicant requested that the Board reaffirm all previously granted barrier and transitional screening waivers and modifications. Ms. Stagg added that the applicant also requested that the special permit, if granted, be allowed to run with the land and be transferable to a different lessee or operator without further action of the Board. In addition, the applicant also requested that previous approved Development Conditions be deleted or revised as appropriate, but the applicant has not provided information to staff with respect to what particular Conditions he would like to revise; therefore, staff has only updated the previously approved Conditions. Ms. Stagg said staff was recommending the granting of SPA 91-C-070-2 in-part and proceeded to outline the portion of the request staff could support.

Page 195, October 8, 1996, (Tape 1-2), GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, SPA 91-C-070-2, continued from Page 194

Ms. Stagg referenced the amended special permit plat received by staff on October 1, 1996, and outlined the various modifications and noted that because of the late submission staff was unable to analyze the additional information for presentation at this public hearing. She said Cecilia Lammers, the Environmental Planner who reviewed the application, was present to respond to any questions the Board might have.

A discussion took place between the Board and staff regarding Development Conditions 6, 21, and 23. Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, explained that the wording in Condition 21 relating to the trail was to ensure that any approval was consistent with decisions made by the Department of Environmental Management and upheld by the Board of Supervisors. Ms. Stagg explained that staff was trying to merely make the Condition consistent with the prior approval.

Mr. Ribble questioned if this was "a rush to judgment" so to speak based on the late submission of the revised plat. Ms. Byron pointed out that the Board was not reviewing the revised plat and the notes in question were not amending the plat. She added that staff routinely used the wording in Condition 3 to ensure that the approved conditions supersede the plat for clarification purposes.

Mr. Hammack questioned how the applicant could be in compliance with the prior approval if he had not met the requirement of the pro rata contribution outlined in Condition 6. Ms. Byron said it should have been made, but perhaps the question should be directed to the applicant as to why it was not done.

A discussion took place between the Board and staff regarding proposed road improvements to the intersection at Sunset Hills and the proposed development on the adjoining lot to the east.

With respect to a question from Mr. McPherson regarding the elevation of the property, Ms. Lammers replied the berms represent the highest point on the property.

Mr. Dively asked staff to elaborate on the type of information that the applicant had failed to submit in order for staff to fairly evaluate the application. Ms. Stagg replied staff had requested information on foot candles at the property line for all lights, traffic generation for special events, and the nature and extent of the special events. With regard to the time frame as to when the application was requested, Ms. Stagg replied the information on lights was requested at the time the application was filed. Ms. Lammers said a portion of the information was received at the time of the initially filing, but additional information was requested.

Mr. Kelley asked if staff was prepared to go forward with the application today. Ms. Stagg said staff was prepared to go forward based on information they received prior to one week ago.

Mr. Thoburn explained that he had not requested a deferral earlier based on staff's refusal to review information that they received a month ago and it was a very difficult process to go through when there is no dialogue with staff. He distributed copies of the amended staff report from 1992 wherein staff wrote a favorable report, which included lighting the site along with copies of the original light study that was done in 1992. Mr. Thoburn said he has worked with the developer who is involved in the tract of land to the east and that he has tried to be a good neighbor. He said he has tried to work with staff and regrets the lack of dialogue that has brought the application to the Board in this format.

With respect to the question raised earlier by Mr. Hammack with respect to the pro rata contribution, Mr. Thoburn explained that contribution was at the discretion of the Virginia Department of Transportation and at this time the request has not been made.

Tom Lilly, engineer for the applicant, came forward to discuss with the Board the lighting proposed for the site and the impact of sky glow in the area. He said similar lights are used on ballfields and observatories. Ms. Byron said the document which the applicant distributed to the Board today was not a part of the packet submitted to staff; therefore, staff has not had an opportunity to review the information and consider the impact on the adjoining properties. Ms. Lammers said this was the first time she had seen the information submitted to the Board.

Mr. Kelley said he was not "knocking" staff, but he did not believe that staff was prepared to go forward with this case and bring it to conclusion. Chairman DiGiulian agreed. Ms. Byron said staff was somewhat

frustrated with this application and said there are two sides to every story and staff's position is somewhat different and contradictory to what the applicant presented. Mr. Kelley said he had made the motion to approve the expedited hearing based on his belief that it was a simple application dealing with a few lights, unaware that it involved expanded hours and increased usage. Ms. Byron said if the Board wished staff to go back and review the information just submitted by the applicant, they would do so and added that the new information still might not address staff's concerns.

Mr. Dively said he believed it would be appropriate to hold the public hearing and postpone the decision until next week to allow staff an opportunity to prepare an update. Mr. Kelley said he did believe that was appropriate since staff would be hearing testimony that they were not prepared to address. He said he did not like the position that he was in since he made the motion to approve the expedited hearing and that he believed the hearing should be postponed for approximately three months.

Mr. Pammel said he had not supported the expedited hearing, but he would like staff to address the changes that have occurred which has generated a totally different staff report than the one prepared by staff in 1992. He agreed with deferring the public hearing.

Mr. Dively said it appeared that the applicant and staff were not working well together and that he did not care who was at fault, but it appeared that every time staff asked for one and it was provided they then asked for something else.

Chairman DiGiulian said several neighbors have indicated that they also need ample time to review the request.

Mr. Ribble said this was deja vu since the same thing occurred at the previous public hearing with regard to last minute submissions and he would reluctantly support the deferral, but he did not want to see any last minute submissions.

Mr. Hammack said the Board brought this on themselves to some extent, but the applicant should be well aware to the extent his project is opposed and has brought this on himself to some extent. The applicant is also aware that staff reviews plans as submitted and that he had not heard anything to indicate that staff has done anything improper or delayed the process. He added that the applicant stated that he has revised the plat several times and pointed out that the applicant was the one who requested the expedited hearing. Mr. Hammack agreed that the application should be deferred for a sufficient amount of time to allow the citizens to thoroughly review the request and that he did not believe the application was properly submitted.

Mr. Pammel suggested that the case be deferred to a night meeting. Mr. Kelley made a motion to defer the public hearing to February 18, 1997, as suggested by staff with no other applications being scheduled for that evening. Mr. Pammel seconded the motion.

Mr. McPherson said he believed the Board should proceed and that he would not support the deferral. Mr. Kelley said he did not believe the Board could make a fair decision based on the information before them.

Mr. Dively said he would like to know if a deferral would create a hardship for the applicant and the citizens.

Mr. Thoburn said he was unhappy with the turn of events and that it was a hardship to operate a golf driving range which is more restricted than any other in the County, but he expected to come back to the Board with a favorable staff report and that he would rather defer the application to allow him an opportunity to work with staff.

The following citizens came forward to oppose the deferral. Philip Hudock, 10502 Hunting Crest Lane; John Mansfield, 1503 Brookmeade Place; Jean Ward, adjacent owner of Lot 10; Elliot Eder, 1616 Crowell Road; and Rubin Cook (no address given). They opposed the deferral based on the fact that the applicant had the responsibility to show the burden of proof and be prepared to proceed with a complete application.

The motion to defer the application to 8:00 p.m. on February 18, 1997, carried by a vote of 5-2 with Mr. McPherson and Mr. Dively voting nay.



Page 197, October 8, 1996, (Tape 1-2), RECESS:

The Board recessed at 11:12 a.m. and reconvened at 11:23 a.m.

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Page 197, October 8, 1996, (Tape 2), Scheduled case of:

9:00 A.M. JAMES A. & SHARON B. KELLEY, VC 96-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a six foot high fence to remain in the front yard of a corner lot. Located at 1905 Belle Haven Rd. on approx. 17,837 sq. t. of land zoned R-4. Mt. Vernon District. Tax Map 3-3 ((14)) (13) 1. (MOVED FROM 6/4/96 FOR ADDITIONAL INFORMATION. DEF. FROM 7/23/96)

(This case was passed over earlier in the public hearing to allow the applicant's attorney to be present.)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant's legal counsel, Tom Thomas, was not present, but Jan Brodie with the County Attorney's office was present to discuss the legal issues involved in this case.

Mr. Dively asked if staff had talked to Mr. Thomas. Ina Stagg, Staff Coordinator, said she had talked with the applicant yesterday and it had been her understanding that Mr. Thomas had been holding discussions with other parties but that she was not aware of the outcome of those discussions. Ms. Stagg added that the applicant was aware that the hearing was scheduled for this date.

Mr. Kelley said he had driven past the property and it did not appear that the property had been legally posted with the public hearing notification. Ms. Kelsey explained that when a case is deferred to a time and date certain, it does not require reposting or readvertising if the public hearing occurs within the ninety day time frame.

Chairman DiGiulian asked the County Attorney if she had any comment. Ms. Brodie explained that Mr. Thomas had contacted her to discuss what stand the County proposed to pursue with regard to the legal issues. She said she had basically told him that "it was in his ball park" and since it does not appear that Mr. Thomas has take any action the Default Decree remains in effect and the applicant is now in contempt of that Order.

Mr. Dively made a motion to dismiss the application. Mr. Ribble seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Betsy S. Hurtt

Approved on: January 7, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 15, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:08 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 199, October 15, 1996, (Tape 1 & 2), Scheduled case of:

8:00 P.M. SHARKEYS, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 95-V-031 for billiard hall to permit change in development conditions. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (MOVED FROM 10/1/96 AT APPL'S REQ.)

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

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to their existing special permit to allow a change in the hours of operation to 10:00 a.m. to 2:00 a.m., daily. Ms. Langdon said it was staff's opinion that the application did not meet all the provisions of Section 8-006 of the required General Special Permit Standards and Section 8-506 Standards for all Group 5 Uses. In particular, General Standard Number 3 which requires the proposed use to be harmonious with and not adversely affect the use or development of neighboring properties. Staff believed that the proposed closing time of 2:00 a.m. would bring increased noise and traffic to the site thereby adversely impacting the nearby residential neighborhood, particularly the three lots directly adjacent to the site and separated only by 10 feet of transitional screening. Staff recommended denial of the special permit amendment.

Mr. McDermott presented the applicant's request as outlined in the statement of justification submitted with the application. He noted that the special permit use had been in existence for ten months and the applicant was now back seeking a reconsideration of the hours. Mr. McDermott briefly explained the background of the original special permit and how the applicant's improvements had helped the area by decreasing crime at the shopping center thereby enhancing the Route 1 Corridor. The applicant felt the additional hours would create a significant increase in revenue for the business, which had not yet shown a profit. Mr. McDermott said he talked with the Captain at the Mount Vernon Police Station who reported only seven minor occurrences at Fast Eddie's over the last ten months.

The following spoke in support. Hassin Mahbodien, 2500 Belleview Avenue; Henry Brittan, Pastor of Calvary Presbyterian Church; Frank Meeks, owner of Dominoes Pizza; Robert Hartwell, 6718 Stoney Brooke Lane; Michael Highdorn, PTA President for Mount Eagle Elementary School; Tom Richert; Shaun Adler, representing the shopping center owner; George of Generous George's Pizza and Pasta Place. They supported the application based on the applicant's improvements to the shopping center which resulted in decreased criminal activity and undesirables; the elimination of trash and other items from collecting onto Mount Eagle Elementary School property; and the support of various fundraisers at the school. They felt Fast Eddie's was an asset to the neighborhood and increased property values.

A petition was submitted to the Board from the area residents opposed to the applicant.

The following spoke in opposition. Betsy Arnette, 2501 Fairhaven Avenue; Lori Myers, 2501 Fairhaven Avenue; Bonnie Hawkins, 2513 Jamaica Drive; Timothy Berkoff, Co-Chair for Mt. Vernon Council of Citizens Association; Vi Taylor, 2506 Fairhaven Avenue; Ernest Taylor, 2506 Fairhaven Avenue; Paula Solorzano, 6010 Park Place. They cited trash being left in the shopping center parking lot or thrown into neighborhood yards and noise from late night traffic. They said the applicant had not abided by the previous special permit development conditions. In particular, they had not witnessed any uniform security guards patrolling after

10:00 p.m. and the gate was not being closed by 9:00 p.m. They felt Fast Eddie's had made their property values go down and requested that the Board not extend the hours.

In response to a question from Mr. Hammack, Ms. Taylor said they had reported various zoning violations to the neighborhood homeowner's association but was not aware of any reports made to Zoning Enforcement.

In rebuttal, Mr. McDermott passed out photos of Fairhaven Community depicting unkept yards. He also passed out a printout from the Mount Vernon Police station showing the number of incidents reported at Fast Eddie's versus the number reported in the Fairhaven Community itself. He felt the traffic noise was generated more from the six lane road of Mount Vernon Highway than from the customers going into and out of Fast Eddie's. Mr. McDermott reiterated the improvements made by the applicant and addressed the uniformed security guard issue by stating that the two companies they had contracted with were not effective; therefore, they had to fire both companies. As a result, the applicant started using their own doormen as security guards, which has proven to be more effective.

In response to a question from Mr. Kelley, Mr. McDermott said the security guards would wear either a shirt with the Fast Eddie's logo or a shirt with a tie.

Mr. McDermott explained the computer printout from the Mount Vernon Police Station to the Board.

Mr. Ribble mentioned a letter of support from Kim Norris that was passed out to the Board. He noted that she had suggested additional shrubbery be planted along the area where the neighborhood borders in order to alleviate noise. Mr. McDermott said the applicant met with the homeowners last night and agreed to the suggestion.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 95-V-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 8, 1996 with the following changes to the Development Conditions: Development Condition Number 6 should reflect hours of operation to be 10:00 a.m. to 2:00 a.m. daily and add new Development Condition Numbers 17 and 18.

Chairman DiGiulian called for discussion.

Mr. Kelley asked Mr. Hammack to amend his motion to include removal of the word "uniformed" from Development Condition Number 14. Mr. Hammack concurred.

Mr. Hammack explained to the citizens present that the Board attempts to adopt development conditions that would not give one business a competitive advantage or put one community group at more disadvantage than another community group. He said the Board tries to establish some uniformity so that businesses can operate on a level playing field resulting in healthy businesses in a community. He felt the neighborhood should recognize that there were any number of businesses that could be operated on site as a matter of right which would possibly create more traffic and noise, and not be required to have a special permit hearing. He pointed out that if Fast Eddie's had a lesser amount of pool tables, they could be operating there as a matter of right. In closing, Mr. Hammack stated that he hoped Fast Eddie's would continue to work with their neighbors and possibly win the adjacent community over.

Mr. McDermott discussed with Mr. Hammack new Development Condition Number 17 for clarification purposes.

Mr. Dively said he was going to vote in favor of Mr. Hammack's motion and pointed out that this puts the neighborhood and citizens in the community on a much better footing than the alternative because of the eighteen Development Conditions put on Fast Eddie's. He reiterated that a sports bar and restaurant business could be put on site by right; therefore, this was a much more regulated use.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 95-V-031 by SHARKEYS, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, under Section 4-803 of the Zoning Ordinance to amend SP 95-V-031 for billiard hall to permit change in development conditions, on property located at 6220 Richmond Highway, Tax Map Reference 83-3 ((1)) 22C and 22D, 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 15, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 2.84 acres.
4. There has been interesting testimony in support and in opposition to the special permit amendment.
5. The Office of Transportation report indicated that there will not be any transportation impact associated with the expansion of the hours; although, community testimony felt there would be an impact.
6. The agent presented testimony which showed a very small percentage of instances reported to the police; therefore, he can not conclude the applicant is drawing more than a random amount of unruly patrons.
7. The applicant is making a reasonable effort to comply with the development conditions previously imposed.
8. The applicant is trying to establish the restaurant as a responsible business along the Route 1 corridor.
9. The applicant has been operating for 15 months and has demonstrated that they are not a detrimental impact by making positive initiatives within the community in a number of ways.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 4-803 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land. 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 R. C. Fields, Jr., dated April 5, 1995, revised through August 30, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. There shall be a maximum of twenty-six (26) billiard tables and 163 seats in the facility, 6220 Richmond Highway.
6. The hours of operation of the billiard parlor shall not exceed 10:00 a.m. to 2:00 a.m. daily.
7. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Environmental Management (DEM).
8. A six foot high board on board fence shall be provided within ten (10) feet of the northern property line as shown on the special permit landscape plat presented to the Board of Zoning Appeals on July 20, 1995. The barrier requirement shall be waived along all other property lines. Ten (10) feet of planting along the northern property line shall be placed along the outside of the board on board fence and the plant materials shall be approved by the Urban Forestry Branch, DEM.
9. Transitional screening shall be waived along all other property lines.
10. Interior parking lot landscaping shall be provided as shown on the special permit plat and as approved by the County Urban Forestry Branch, DEM.
11. Interparcel access shall be provided to Lot 22B to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County.
12. The entrance on Jamaica Drive shall be limited to "Entrance Only" and shall be gated at 9:30 p.m. The entrance shall be narrowed to a one-way width, but shall be a minimum of 18 feet wide to allow access for emergency vehicles.
13. A bench shall be provided at the transit stop on site along Route 1.
14. The applicant shall provide security guard(s) to police the area from the hours of 10:00 p.m. until closing.
15. The applicant shall police the premises for trash and debris on a daily basis.
16. The applicant shall comply with the applicable Alcoholic Beverage Control laws.
17. The applicant shall keep its kitchen doors closed at all times, except for ingress and egress, to minimize the impact of noise on the adjacent community.
18. This amended special permit shall be reviewed by the Board of Zoning Appeals twenty-four (24) months after the date of approval.

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

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

Page 203, October 15, 1996, (Tape 1 & 2), SHARKEYS, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031, continued from Page 202

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 30, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 203, October 15, 1996, (Tape 2), Scheduled case of:

8:00 P.M. DONALD E. CRUMP AND CHESLEY CRUMP, Appeal 96-S-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant added structures and storage/display areas without site plan, Building Permit, and Non-Residential Use Permit approval, and in noncompliance with applicable location regulations all in violation of Zoning Ordinance provisions. 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 7/23/96)

Chairman DiGiulian stated that last week the Board issued an intent to defer to January 14, 1996 at 9:30 a.m. Mr. Ribble so moved. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 203, October 15, 1996, (Tape 2), Scheduled case of:

Approval of Minutes  
from the August 13, 1996 hearing

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

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Page 203, October 15, 1996, (Tape 2), Scheduled case of:

Request for Reconsideration  
for James and Sharon Kelley, VC 96-V-028

The applicant's agent, William Thomas, said he felt the Board's prior action to dismiss this case was based on a perception of lack of jurisdiction. He said the Court had issued a decree of permanent injunction based on a number of circumstances and it was his position that the Board could act to create a legal use by issuing the variance. As a result, the decree issued by the Court would be consonant with the action by the BZA and not in conflict with it. It was Mr. Thomas's opinion that the Court had little interest in this, outside of the request made by the County Attorney's Office on behalf of the Zoning Administrator. He felt if the Board granted the variance the Court would not have any problem with dissolving the decree based on the fact that there would no longer be an illegality because all of the decree language speaks to the fact that there is an illegal fence in accordance with the Zoning Ordinance.

Mr. McPherson said that he disagreed with Mr. Thomas's position in regard to the ability of the BZA to overturn a Circuit Court's decision as it stands right now. He said he understood that Mr. Thomas was not asking the BZA to overturn the Court's position, but that is what the impact would be.

Mr. Dively said he would be in favor of granting the request for reconsideration. He said he was skeptical but thought the applicants should have the right to be heard before the BZA.

Chairman DiGiulian said he was also skeptical and discussed with Mr. Dively the reason the variance was dismissed at last week's hearing.

Page 204, October 15, 1996, (Tape 2), JAMES AND SHARON KELLEY, VC 96-V-028, continued from Page 203 )

Mr. Dively moved to grant the Reconsideration with the County Attorney's Office being made aware of the new date in order to have someone present to respond to the Board's concerns. Mr. Kelley seconded the motion.

Mr. Hammack said he was uncomfortable granting a variance in a case where the Court enjoined that use. Mr. Dively said he was not moving to overturn the Courts ruling, just to let the applicant's variance request be heard.

The motion failed by a vote of 3-4 with Mr. Dively, Mr. Kelley, and Mr. DiGiulian voting aye; Mr. Ribble, Mr. Pammel, Mr. Hammack, and Mr. McPherson voting nay.

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Page 204, October 15, 1996, (Tape 2), Scheduled case of:

Out of Turn Hearing Request  
for Pohick Episcopal Church, SPA 81-L-037-2

Mr. Dively moved to grant the request which carried by a vote of 6-1, with Mr. McPherson voting nay.

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Page 204, October 15, 1996, (Tape 2), Scheduled case of:

Approval of Resolutions  
from October 8, 1996 hearing

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

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Page 204, October 15, 1996, (Tape 2), Scheduled case of:

Memo from Jane C. Kelsey, Chief, Special Permit and Variance Branch  
Regarding: BZA Meeting of October 22, 1996

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the hearing date for October 22, 1996 was canceled due to the newspaper not running the advertisements. Her memo suggested that the Board put most of the hearings on the November 7, 1996 Agenda and the others on dates shown in the memo.

Chairman DiGiulian discussed with Ms. Kelsey how many cases were originally scheduled for October 22, 1996 and November 7, 1996 meetings. He also discussed with Ms. Kelsey the scheduling of the Cedar Knoll Appeal, which was not going to be put on the November 7 Agenda. He expressed concern over the fact that it was an existing violation and that he did not want it pushed back to a later date.

Chairman DiGiulian said he wanted to schedule the Cedar Knoll Appeal for November 7, 1996 and have staff come back with suggestions on an alternative meeting date in reference to the other canceled hearings.

Mr. Dively made a motion for staff to bring back dates for an alternative meeting for the Board to approve at the next BZA meeting. Mr. Kelley seconded the motion which carried by a vote of 7-0.

(Note: The next day William Shoup, Deputy Zoning Administrator, spoke with Chairman DiGiulian by phone and they agreed to move the Cedar Knoll Appeal to January 7, 1997. )

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Page 205, October 15, 1996, (Tape 2), ADJOURNMENT:

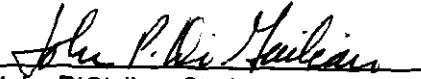
As there was no other business to come before the Board, the meeting was adjourned at 10:12 p.m.

Minutes by: Teresa M. Wang

Approved on: December 17, 1996



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 29, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 201, October 29, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PEDRO DE LEON, SP 96-P-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 shed to remain 2.0 ft. from rear lot line and 2.7 ft. from side lot line. Located at 2858 Graham Rd. on approx. 7,310 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 123. (DEF. FROM 9/10/96 FOR NOTICES)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent for the DeLeons, Olivia Cedillo, of 13641 Orchard Drive, Clifton, Virginia replied that it was.

In the absence of Inda Stagg, the Staff Coordinator who prepared the staff report, Jane Kelsey, Chief, Special Permit and Variance Branch, gave staff's presentation. She pointed out that the applicant was requesting two variances in order to permit an existing shed to remain 2.0 feet from the rear lot line and 2.7 feet from the side lot line.

Addressing the Board, Olivia Cedillo said that the shed was needed to store equipment and that fellow church-goers had been contracted to build it. She professed that the DeLeons had requested and assumed that all rules and regulations were adhered to and that the shed was constructed in good faith. In response to Mr. Ribble's question, Ms. Cedillo explained that the shed cost around \$700 and that the contract was verbal. She requested that the Board grant this variance request because the shed was needed and because there was no other place to locate it on their lot.

Chairman DiGiulian called for speakers and received no response. He then closed the public hearing.

Mr. Ribble moved to grant SP 96-P-019 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-P-019 by PEDRO DE LEON, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.0 feet from rear lot line and 2.7 feet from side lot line, on property located at 2858 Graham Road, Tax Map Reference 50-3((9))123, 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 29, 1996; and

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

- 1. The applicant is the owner of the land.

2. The present zoning is R-4.
3. The area of the lot is 7,310 square feet.
4. The error exceeds 10 percent of the measurement involved.
5. The non-compliance was done in good faith.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of the accessory structure (frame shed) shown on the plat prepared by Peter R. Moran, dated October 26, 1995, 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 unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 208, October 29, 1996, (Tape 1), Scheduled case of:

9:00 A.M. RHODA B. NELSON, VC 96-L-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 2 having a lot width of 21.35 ft. And

Page 209, October 29, 1996, (Tape 1), RHODA B. NELSON, VC 96-L-110, continued from Page 208

proposed Lot 3 having a lot width of 21.24 ft. Located at 7309 Hayfield Rd. on approx. 3.88 ac. of land zoned R-1. Lee District. Tax Map 91-3 ((1)) 73.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The grandchildren, Daniel and Debra Rich, of 4701 Kilburn Place, Woodbridge, Virginia acting as Ms. Rhoda Nelson's agents, replied that it was.

David Hunter, the Staff Coordinator, presenting the staff report, noted the location and size of the subject property. Mr. Hunter explained that Ms. Nelson's variance request resulted from her proposal to subdivide one lot into three and considerations of the future widening of Hayfield Road, a Resource Protection Area, and the ingress and egress for the three lots were all carefully considered. However, Mr. Hunter stated, this variance application has not satisfied all nine standards required by Section 18-404 of the Zoning Ordinance, and, in staff's opinion, Variance Standards 4, 5, and 6 which pertain to undo hardship and the question of whether reasonable use of the property is restricted, have not been demonstrated. In conclusion, Mr. Hunter said, if the application should be approved, staff recommended that the approval be subject to the proposed development conditions contained in Appendix 1 of the staff report.

Daniel J. Rich explained that Ms. Nelson sought to subdivide her 3.88 acre lot into three lots in order to build an additional home on one of the lots and to have the option to build another home on the remaining lot at some future date. He points out that much of the Kingstowne land which surrounds his grandmother's parcel has been subdivided and that this request was reasonable.

Deborah A. Rich, the granddaughter of Ms. Nelson, stated that her grandmother had incurred substantial debt to borrow funds for improvements to her home and that she had lost a good deal of frontage due to dedication for road improvements. Ms. Rich explained that the County's payment for the dedication was less than 10 percent of the property's value and Ms. Nelson was unable to repay her loans with the funds as she had planned.

Chairman DiGiulian called for speakers. Receiving no response, he closed the public hearing.

Mr. Pammel commented that it is a difficult process for the Board of Zoning Appeals members to ascertain whether an applicant has evidenced a case of hardship versus special privilege. He suggested that staff review the Ordinance's requirements and stipulations regarding this issue and report back to the BZA with a clarification of this often times rather nebulous issue.

Mr. Ribble concurred with Mr. Pammel's remark.

Mr. Hammack moved to grant VC 96-L-110 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 22, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-110 by RHODA B. NELSON, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 2 having a lot width of 21.35 feet and proposed Lot 3 having a lot width of 21.24 feet, on property located at 7309 Hayfield Road, Tax Map Reference 91-3((1))73, 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 29, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.88 acres.
4. The lot is an irregular shape.
5. The variance requested is minimal given the zoning that is applicable for the 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 **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of one (1) lot into three (3) lots, proposed Lot 2 having a lot width of 21.35 feet and proposed Lot 3 having a lot width of 21.24 feet as shown on the plat prepared by Alexandria Surveys, Inc. and dated July 16, 1996, revised through September 26, 1996.
2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and individual deeds to each lot and with the covenants, running with the land, to assure that future owners are aware of these restrictions.
3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual, as determined by the Department of Environmental Management (DEM).
4. In order to preserve water quality in the Piney Run watershed, the Resource Protection Area (RPA) as shown on the variance plat shall be preserved in open space. There shall be no structures

located in the RPA and no construction activities to include a buffer of fifteen (15) feet from the RPA line as shown on the variance plat except as may be necessary and approved by the Director, DEM. There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading except for necessary utilities.

5. These conditions shall be recorded on these individual lots in the land records of Fairfax County.
6. The existing dwelling on proposed Lot 1 may remain or be rebuilt in the location shown on the 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 within the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 211, October 29, 1996, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF LITTLE RIVER UNITED CHURCH OF CHRIST, SPA 75-P-131 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 75-P-131 for church and related facilities to permit nursery school, building addition, site modifications and trailer. Located at 8410 Little River Tnpk. on approx. 13.56 ac. of land zoned R-2. Mason District. Tax Map 59-3 ((1)) 22.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's architect and agent, William M. Robson, with Robson Group Architects, Inc., at 5675 Stone Road Suite 230, Centreville, Virginia replied that it was.

Heidi Powell, the Staff Coordinator, presented the staff report. She noted that the applicant has submitted a revised plat dated October 28, 1996 and that the proposed development conditions have been revised to reflect the October 28th plat. Ms. Powell briefly reviewed the revisions noting that the special permit plat now showed the phases of the proposed development. She clarified that Proposed Condition #11, regarding right-of-way dedication, had been of concern to the applicant but was now resolved and that the revised plat and October 29th development conditions reflected the change.

William Robson commented on the natural beauty of the church's site and the desire to retain it. He said that there were several items which he believed may not be required at the site-plan review, specifically a deceleration lane and a dedication along Route 236. He said that these changes were indicated on their revised plat subject to the site-plan review. Mr. Robson requested that the church be allowed waivers for the existing building which could accommodate the required storm water retention facility but that an area had been designated on their plat if one was necessary. He reported that the church preferred not to have to build the pond and that the Department of Environmental Management would make the final determination. Mr. Robson advised the Board that the church has been conducting a "good neighbor" policy by keeping its neighbors informed of proposed development and there seemed to be no complaints at this time.

Reverend Vern E. Arens, the Senior Pastor, gave a brief history of the church noting the numerous community groups that regularly used its facilities. He reiterated that a good relationship with the neighbors was valued and that a detailed brochure was recently sent informing the community of the church's expansion plans.

Kenton Pattie, 8421 Frost Way, Annandale, Virginia professed that, over the past 20 years, the church and its associates were excellent neighbors and that he has had the use of its facilities for community activities and functions. He pointed out that he and his neighbors have been well informed of the church's proposals and that he believed the requested expansion was reasonable, responsible, conservative and an excellent use of the land. Mr. Pattie voiced his confidence that whatever issue was of a concern, that the church would address it and resolve it, and he requested the Board's favorable recommendation for the project.

Martha Callavita, 6805 19th Road North, Arlington, Virginia voiced her concern about whether a possible road widening from Route 236 into the subject property because there is a private cemetery in close proximity which must not be disturbed.

Discussion followed among Board members and Mr. Robson regarding the possibility of future road widening and Ms. Callavita was assured that the Virginia Department of Transportation would address the cemetery issue when and if road improvement funding becomes available.

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

Mr. Pammel made a motion to grant this special permit amendment application with the deletion of the Proposed Development Condition Number 11 and to replace that development condition with the following language: "A 15-foot ancillary easement in addition to the right-of-way reservation along the site frontage shall be provided as determined by the Department of Environmental Management." He further stated that it was his belief that the condition had been agreed upon by the applicants.

Mr. McPherson seconded the motion.

Chairman DiGiulian acknowledged the motion and called for discussion.

Mr. Hammack briefly commented on the relevance of Conditions 11 and 12 stating that, as he understood it, when addressing Development Condition #11, the applicant was to request a waiver and with regards to Development Condition #12, the applicant wanted to propose some kind of an environmental water runoff area rather than having to construct a storm water management detention pond. Because of these two issues, Mr. Hammack made a motion to amend the original motion and delete Conditions #11 and #12.

Mr. Dively seconded the amended motion.

Mr. Pammel interjected that, in his opinion, the issue was moot because the Department of Environmental Management would require whatever storm water management facility it deemed necessary during the site plan process.

Discussion followed among the Board members regarding the amendment.

Chairman DiGiulian called for a vote on the amended motion which carried by a vote of 6-1 with Mr. Pammel voting nay.

Chairman DiGiulian then called for a vote on the main motion with its amendment and it carried by a unanimous vote of 7-0.

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#### COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Amendment Application SPA 75-P-131 by TRUSTEES OF LITTLE RIVER UNITED CHURCH OF CHRIST, under Section 3-203 of the Zoning Ordinance to permit nursery school, building addition, site modifications and trailer, on property located at 8410 Little River Turnpike, Tax Map



Page 213, October 29, 1996, (Tape 1), TRUSTEES OF LITTLE RIVER UNITED CHURCH OF CHRIST, SPA 75-P-131, continued from Page 212

Reference 59-3((1))22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13.56 acres.
4. The applicant has presented testimony before the BZA which states that they have met the prescribed criteria for a special use permit amendment.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8410 Little River Turnpike (13.55 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William M. Robson, Architect, dated July 10, 1996, revised through October 28, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity shall be 230.
6. The maximum daily enrollment of the nursery school shall not exceed 98 children.
7. The normal hours of operation for the nursery school shall be limited to Monday-Friday, 8:00 a.m. to noon.
8. One hundred twenty (120) parking spaces shall be provided on site as shown on the special permit plat. All parking shall be on site.
9. A temporary office trailer may be installed in the location indicated on the special permit plat. The trailer shall be removed when construction of the building additions shown on the special permit plat is completed, and prior to the issuance of the Non-Residential Use Permit (Non-RUP) for the

building additions, but shall remain no longer than five (5) years from the date of approval of the Non-RUP for the trailer.

10. The transitional screening requirement shall be modified and the barrier requirement waived along the northern, eastern and western lot lines. Existing vegetation shall satisfy these requirements.
11. The trash enclosure shall be a six-foot high board-on-board fence.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - ▶ The lights shall focus directly onto the subject property.
  - ▶ Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. All signs on the property shall conform to the provisions of Chapter 12.
14. Notwithstanding Note #11 on the Special Permit Plat, only minor modifications are permitted in accordance with Section 8-004 of the Fairfax County Zoning Ordinance.

These development conditions incorporate and supersede all previous development conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The implementation 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. McPherson seconded the main motion, to grant the special permit, which carried unanimously 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 8, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 214, October 29, 1996, (Tape 1), Scheduled case of:

9:00 A.M. DAVID J. & LISA KIM, SP 96-M-020 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard parlor and pool hall. Located at 7203 Little River Tnpk. on approx. 2.03 ac. of land zoned C-6 and HC. Mason District. Tax Map 71-1 ((1)) 115A and 116B. (MOVED FROM 9/10/96)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The attorney for the Kims, Stephen K. Fox, Esquire, of 11350 Random Hills Road, Suite 500, Fairfax, Virginia replied that it was.

Susan Langdon, the Staff Coordinator, presented the staff report. She stated that the applicants, David and Lisa Kim were requesting a special permit to allow a billiard parlor with a full-service restaurant and that a revised plat dated October 24, 1996 evidencing this. Ms. Langdon listed the hours of operation, the

Page 215, October 29, 1996, (Tape 1), DAVID J. & LISA KIM, SP 96-M-020, continued from Page 214

proposed seating, the number of billiard and pool tables, and the number of employees. She stated that it was staff's conclusion that the application is in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance. Ms. Langdon stated that staff recommends approval of the application subject to the revised proposed development conditions dated October 29, 1996 and distributed that morning.

Susan Langdon responded to Mr. McPherson's question regarding the minor changes to the development conditions.

In response to Mr. Kelley's questions, Stephen Fox, Esquire, clarified the differences between a billiard parlor in the area and the kind of establishment proposed by the Kims.

Susan Langdon explained to Mr. Kelley the reason for and the extent of the October 29th proposed development condition stipulating that the applicant must address the Urban Design Guidelines of the Annandale Community Business Center.

Mr. Fox explained the applicant's intentions regarding the applicability of the Annandale Community Business Center's requirements for its design standards pointing out that their latest plat evidenced conformance.

Mr. Hammack noted that Development Condition #9 could be deleted as it was unnecessary since the application was now in conformance.

Mr. Fox confirmed that the applicant's latest plat addressed all issues and he concurred with Mr. Hammack that Development Condition #9 was unnecessary and should be deleted. He prefaced his presentation with a brief history of the site. He explained that the applicant intended to provide a exemplary facility in which billiards and pool tournaments would be played and where an entire family could enjoy time together. He noted that they would provide a pedestrian access from Route 236, although the establishment essentially would be automobile oriented and that there would be ample parking for both the game tables and the restaurant. Mr. Fox affirmed that the application met the conditions of the Ordinance and he requested the Board's approval.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. McPherson moved to grant SP 96-M-020 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1996.

Comments followed from Messieurs. Pammel and Hammack regarding the applicant's requirement to meet both Zoning Ordinance standards and the Central Business District's for Urban Design. It was their consensus that it is unsettling when any outside organization can dictate conditions to an applicant and that careful consideration has always been taken to exclude homeowners associations and other such groups from wielding control or dictating conditions. Mr. Hammack suggested that whenever plans from these types organizations are delegated or may be applicable for a special exception or special permit use, the plan should first be circulated to the appropriate County Department before coming before the Board.

Mr. Pammel pointed out that clarification should be provided on the application plat's development notes, Items 13, 14, 15, and 16 concerning waivers.

Discussion followed among Board members and Mr. Fox concerning the development notes.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it was not the Board of Zoning Appeals purview to grant waivers of open space nor interior parking lot landscaping.

Chairman DiGiulian suggested an amended motion that the BZA has no objection to granting waivers 13, 14, 15, and 17 with item #16 to be deleted.

Mr. Fox concurred with the amended motion and it carried unanimously by the Board.

Mr. Kelley requested that staff provide information on including a billiard parlor as a by-right use similar to sports bars and submit its determination to the Board for review.

At Ms. Kelsey's suggestion, Mr. Kelley moved to have the BZA staff submit a memorandum to Jane Gwinn, Zoning Administrator, requesting a determination on the inclusion of billiard parlors as a by-right use. The motion carried unanimously by a vote of 5-0 with Messieurs. Dively and Ribble not present for the vote.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-M-020 by DAVID J. AND LISA KIM, under Section 4-603 of the Zoning Ordinance to permit a billiard parlor and pool hall, on property located at 7203 Little River Turnpike, Tax Map Reference 71-1((1))115A and 116B, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 1996; and

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

1. The applicants are the lessee of the land.
2. The present zoning is C-6, HC.
3. The area of the lot is 2.03 acres.
4. The area is to remain a commercial use, it has no residential lots in close proximity; therefore, there is no negative impact on the community.
5. The traffic pattern within the lot is well-planned and has adequate parking spaces.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 4-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7203 Little River Turnpike, shown as "Horn & Horn Restaurant" on the special permit plat 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 Arch Group, dated through December 12, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined

Page 217, October 29, 1996, (Tape 1), DAVID J. & LISA KIM, SP 96-M-020, continued from Page 216)

by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The hours of operation shall not exceed 12 noon to 2:00 a.m., daily.
6. Any signage erected on the building shall be of a size and materials which is compatible with existing signage on site and shall be subject to the requirements of Article 12 of the Zoning Ordinance.
7. Parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Environmental Management.
8. The maximum number of billiard/pool tables shall be thirty-one (31) and the maximum number of seats shall be 176 with no more than 50 seats located outside.
9. The applicant shall comply with all alcoholic beverage control laws of the State of Virginia.

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 unanimous vote of 5-0 with Messieurs. Dively and Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 217, October 29, 1996, (Tape ), Action Item:

Approval of September 24, 1996 Minutes

Mr. Hammack moved to approve the September 24, 1996 minutes and the motion was seconded by Mr. Pammel and carried unanimously by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 217, October 29, 1996, (Tape ), Action Item:

Request for Additional Time  
St. Katherine's Greek Orthodox Church of Northern Virginia

Mr. Pammel moved to accept the request for additional time with the new expiration date of April 6, 1999. Mr. McPherson seconded the motion which carried unanimously with Mr. Ribble not present for the vote.

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Page 218, October 29, 1996, (Tape ), Action Item:

Approval of Resolutions  
Sharkeys, Inc., SPA 95-V-031

Mr. Hammack noted that it was his motion which had conditioned the approval of Sharkeys, Inc. He stated that it was his intention to include the condition that was in the original approval, that which stated that the special permit be reviewed by the BZA twenty-four months after the date of approval to ensure that the use was operating in compliance with the development conditions.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if it was the BZA's intent to hold a public hearing or simply receive a memorandum from staff indicating whether any complaints had been filed. She asked for a clarification as to the type of information the BZA might want to review.

Mr. Kelley said he believed that it had been the BZA's intention, at the time of the original approval, that a staff report would be sufficient and at a later date, if it was deemed necessary, schedule a public hearing. Mr. Hammack agreed and added that if anyone had complaints he hoped they would be addressed to the BZA prior to the publication of the staff report.

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Page 218, October 29, 1996, (Tape 1) Action Items:

Out-of-Turn Hearing Requests For:  
Sharron M. & Richard D. LaRoche, VC 96-P-133  
Keith Early, ESC, L.L.C., SP 96-Y-043

Mr. Pammel stated that because the Board had, at previous BZA meetings, already discussed both the LaRoche case, VC 96-P-133 and the Special Permit case for Keith Early, SP 96-Y-043 at length and because the BZA's scheduled agenda was currently quite full, he recommended denial of both of these Action Agenda Items, 3 and 4.

A question arose among Board members concerning their upcoming docket and at the request of Mr. Dively, Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board of its forthcoming schedule.


Chairman DiGiulian then called for a vote on Mr. Pammel's motion to deny both of these Action Agenda item cases and the motion carried unanimously by a vote of 6-0 with Mr. Ribble not present for the vote.

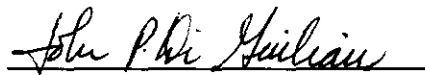
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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Paula A. McFarland

Approved on: January 28, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 7, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 219, November 7, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PETER S. & PATRICIA L. RODER, VC 96-B-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 10B2 having a lot width of 105.33 ft. Located at 4701 Olley Ln. on approx. 2.35 ac. of land zoned R-1. Braddock District. Tax Map 69-2 ((2)) 10B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's engineer, Greg Budnik, P.O.Box 1214, Newington, Virginia, replied that it was. He said he had been unaware of the number of opposition letters received by staff until this morning and asked that the case be deferred to allow him an opportunity to work with the citizens.

Susan Langdon, Staff Coordinator, said she had discussed a deferral date with all parties present and suggested a hearing date of November 20, 1996, at 9:00 a.m.

Mr. Dively made a motion to defer to the date and time suggested by staff. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not being present for the vote.

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Page 219, November 7, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MILES A. & SUSAN A. MICIOTTO, VC 96-H-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot two having a lot width of 7.5 ft. Located at 2307 Hunter Mill Rd. on approx. 4.23 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 20.

Chairman DiGiulian noted that it appeared that this case had been moved to December 3, 1996, public hearing. David Hunter, Staff Coordinator, explained that the applicant's engineer had made an error on the plat which required readvertising the application; therefore, the application had been rescheduled for December 3, 1996, with the concurrence of the applicant.

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Page 219, November 7, 1996, (Tape 1), Information Item:

Approval of October 29, 1996 Resolutions

Mr. Dively made a motion to approve the Resolutions as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 219, November 7, 1996, (Tape 1), Information Item:

Request for Additional Time from Mary I. Llewellyn and Frederick D. Bean

Mr. Kelley made a motion to grant the applicant's request making the new expiration date November 15, 1997. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Page 220, November 7, 1996, (Tape 1), RECESS:

The Board of Zoning Appeals recessed at 9:12 a.m. and reconvened at 9:35 a.m.

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Page 220, November 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. NABIL MANSOUR, Appeal 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31. (DEF. FROM 6/11/96. MOVED FROM 9/17/96)

Jack Connor, 1033 North Fairfax Street, Alexandria, Virginia, came forward and explained that he had been retained by the appellant subsequent to the time the notices should have been mailed to the adjoining property owners, and the appellant had not met that requirement. Mr. Connor said he would like the case continued to January 28, 1997.

Mr. Connor stated that he believed the issue involved in the appeal was mainly an engineering problem which he believed could be rectified. He added that the deferral would allow ample time to submit a proper site plan to the Department of Environmental for review.

William Shoup, Deputy Zoning Administrator, said since the appellant has now retained legal counsel and appears to be proceeding toward a resolution of the issue, staff was in agreement with the deferral.

Mr. Kelley said he would like an assurance from the appellant that another deferral would not be forthcoming, particularly based on the fact that the notice requirement was not met. Mr. Connor assured the Board that would not occur, as that would be his responsibility in the future.

Mr. Ribble made a motion to defer the appeal to January 28, 1997, at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 220, November 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. LEE CASSEL, CASSEL'S SPORT PARK, Appeal 96-W-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination concerning the amount of retail sales space permitted as an accessory use to a proposed indoor soccer/volleyball complex, and as an associated use to a proposed establishment for production and manufacturing assembly. (DEF. FROM 9/10/96)


Mr. Pammel made a motion to grant the appellant's request to withdraw the appeal. 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 9:35 a.m.

Minutes by: Betsy S. Hurtt

Approved on: December 10, 1996

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 12, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 221, November 12, 1996, Scheduled case of :

9:00 A.M. DORY & JENNY SAAD, VC 96-D-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.0 ft. from side lot line. Located at 1200 Beverly Rd. on approx. 9,375 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (K) 1.

Susan Langdon, Staff Coordinator, said the applicants were not present but were aware of the hearing. Mr. Kelley made a motion to move the application to the end of the docket. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 221, November 12, 1996, Scheduled case of :

9:00 A.M. CARRHOMES, INC. FOR TIMOTHY E. & CATHY J. DRURY, SP 96-L-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.4 ft. from side lot line. Located at 6349 Alderman Dr. on approx. 4,863 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11)) (3) 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. David B. Williams, 7535 Little River Turnpike, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification of 0.55 feet to the minimum side yard requirements based on an error in building location.

Mr. Williams presented the special permit request as outlined in the statement of justification submitted with the application. He said the error was a result of the contractor and not the fault of the homeowner.

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

Mr. Hammack moved to grant SP 96-L-036 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 7, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-L-036 by CARRHOMES, INC. FOR TIMOTHY E. & CATHY J. DRURY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.4 feet from side lot line, on property located at 6349 Alderman Drive, Tax Map Reference 91-3((11))(3)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 November 12, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of the deck shown on the plat prepared by Richard J. Cronin, IV, dated July 10, 1996, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 222, November 12, 1996, Scheduled case of :

9:00 A.M. DORY & JENNY SAAD, VC 96-D-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.0 ft. from side lot line. Located at 1200 Beverly Rd. on approx. 9,375 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (K) 1.

Page 223, November 12, 1996, DORY & JENNY SAAD, VC 96-D-115, continued from Page 222)

The applicants for the first scheduled case arrived at the hearing and Chairman DiGiulian called the case of Dory and Jenny Saad, VC 96-D-115.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dory Saad, 1200 Beverly Road, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.0 feet to the minimum side yard requirements.

Mr. Saad presented the variance request as outlined in the statement of justification submitted with the application. He said the deck was very high and the stairs provided a fire exit.

In response to Chairman DiGiulian's question, Mr. Saad replied that the stairway was existing. Mr. Saad said the contractor who built the deck also added the stairway and they were not aware that the stairs did not meet the zoning requirements.

Chairman DiGiulian noted a letter in opposition. Mr. Saad responded to the letter stating that the other neighbors had no problem with the application and the letter had no justification as to why they were against the application. He said the complainants did not reside on the property and the deck was at least 50 feet away from their property.

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

Mr. Pammel said the application was difficult and he was reluctant to require the applicant to remove the steps. He said it was one of those situations where the builder was at fault and had done something contrary to the Code. Mr. Pammel said the burden should not be placed on the applicants to remove the stairs, but he was concerned with the rear portion of the steps and said they should be removed. He moved to grant-in-part VC 96-D-115 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 7, 1996 with the provision that new plats need to be submitted within 30 days.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-115 by DORY & JENNY SAAD, under Section 18-401 of the Zoning Ordinance to permit construction of deck 6.0 feet from side lot line, on property located at 1200 Beverly Road, Tax Map Reference 30-2((4))(K)1 **(THE BOARD DID NOT GRANT THE APPLICANT'S REQUEST TO CONSTRUCT STEPS GOING FROM THE DECK TO THE REAR YARD)**, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,375 square feet.
4. The applicant presented testimony indicating compliance with the nine 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 **GRANTED IN PART** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Alexandria Surveys, Inc., dated August 1, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. A revised variance plat that incorporates the features of the development conditions set forth above shall be submitted within thirty (30) days of the Board of Zoning Appeals' decision on this variance.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on \_\_\_\_\_, the date the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHAU T. LE, VC 96-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 12337 Cliveden St. on approx. 8,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 10-2 ((11)) (3) 66.

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, Apt. 202, Falls Church, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 8.0 feet to the minimum rear yard requirement.

Mr. Pham presented the variance request as outlined in the statement of justification submitted with the application.

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

Mr. McPherson moved to grant VC 96-D-117 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 5, 1996. He said that he was not swayed by the applicant's testimony indicating that the family had grown since that was a personal reason.

Mr. Pammel stated he had the same concerns as Mr. McPherson.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-117 by CHAU T. LE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.0 feet from rear lot line, on property located at 12337 Cliveden Street, Tax Map Reference 10-2((11))(3)66, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; 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 8,500 square feet.
4. The property is set back from the street which creates a hardship in utilizing the property.
5. The situation of the house makes the lot shallow in the back and the lot is very small.

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

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

adjacent to the subject property.

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

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

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

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

- 1. This variance is approved for the location of the addition (study) shown on the plat prepared by Peter R. Moran, dated May 22, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 226, November 12, 1996, Scheduled case of :

9:00 A.M. OK CHA HA, SP 96-M-030 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a beauty parlor. Located at 4103 Woodland Rd. on approx. 16,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-3 ((12)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J. Thomas Fromme, 10482 Armstrong Street, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a beauty parlor. She said all the issues had been addressed and staff recommended approval.

Mr. Fromme presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant would be limited to one customer at a time and would abide by the development conditions. Mr. Fromme said there were no problems with the neighbors.

Chairman DiGiulian noted two letters of opposition. Mr. Fromme responded to the letters by stating that there would be no on-street parking and the beauty parlor would have no impact on traffic.

Mr. Hammack said operation of a business was an intrusion on a residential neighborhood and that the application would impact the character of the neighborhood.

Chairman DiGiulian called for speakers.

Betty Crane, 4101 Woodland Road, came forward to support the application. She said the beauty parlor would have no impact on the traffic and that the traffic problems were caused by the construction in the neighborhood.

Francis Collins, 4023 Woodland Road, spoke in opposition of the application. She said the application would set a precedent in the neighborhood and lower property values.

Mr. Ribble moved to grant SP 96-M-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 5, 1996.

Mr. Kelley said had the application been anything besides a beauty parlor, it would have probably been denied.

Mr. Hammack said he wondered about double standards imposed by the Board since the Board had routinely denied home professional offices for attorneys and psychologists or limited them to one patient a day or maybe a few clients a day and never on Saturdays. He stated that this was not a particularly objectionable activity, but that it was still a commercial activity being introduced into a residential neighborhood. Mr. Hammack said he disagreed with staff about there being no exterior evidence of the property being used in any other way than for a dwelling, when there are two rather large front doors on the front of the property. He said it didn't look like the typical residential dwelling even though there wouldn't be a sign out front. Mr. Hammack said the Board was allowing a business to be introduced into a residential neighborhood and he opposed the motion.

Mr. Dively shared Mr. Hammack's reservations but said as long as the standards were met, the Board was in a position to approve the application. Mr. Dively said the standards were fairly straight forward and limited the use to a minimal one and it was for that reason that the application was in compliance with Sect. 8-905 and he voted in favor of the application.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-M-030 by OK CHA HA, under Section 3-203 of the Zoning Ordinance to permit a beauty parlor, on property located at 4103 Woodland Road, Tax Map Reference 60-3((12))30, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 16,000 square feet.
4. Staff's view is that traffic can be controlled through the conditions and won't cause much of an impact.
5. The use is reasonable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-905 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4103 Woodland Road (16,000 square feet) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A. Logan, Land Surveyor, dated July 10, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The area dedicated to the beauty parlor shall not exceed 160 square feet.
6. The facility shall be limited to that necessary to accommodate no more than one patron at a time.
7. The hours of operation shall be limited to 8:45 a.m. to 5:00 p.m., Monday, Wednesday, Thursday, Friday and Saturday.
8. The applicant shall be the only employee and may retain this privilege only while she resides in the dwelling.
9. All parking shall be on site.
10. There shall be no signs associated with this use.
11. This special permit for a beauty parlor is approved for a period of two (2) years from the final date of approval of this special permit.

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



Page 229, November 12, 1996, OK CHA HA, SP 96-M-030, continued from Page 228)

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

Mr. Kelley seconded the motion which carried by a vote of 5-2. Mr. Hammack and Mr. Pammel voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 229, November 12, 1996, Scheduled case of :

9:30 A.M. IFS, VIRGINIA, INC. D/B/A MOUNT COMFORT CEMETERY, SPA 83-L-100-3 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 83-L-100 for cemetery and crematory to permit additional mausoleums, site modifications and trailer. Located at 6600 South Kings Hwy. on approx. 51.21 ac. of land zoned R-4. Lee District. Tax Map 92-2 ((1)) 23. (MOVED FROM 10/22/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Thomas, Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow additional mausoleums, site modifications, and a trailer.

Mr. Thomas presented the applicant's request as outlined in the statement of justification submitted with the application. He said the applicant agreed with staff's recommendation and no concerns were expressed by the neighbors.

Mr. Pammel said the screening near the residential properties had died and asked why appropriate steps had not been taken to ensure adequate screening of the property. Mr. Thomas replied that there was no reasonable argument he could offer other than changes in management. He said some of the screening had died and rather than replacing it the applicant had removed it. Mr. Thomas apologized for the lack of adequate screening.

Mr. Pammel said he wanted a commitment from the applicant that every step possible would be taken to ensure that the material they removed would be replaced appropriately.

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

Mr. Kelley moved to grant SPA 83-L-100-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Amendment Application SPA 83-L-100-3 by IFS, VIRGINIA, INC. D/B/A MOUNT COMFORT CEMETERY, under Section 3-403 of the Zoning Ordinance to amend SP 83-L-100 for cemetery and crematory to permit additional mausoleums, site modifications and trailer, on property located at 6600 South Kings Highway, Tax Map Reference 92-2((1))23, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 230, November 12, 1996, IFS, VIRGINIA, INC. D/B/A MOUNT COMFORT CEMETERY, SPA 83-L-100-3, continued from Page 229)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 51.21 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-203 and 8-204 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6600 South Kings Highway (51.21 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated March 25, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Evergreen plantings, at least six (6) feet in height, shall be provided between the crematorium and mausoleums and adjacent neighborhoods, between the mausoleums and South Kings Highway and between the trailer and the adjacent neighborhood. The purpose of such plantings shall be to screen these uses from the view of neighboring residences. The exact type and location of the plantings shall be determined by the Director, DEM. The existing vegetation along all lot lines shall be deemed to satisfy transitional screening and barrier requirements.
6. Other than as required by Condition 5 and 7, no additional barriers shall be required around the perimeter of the site.
7. Transitional screening requirements around the perimeter of the site shall be satisfied by existing vegetation.
8. The maintenance yard area and road leading to the crematorium shall be paved.
9. Any signs on the property shall be located in accordance with Article 12, Signs.
10. At the time of site plan review and prior to any ground disturbing activity on the site, limits of clearing and grading shall be shown on the site plan which ensure that existing vegetation which provides screening of the cemetery buildings from adjacent single family neighborhoods is not disturbed.

Such limits of clearing and grading shall be approved by the Department of Environmental Management (DEM). Any healthy vegetation deemed important for screening benefits that is damaged or destroyed during construction shall be replaced with an equivalent plant, subject to the review and approval of the Urban Forestry Branch. DEM shall ensure that all steep slopes in the area of the proposed construction are stabilized.

11. All parking for employees shall be provided within designated parking areas. All parking shall be on site.
12. The hours of operation shall be limited to 7:30 a.m. to 4:30 p.m., Monday through Saturday.
13. The height of the proposed mausoleums shall not exceed 22.3 feet.
14. The trailer shall remain on site a maximum of five (5) years from the date of the issuance of the Non-RUP.

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 implementation of Phase I shall establish the use. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 231, November 12, 1996, Scheduled case of :

9:30 A.M. TRINITY ASSEMBLY OF GOD, SP 96-Y-031 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located at 4650 Shirley Gate Rd. on approx. 12.52 ac. of land zoned R-C and WS. Sully District. Tax Map 56-4 ((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. Michael Brown, 5312 Gainesboro Drive, Fairfax, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a church and related facilities. Staff recommended approval of the application subject to the development conditions in Appendix 1 of the staff report. Ms. Stagg noted a letter in opposition that was submitted to the Board.

Mr. Brown, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant wished to keep the property in its natural state and make it befitting of the church and the residential character of the neighborhood.

Chairman DiGiulian noted a letter in opposition and gave it to Mr. Brown to read. Mr. Brown responded that most of the letter was opposing a church that had already been started on Shirley Gate Road that had gone uncompleted for many years. He said the applicant wanted to complete their church as soon as possible and that the letter was not opposing the church itself.

Mr. Pammel and Mr. Brown discussed the engineering study of the septic field.

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

Mr. Dively moved to grant SP 96-Y-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 12, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-Y-031 by TRINITY ASSEMBLY OF GOD, under Section 3-C03 of the Zoning Ordinance to permit a church and related facilities, on property located at 4650 Shirley Gate Road, Tax Map Reference 56-4((1))17, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 12.52 acres.
4. A fairly sound and reasonable agreement has been worked out between staff and the applicant.
5. The church is a good use 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 Section 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4650 Shirley Gate Road (12.52 Acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Cad-Con Consulting, Incorporated dated January 22, 1996 as revised through October 3, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the main area of worship shall be limited to a total of 640.
6. One-hundred-sixty (160) parking spaces shall be provided as shown on the special permit plat.
7. A right turn deceleration lane shall be constructed into the site as required by VDOT.
8. The private road on Parcel 18, providing access to the church property, shall be constructed to VDOT standards. The proposed pond access drive shall be accessed from the private road on Parcel 18, not off of Shirley Gate Road as represented on the Special Permit Plat.
9. The applicant may provide an additional walkway which connects the church structure to the walkway adjacent to Shirley Gate Road. This additional walkway can be located adjacent to the area delineated on the Special Permit Plat for the water line into the site. Construction of the walkway shall not encroach upon any area designated as a tree save area.
10. Existing vegetation shall be preserved and maintained as indicated on the special permit plat. No clearing or grading will be permitted in this area except for the removal of dead, dying or diseased trees which shall be removed manually. No structures or utilities shall be located in this area. This buffer area shall be delineated by a visible border, such as an orange hurricane fence, throughout the entire construction period for the development.
11. Supplemental vegetation shall be provided along the eastern property line adjacent to Shirley Gate Road as shown on the special permit plat. Transitional Screening 1 shall be provided along the southern and eastern lot lines, adjacent to the proposed stormwater management pond.
12. The transitional screening requirement shall be modified along all lot lines, except for the areas described in Condition 11, to allow existing vegetation to satisfy the requirements of Transitional Screening 1.
13. The barrier requirement shall be waived along all lot lines.
14. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM).
15. A geotechnical engineering study shall be submitted to DEM for review and approval in accordance with Chapter 107 of the Fairfax County Code as determined necessary by DEM and shall be implemented as determined by DEM. If DEM 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 DEM shall be implemented.
16. The northern most segment of Parcel 17 shall remain in an undisturbed state and shall remain undeveloped.
17. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.

18. A sign permit shall be obtained for any sign proposed at this site.
19. The site shall be served by private septic fields. No request for expansion of the sewer service area or connection to public sewer shall be made; however, should Fairfax County extend sewer service in this area, the applicant may request a connection. If septic field(s) are inadequate to serve the use, the use shall be reduced to such an extent as required to ensure adequacy of the septic system.
20. A minimum of fifty (50) percent of the combined lot area for Parcel 17 shall remain as undisturbed open space.

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 November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 234, November 12, 1996, Scheduled case of:

9:30 A.M. AMERICAN PCS, L.P., SPA 91-S-056 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 91-S-056 for a community center to permit a telecommunications facility. Located at 12111 Braddock Rd. on approx. 9.21 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 35.

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

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to construct a 170-foot high monopole with 9 antennas and 2 equipment cabinets on a concrete pad. On June 26, 1996, the Planning Commission voted that the location, character, and extent of the proposed monopole was consistent with the Comprehensive Plan. Mr. Hunter noted the revised development conditions submitted at the hearing by the applicant which requested 12 antennas and 5 equipment cabinets. He said the applicant was aware that a new 456 determination would be required by the Planning Commission in order to establish the new antennas. Staff recommended approval of the application.

Ms. Murray presented the special permit request as outlined in the statement of justification submitted with the application. The applicant requested that the approved 9 antennas be increased to 12 antennas to allow for their new standard configuration which was 4 antennas per phase as opposed to 3 antennas per phase. She said the applicant was aware that should the BZA approve the proposal they would be required to return to the Planning Commission for a determination.

Chairman DiGiulian called for speakers.

Page 235, November 12, 1996, AMERICAN PCS, L.P., SPA 91-S-056, continued from Page 234

Shirley Curtin, 5433 Ashley Road, and Judy Robinson, 12115 Braddock Road, came forward to speak in opposition. The speaker expressed concern about the neighborhood not being properly notified.

In response to Chairman DiGiulian's question, Mr. Hunter replied that the applicant notified the adjacent property owners according to the procedures required of all applicants.

Mr. Hammack asked if there was a policy in the Comprehensive Plan pertaining to the co-location of monopoles. Mr. Hunter replied there was a policy in the Comprehensive Plan that encouraged co-location.

In rebuttal, Ms. Murray said there was an objective in the Comprehensive Plan that encouraged the location of telecommunications facilities on public property, which was one of the reasons the subject property had been selected.

Chairman DiGiulian closed the public hearing.

The Board members discussed co-location of the monopole.

Tom Hicks, attorney for the applicant, said that the notion of co-location was common to the telecommunications' industry, part of County policy, and was part of standard leases.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had no objection to additional antennas, but were concerned with the location of the cabinets that power the antennas. Ms. Murray said any additional cabinets would be within the applicant's leased area. Ms. Kelsey added that the additional cabinets would require a special permit amendment.

Mr. Hunter introduced Michael Hines, 456 Coordinator with the Planning Division. Mr. Hines informed the Board of the relationship between antennas and cabinets. He said any additional antennas placed on a monopole through co-location would require additional cabinets.

Mr. Hammack moved to grant SPA 91-S-056 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 5, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Amendment Application SPA 91-S-056 by AMERICAN PCS, L.P., under Section 3-C03 of the Zoning Ordinance to amend SP 91-S-056 for a community center to permit a telecommunications facility, on property located at 12111 Braddock Road, Tax Map Reference 67-1((1))35, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; and

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

1. The applicant is the lessee of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 9.21 acres.
4. The Board of Zoning Appeals has had to come to grips with the issue of monopoles. Monopoles are being proposed within the County and the County Board has acted upon it in various ways by trying to address the issues through the Comprehensive Plan and through ordinances. The policy of the County

has been to locate facilities on an area that is public. The Planning Commission hearing report clearly stated that the application met the Sect. 456 requirements. With respect to the original application for the 9 antennas, the requirements of the Ordinance have been satisfied.

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. 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 12111 Braddock Road containing 9.21 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dove & Associates, dated July 19, 1996, revised through September 26, 1996, and approved with this application, as qualified by these development conditions.
3. The leased area shall not be enlarged and no additional telecommunication equipment shall be permitted without an amendment to this special permit amendment. These conditions shall not preclude the addition of antennas to the monopole by the applicant or the co-location of antennas on the monopole by competing telecommunications carriers upon proper application to this Board pursuant to the 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. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
6. A maximum of 102 parking spaces shall be provided as shown on the special permit plat.
7. It shall be demonstrated to the satisfaction of DEM that maximum interior noise levels at the community center do not exceed 45 dBA Ldn. If necessary to comply with the requirements of this condition the community center shall have the following acoustical attributes:
 

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

Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade they shall 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.
8. Prior to site plan approval, it shall be demonstrated to the satisfaction of DEM that maximum exterior noise levels in the play areas located east of the building do not exceed 65 dBA Ldn. At a minimum, a densely planted evergreen hedge shall be placed between the cul-de-sac and the play areas located east of the building. An additional structural barrier may be required if determined necessary by DEM to mitigate outdoor noise to 65 dBA Ldn.
9. Modifications to the traffic signal planned for the intersection of Braddock Road and the Fairfax County Parkway shall be provided as determined necessary by the Virginia Department of Transportation



(VDOT) and DEM. These modifications, if necessary shall ensure that turning movements from the site to be safely coordinated with the turning movements governed by the traffic signal planned for the intersection of Braddock Road and the Fairfax County Parkway. If not provided at the time of construction, funds for this improvement shall be escrowed in an amount determined by DEM at site plan review.

10. The limits of clearing and grading shall be as depicted on the approved special permit plat.
11. A tree preservation/tree replacement plan shall be reviewed and approved by DEM prior to site plan approval. This plan shall preserve to the greatest extent possible substantial individual trees or stands of trees. Emphasis shall be placed on preserving the trees located along the site's frontage to Braddock Road. If it is determined by DEM to be necessary to remove any trees previously designated to be preserved in order to located utility lines trails etc., then an area of additional tree save of equivalent value as determined by DEM may be substituted at an alternate location on the site If a suitable alternate location cannot be identified on the site by DEM, then the applicant may elect to replace such trees according to the directions of DEM pursuant to (Part 4 Section 12-0403.7) of the Public Facilities Manual (PFM).
12. All areas of the site within the floodplain line denoted on the special permit plat shall be designated as an Environmental Quality Corridor (EQC). There shall be no structures located in the EQC and there shall be no clearing and grading, or removal of vegetation in the EQC except for dead or dying trees.
13. The requirement for Transitional Screening 1 along all lot lines shall be modified to allow the existing vegetation to fulfill the applicable requirements provided that the existing vegetation preserved pursuant to Development Conditions 10, 11, and 12 is supplemented as follows:

Along the site's frontage to Braddock Road, single row of evergreen trees shall be maintained at 10 feet on center in an area between the eastern edge of the cul-de-sac and the entrance to the parking area.

To compensate for vegetation lost due to the construction of the cul-de-sac, the area east of the cul-de-sac shall be maintained with a minimum of twenty-five (25) new evergreen and deciduous trees.

Along the westernmost edge of the parking area, a single row of evergreen trees shall be maintained 10 feet on center.

Along the westernmost lot line, a single row of evergreen trees shall be maintained 10 feet on center in the area adjacent to the baseball diamond.

All evergreen trees required as supplemental plantings shall have a minimum planted height of at least six (6) feet as may be deemed appropriate by DEM. All deciduous trees shall have a caliper of at least two (2) inches. Species of all trees shall be as determined by DEM.

14. A six foot high fence and Transitional Screening 1 shall be provided and maintained surrounding the east, south and west sides of the 600 square foot leased area as shown on the special permit amendment plat.
15. The Barrier requirement shall be waived along all property lines.
16. The structural detention pond located south of the parking area shall be constructed to BMP and WSPOD standards as determined by DEM at site plan review. Open space may also be used to fulfill BMP requirements as may be acceptable to DEM.
17. The proposed monopole shall be painted with a non-reflective color chosen to maximize visual integration of the monopole with the surrounding community. The monopole shall not be lighted except as may be required by the Federal Aviation Administration (FAA) and Fairfax County.
18. The monopole shall be limited to a maximum height of one hundred seventy-five (175) feet. The number of antennas located on the monopole shall be limited to a maximum of nine (9) panel antennas

measuring 54" high by 9" wide, and two (2) dish antennas 24" in diameter. In addition, two equipment cabinets, each measuring a maximum of 54" wide by 54" high by 20" deep, shall be permitted within the fenced area of the monopole. The monopole and associated equipment cabinets shall be enclosed by a six foot high chain link fence.

19. In order to ensure conformance with applicable safety standards, the Fairfax County Department of Information Technology (DIT) shall have the option to conduct monitoring of radiation emissions as deemed necessary by the DIT. In the event that the monitoring indicates that the radiation levels exceed the amounts deemed appropriate by the applicable standards, the applicant shall immediately take any and all actions deemed necessary by DIT to comply with accepted standards and agreements to reduce radiation emission to meet applicable standards.

These development conditions incorporate and supersede all previous development conditions.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 238, November 12, 1996, Scheduled case of :

9:30 A.M. PENTECOSTAL CHURCH OF GOD, LA BIBLIA, SP 96-M-034 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a church and related facilities. Located at 5001 Backlick Rd. on approx. 3.55 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 21, 21A and 22. (OUT OF TURN HEARING GRANTED 9/17/96)

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

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a church and related facilities. He noted that Central Fairfax Services operated a school of special education on the subject property and were in the process of locating to another facility. Staff recommended approval of the application subject to the Proposed Development Conditions.

Roger Velez, Pastor, presented the special permit request as outlined in the statement of justification submitted with the application. He discussed the previous application submitted by the applicant which had been denied. Mr. Velez and his wife visited the neighbors to solicit their opinions of the church, he said most of the neighbors welcomed the church and had submitted letters in support of the application. Mr. Velez said some of the neighbors expressed concerns about the application such as property value being lowered, activities taking place on the property, and noise and electronic sound. He addressed the concerns of the neighbors who were not in support of the application.

Chairman DiGiulian called for speakers.

Page 239, November 12, 1996, PENTECOSTAL CHURCH OF GOD, LA BIBLIA, SP 96-M-034, continued from Page 238

Carlos Piaz, member of the church, and Paul Wexler, Executive Director of Central Fairfax Services, spoke in support of the application.

Ms. Carroll came forward to discuss concerns with Proposed Development Conditions Number 9 and #12.

Pat Dean, 5008 Backlick Road, spoke in opposition of the application. She presented a petition signed by neighbors in opposition of the application and an accident report from the police department. Ms. Dean expressed concerns pertaining to noise, traffic accidents, and parking.

In rebuttal, Mr. Velez apologized for any inconvenience and said he didn't realize the noise was affecting the neighborhood because it was barely audible from the side of the street where the church was located. Ms. Carroll said that the building was 63.9 feet from the property line and that the closest property line to Ms. Dean's house would be over 120 feet. She added that the Comprehensive Plan called for the subject property to be used as government, public facility, or institutional uses.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said when the previous application was before the Board there was a lot of concern expressed by the community about the number of uses that were non-residential in that area. He said the applicants listened to the comments that were made and sought another location. Mr. Pammel said the subject application simply sought to replace one institutional use with another. He said the applicant presented reasonable arguments for locating the church and related facilities and moved to grant SP 96-M-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 5, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-M-034 by PENTECOSTAL CHURCH OF GOD, LA BIBLIA, under Section 3-203 of the Zoning Ordinance to permit a church and related facilities, on property located at 5001 Backlick Road, Tax Map Reference 71-4((1))21,21A, and 22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 3.55 acres.
4. When the previous application came before the Board, there was a lot of discussion and concern expressed by the community about the number of uses that were non-residential in the area. The applicants listened to comments that were made and they sought another location which is the site of an existing institutional type use. This application simply seeks to replace one institutional use with another, although the activities might be at different periods during the week. On the plan, it is indicated as an institutional use and they have presented a reasonable argument for the location of the church and related facilities.

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

Page 240, November 12, 1996, PENTECOSTAL CHURCH OF GOD, LA BIBLIA, SP 96-M-034, continued from Page 239)

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. 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Rinker Detwiler & Associates, P.C., dated July 19, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. A maximum of sixty-six (66) parking spaces provided as shown on the plat. All parking shall be on site.
6. The maximum number seats in the sanctuary shall be two hundred (200).
7. Transitional Screening 1 shall be modified along the northern and western lot lines to allow additional landscaping to include evergreen trees to be provided in the areas shown on the plat other than those to be used for vehicular access and parking or buildings along Backlick Road and Sunset Lane in order to reduce the visual impact of the use. Location, type and size of plantings shall be approved by DEM.
8. The barrier requirement shall be waived along the northern and western lot lines.
9. The entrance on Backlick Road shall be used for right-turns only to and from the site and shall be signed accordingly.
10. Any proposed lighting of the parking lot areas shall be in accordance with the following:
  - The combined height of any new light standards and fixtures shall not exceed twelve (12) feet;
  - the lights shall focus directly onto the subject property; and
  - shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.
11. Signs shall be permitted in accordance with Article 12, Signs.
12. This approval is for the 19,400 square feet of space located within the existing church sanctuary, the assembly hall and residential structure located on the subject property.
13. The private school of general education that is now existing on the site may continue until such time as their facilities are complete and they are ready to move out; after the school of general education has left, the church may begin to operate as a church with related activities provided this special permit has been legally established and there shall be no application by this church for any special permit to include a school, nursery school, or preschool of that nature.

Page 24, November 12, 1996, PENTECOSTAL CHURCH OF GOD, LA BIBLIA, SP 96-M-034, continued from Page 240

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

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

Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack abstained 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 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:15 a.m. and reconvened at 11:24 a.m.

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Page 24, November 12, 1996, Scheduled case of :

9:30 A.M. SHEDQUARTERS, INC., Appeal 96-V-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the denial of minor site plan by the Department of Environmental Management. Located at 6027 Richmond Hwy. on approx. 33,538 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) pt. 57. (DEF. FROM 5/7/96 AND 8/13/96)

Stuart Herder, the appellant, 6022 Pike Branch Drive, Alexandria, Virginia, came forward and stated his name and address.

Yong Paek, Chief, Site Review Branch, Department of Environmental Management, (DEM), presented staff's position as set forth in the memorandum dated April 26, 1996. He stated that a Notice of Violation was issued due to the non-compliance of the Site Plan Ordinance for the retail sales and display of sheds on August 18, 1995. On November 15, 1995, the appellant filed a minor site plan application with DEM which was denied due to the insufficient justification by the appellant. A detailed list of deficiencies was given to the appellant at his request. DEM maintained that the issues listed in the January 30, 1996 letter to the appellant satisfied the Zoning Ordinance and made the issues of the subject appeal moot. Mr. Paek said the public hearing was originally set on May 7, 1996, and that the appellant requested a deferral to work with the staff to arrive at a solution. He said although one meeting was held the appellant had not submitted the necessary information to validate the proposal.

Mr. Pammel asked if Mr. Paek would enumerate each deficiency. Mr. Paek said the deficiencies were noted in Attachment 9 of the staff report.

Mr. Pammel asked what structural additions were being proposed for the subject site. Mr. Paek said the appellant was not proposing any permanent structures, that he was proposing to use the site for the retail sales of sheds and the display of sheds.

Mr. Pammel then asked why were there so many requirements. John Winfield, Deputy Director, Design Review Division, DEM, replied that the Ordinance specifically requires improvements for any site plan or minor site plan, whether it be permanent or temporary. Mr. Winfield said if the appellant had requested

waivers or modification based on his temporary use, DEM would have entertained those waivers. He said the appellant was informed of the deficiencies and had made no attempt to work with staff.

Mr. Herder presented the arguments forming the basis of the appeal. He said he requested a 2 year permit and felt that he was being judged under the harsher standards of a full blown site plan. Mr. Herder said he looked to work with staff but shortly after their meeting, staff informed him that their hands were tied due to the subject appeal.

Mr. Dively asked staff if they had attempted to work out the issues with the appellant. Mr. Paek replied that DEM staff had a meeting with Mr. Herder, his attorney, and OCP staff, and found that the issues could not be waived unless there was a request to do so.

Chairman DiGiulian stated that there was a fee associated with waivers and could staff inform the Board of the amount of the fee. Mr. Winfield said the waiver would be \$500 per application with a limit of \$2,000.

Mr. McPherson asked if there was a reason the applicant didn't complete the process of requesting waivers. William Thomas, the applicant's attorney, said his client's frustration was due to the fact that he submitted a minor site plan to begin with and was denied and then had to go back and start from scratch. Mr. Thomas said the appellant was faced with paying for a substantial amount of work to be performed by Alexandria surveys with no sense of whether the waiver would be granted.

Mr. Dively asked the speaker if he believed DEM applied the statute improperly. Mr. Thomas said he believed the statute was applied erroneously and that he didn't have an easy answer on how to proceed but the appellant looked to the Board for guidance.

Mr. Pammel asked if waivers were requested in the initial submission of the minor site plan. Mr. Winfield replied that the original request was Attachment 3 of the staff report which included a request for only a stormwater management waiver.

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

Mr. McPherson said he was sympathetic to the appellant, but that it was not up to the Board to rewrite the waiver process or to present the minor site plan in a comprehensive manner for the appellant. Mr. McPherson said the Board's position was to review the basis of the appeal. He said sufficient evidence had not been presented to indicate why the appeal should be granted. Mr. McPherson moved to uphold the determination of DEM. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 242, November 12, 1996, Scheduled case of :

9:30 A.M. MILES D. SMITH, APPEAL 96-P-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appealing the denial of a Non-Residential Use Permit for American Beverage Systems, Inc., dba Brew American, for a retail use in the I-5 District. Located at 2738 Gallows Rd. on approx. 3.41 ac. of land zoned I-4 and I-5. Providence District. Tax Map 49-2 ((1)) 19.

Miles Smith, 6936 Regent Lane, came forward to state his name and address for the record.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated November 6, 1996. At issue was the appellant's unit, which was located in the warehouse building on the portion of the land zoned I-5. He said the appellant's retail business operation, known as Brew America, involved retail sales of equipment and ingredients used in the home brewing of beer and wine making. Mr. Shoup said retail sales was not a permitted use in the I-5 District; however, under Paragraph 4 of Sect. 5-505 of the Zoning Ordinance, retail sales may be permitted as an associated use in a warehouse where at least 60% of the gross floor area is devoted to warehouse space. He said there were also provisions where special exception approval could be obtained to allow up to 60% of the gross floor area to be used for retail sales that would also include related display area and office area. Mr. Shoup said the appellant obtained

building permit approval on June 20, 1996 to build out his tenant's space and the building permit application indicated that the use would be retail sales, however, the zoning technician who signed off on the permit failed to question the retail orientation. On August 16, 1996, the appellant tried to obtain his Non-Residential Use Permit, (Non-RUP), and it was at that point that it was discovered that this was a retail sales use. Mr. Shoup noted that a Non-RUP was issued on August 16, 1996 that required the appellant to alter his space so that no more than 40% of the floor area was accessible to the public. He said that was done as an accommodation until the appellant had obtained special exception approval or processed an appeal. Mr. Shoup said the alteration had not occurred and the business was open for operation. Mr. Shoup said the proper remedy was to obtain special exception approval to allow up to 60% of the floor space to be retail.

Mr. Smith presented the arguments forming the basis for the appeal. Mr. Smith said he was being held accountable for mistakes made by zoning. He said if the appeal wasn't granted he would be forced to apply for a Special Exception which also was not guaranteed to be granted.

Mr. Shoup said he agreed that zoning wasn't thorough in the initial review but to allow the use to remain would be, in effect, rewriting the Zoning Ordinance. He said that could not be done no matter how unfortunate the situation was.

Mr. Smith added that when he made mistakes, he was completely accountable to his customers and he made good when he could. He said he understood the position of the County, but it seemed that there was no accountability. Mr. Smith said he did everything that was required and built according to the approval.

Chairman DiGiulian closed the public hearing.

Mr. Dively said he agreed with Mr. Smith that it was not fair. He said it was regrettable but the Board was constrained to interpret the Ordinance the way it was written. Mr. Dively moved to uphold the Zoning Administrator.

Mr. Pammel said he agreed with Mr. Smith's observation. He said it was the responsibility of the County and that he would strongly encourage that the special exception application fees be waived. Mr. Pammel said it was the County's mistake and not the individual and the appellant should be permitted to have his hearing for a special exception for no additional charges. He said it was a disgrace to charge the appellant again for fees that was not his fault.

Mr. Hammack seconded the motion for purposes of discussion. He agreed completely with Mr. Pammel and with the motion, but under the circumstances, if the Board were to uphold the Zoning Administrator, the appellant would be out of business. Mr. Hammack said the Board should defer decision to allow the applicant to apply for a special exception and a waiver and continue operating his business during the process.

Mr. Dively said the Board could do a continuance with a strong urgency that the special exception fees be waived.

Chairman DiGiulian asked Mr. Shoup what his feelings were on the issue. Mr. Shoup replied that only the Board of Supervisors could waive the fee. He said it was his understanding that the issue had previously gone before the Board of Supervisors and because of input from the County Attorney's office on fee waivers in general, the Board was not supportive of waiving the fee in this case.

Mr. Kelley said he was going to vote for the applicant. He said if the decision of the Board of Zoning Appeals was the only way to rectify the situation, then so be it. Mr. Kelley said it was a matter of equity and the applicant should not have to suffer because the County made a mistake.

Mr. Dively said he would like for the County Attorney to explain their position on fee waivers.

Mr. Pammel agreed with Mr. Kelley that if the County could not accommodate the appellant with a waiver then the Board's choice was clear.

Page 244, November 12, 1996, MILES D. SMITH, APPEAL 96-P-042, continued from Page 243

Mr. McPherson said it was the responsibility of the Board to view the appellant's position and not just to read papers and figure out exactly what the strict interpretation of the law was. He said the appellant had been taken advantage of and the Board should rule in the appellant's favor.

Mr. Pammel moved for an indefinite continuance to allow the applicant to proceed with a special exception and requested an Executive Session with the County Attorney for November 20, 1996 to discuss why the County Attorney's office recommended that the Board of Supervisors not waive the special exception filing fee and if there were any other alternatives. Mr. Dively withdrew his original motion and seconded the amended motion. The motion carried by a vote of 6-0, with Mr. Ribble not present for the vote.

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Page 244, November 12, 1996, (Tape 2), Action Item:

Request for Change in Permittee  
Sunrise Foundation, SPA 82-P-089-3

Mr. McPherson moved to approve the Request for Change in Permittee. 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 244, November 12, 1996, (Tape 2), Action Item:

Approval of July 30, 1996 Minutes


Mr. Pammel moved to approve the July 30, 1996 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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As there was no other business to come before the Board, the meeting was adjourned at 12:03 p.m.

Minutes by: Regina Thorn

Approved on: January 14, 1997

  
Betsy S. Hunt, 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 November 19, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 245, November 19, 1996, (Tape 1), Scheduled case of:

8:00 P.M. KEVIN J. FISCHER, VCA 95-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 95-D-007 to permit construction of addition 5.3 ft. from side lot line (second story addition). Located at 1635 Dempsey St. on approx. 14,314 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((34)) 10. (OUT OF TURN HEARING GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Joseph Fischer, 1635 Dempsey Street, McLean, replied that it was.

Susan Langdon, Staff Coordinator, presented her staff report dated November 12, 1996. She stated that in 1995 the applicant had been granted a variance to allow a garage addition but had not included a request for a second-story addition. She explained that subsequent to that variance approval, the applicant applied for and was issued a building permit for a larger garage with a master bedroom and bath above the garage. Ms. Langdon pointed out that no height for the addition was shown on the plat and the permit stated that the work be conducted "per variance". Ms. Langdon also noted that a "stop work" order was issued in August 1996 by the Department of Environmental Management (DEM) after a site inspection revealed that a two-story addition was under construction with the height of 21.5 feet which was not in conformance with the approved variance.

Ms. Langdon responded to questions from Mr. Kelley regarding whether the height of the garage was indicated in the minutes of the public hearing when the variance was granted. She clarified that only a two-car garage addition was indicated with no reference or mention of height. In response to Mr. Ribble's query, she affirmed that there was no mention of a master bedroom nor a bathroom during the public hearing as she had listened carefully to the audio tapes of the public hearing held April 27, 1995 when the initial variance was requested.

Kevin J. Fischer addressed the Board of Zoning Appeals to present his justification for his request. He stated that his submitted packet explicitly outlined the events that had transpired. He pointed out that, at the time, he believed he had been following the granted guidelines; that he apparently had misunderstood and that he had no intention to deceive the Board nor his neighbors. Mr. Fischer explained that during the time of his plan submission for the one-story garage, he had had to consider a second-story addition because of the need to house his invalid father-in-law. He affirmed that he sought to rectify the situation by consulting his neighbors on whether there was any concern to or opposition of the addition's increased building size. Mr. Fischer maintained that there was no negative feedback from his neighbors and that the structure was now over 75 percent completed.

In response to Mr. McPherson's question, Mr. Fischer said that he did not have a copy of his state-ment of justification which was submitted along with his variance request.

In response to Mr. Ribble's question, Mr. Fischer said that he did not have a copy of his contract with his builder nor was his contractor at the hearing that evening.

Mr. Ribble commented that perhaps Mr. Fischer should have sought relief from the present situation by filing under the Ordinance's Mistake section as this error was over ten percent and was performed in good faith. He noted that variance requirements were far more strict.

Jane Kelsey, Chief, Special Permit and Variance Branch, responding to Mr. Dively's query, explained that upon receipt of a Board of Zoning Appeals' application, an applicant has already been advised of his

alternatives of whether a special permit versus a variance is appropriate and it's the applicant's option to choose either. She noted that an applicant has an option to request a variance because the Board may vary the Zoning Ordinance's provisions unless specifically precluded which, in this particular case, it was not. Ms. Kelsey stated that she always advises applicants of their options and the differences with each.

Mr. Fischer interjected that he had submitted both a special permit application and an amendment to the variance but only the latter was accepted. In response to Mr. Kelley, he explained how his architect had been contracted and the time-frame but could not produce a copy of that contract.

Mr. Langdon responded to Mr. Hammack's question concerning the procedures routinely followed for the granting of a building permit according to what is approved by variance. She was unable to give a definitive answer as to why, in this particular situation, a building permit was issued when the specific dimensions did not match those of the approved variance.

Mr. Pammel suggested that the reviewing staff of special permit and variance applications who sign off on the building permits should be required to read the record.

Mr. Dively made the observation that, in this particular case, it was an error on the County's part when the building permit was issued.

Because he was unable to give a definitive answer to Mr. Kelley's question concerning what height he had originally requested for his two-car garage, Mr. Fischer apologized for his lack of understanding over the issue of dimensions because he thought, at that time, that he was addressing the issue of yard setbacks and not having to define the requested height of the structure. He clarified that his intent, at the time, was to build only a two-car garage and at some future date, perhaps five years, to put a room over it.

Discussion followed between the Board, Ms. Kelsey, and Ms. Langdon regarding the State Code which addressed those situations when mistakes are made and not caught within 60 days and a building permit is issued in error. The question was raised that since the error was not caught in 60 days, the structure is approved. It was decided that staff would obtain an opinion from the County Attorney on the application of that provision of the Code.

There being no speakers present in support of the application, Chairman DiGiulian called for speakers in opposition.

Jack Evans, 1633 Dempsey Street, McLean, speaking for himself and his wife, Theora, read his letter opposing the Fischer's variance request. A copy of the letter is on file. He pointed out that he and his wife had no objection to the building plat which the Fischers originally presented, however, the structure that began to take form was not what was depicted on that plat. Mr. Evans affirmed that there was never a copy of any proposed changes and the Fischers offered no explanation for a change in their plans. He listed issues of substantial detriment to his property and the decrease in his property value due to the closeness of the two-story structure.

In rebuttal, Mr. Fischer stated that he had spoken twice with the Evans about the proposed changes; that it greatly distressed him to have a misunderstanding with his neighbors over this matter and; he would do plantings, etc., to try and amend what has become an unfortunate situation. Mr. Fischer said that he wanted to be a good neighbor.

Mr. McPherson called Mr. Fischer's's attention to the changes in the plat which had been approved with the variance compared to the plat which was submitted with the building permit. He pointed out that there were definite alterations to the approved plat when it was submitted for the building permit.

Mr. Fischer had no explanation nor response.

Before the close of the public hearing, Mr. Pammel called the Board's attention to two letters, a copy of each are in the record, that suggested a method of arbitration for this perplexing matter which was before

them tonight. He stated that he wanted these noted for the record. (These letters are in the official file for this case.)

Chairman DiGiulian closed the public hearing.

Because he believed that further clarification from the Zoning Administrator and County Attorney of the Code was necessary, Mr. Hammack moved to defer the decision on VCA 95-D-007, until the end of the BZA agenda scheduled the following day, November 20, 1996, with the option to further defer if it was deemed necessary.

Mr. Ribble requested that Mr. Fischer bring his contractor with him to the November 20th, BZA meeting, if it were possible.

Mr. Kelley suggested that Mr. Fischer provide all the copies of his architectural drawings, along with the date of each, to the meeting.

The motion to defer the decision was seconded by Mr. Pammel.

Chairman DiGiulian specified 10:00 a.m. for the Board to hear the case which was unanimously agreed to by the BZA members.

The motion to defer carried unanimously by a vote of 7-0.

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Page 247 , November 19, 1996 (Tape 1), Action Item:

Approval of Minutes  
September 17, 1996 Hearing

Chairman DiGiulian brought the September 17, 1996 minutes before the Board for approval.

Mr. Ribble so moved that the Board approve the minutes for the September 17, 1996 meeting. There being no objection, Chairman DiGiulian stated that the September 17th minutes were approved unanimously.

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Page 247 , November 19, 1996 (Tape 1), Action Items:

Out-of-Turn Hearing Request for Arthur V. Kay  
VC 96-S-140  
AND

Out-of-Turn Hearing Request for John and Anne Kress  
VC 96-M-141

Mr. Pammel moved to deny both requests for out-of-turn hearings. Mr. Ribble seconded the motion which carried by a unanimous vote of 7-0.

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Page 247 , November 19, 1996 (Tape 1), Action Item:

Request for Additional Time  
A & K Family Recreation Center

Page 248, November 19, 1996 (Tape 1), A & K FAMILY RECREATION CENTER, continued from Page 247

Mr. Dively moved to approve an additional six-month extension to a date of April 15, 1997.  
Mr. McPherson seconded the motion which carried unanimously by a vote of 7-0.

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Page 248, November 19, 1996 (Tape 1), Action Item:

Request for Additional Time  
Bradley W. & Nancy L. Johnson

Mr. Ribble moved to approve this request for 18 months of additional time to a date of July 20, 1998.  
Mr. McPherson seconded the motion which carried by a unanimous vote of 7-0.

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Page 248, November 19, 1996 (Tape 1), Action Item:

Request for Reconsideration of Dory & Jenny Saad, VC 96-D-115

Commenting that the Saad's request only reiterates certain sections of the Ordinance but gives no new information nor a reason for reconsideration, therefore, Mr. Hammack moved to deny this request for reconsideration. Mr. Dively seconded the motion which carried unanimously by a vote of 7-0.

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Before calling #7, the last After Agenda Item, Approval of the Resolutions for the November 12, 1996 meeting, Chairman DiGiulian called upon Mr. Hammack for clarification language.

Mr. Hammack informed the Board that he was submitting language for the record pertaining to the approval of a monopole for an item which was on the agenda for the November 12, 1996 BZA meeting. He clarified that this language would amend Development Condition #3, for the special permit application, SPA 91-S-056, for the American PCS, L.P. Mr. Hammack then moved to approve the following language to amend Development Condition #3 for the Special Permit Application SPA 91-S-056 to read:

"The leased area shall not be enlarged and no additional telecommunications' equipment shall be permitted without an amendment to the Special Permit Amendment. These conditions shall not preclude the addition of antennas to the monopole by the applicant or to the co-location of antennas on the monopole by competing telecommunication carriers upon proper application to this Board pursuant to the Ordinance."

Mr. Pammel seconded the motion.

Responding to Mr. Kelley's question, Mr. Hammack explained that the attorney to the applicant stated that there was no objection to the co-location and that his proposed language did not intend to make policy but only to insure that the policies which the Board of Supervisors have enacted and which are embodied within the Ordinance, are made available upon proper application. The motion carried by a unanimous vote of 7-0.

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Page 248, November 19, 1997 (Tape 1), Action Item:

Approval of Resolutions  
November 12, 1996 Meeting

Mr. Ribble moved to approve the resolutions from the November 12, 1996 meeting. Mr. Pammel

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

Addressing one of the November 12th's agenda items, Jane Kelsey, Chief, Special Permit and Variance Branch, requested whether the Board's approval of the resolutions included the clarification language regarding the Pentecostal Church of God, La Biblia, SP 96-M-034. She noted that instead of the term "private school", staff's suggested language was ". . . of general education" to be used throughout so as to be in compliance with the Zoning Ordinance.

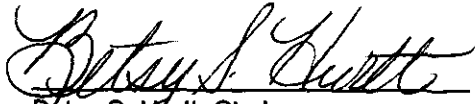
Mr. Pammel, stating that there appeared to be no problem with the amended language, so moved. The amended language was unanimously accepted by the Board carrying by the vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 8:47 p.m.

Minutes by: Paula A. McFarland

Approved on: March 4, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, November 20, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 251, November 20, 1996, (Tape 1), Scheduled case of :

9:00 A.M. PETER S. & PATRICIA L. RODER, VC 96-B-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 10B2 having a lot width of 105.33 ft. Located at 4701 Olley Ln. on approx. 2.35 ac. of land zoned R-1. Braddock District. Tax Map 69-2 ((2)) 10B. (DEF. FROM 11/7/96 AT APPLICANT'S REQUEST)

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

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 44.67 feet to the minimum lot width requirement. Ms. Langdon said that it was staff's position that the application did not meet all of the requirements for a variance. She noted the revised plat submitted on November 19, 1996 by the applicant and a letter of opposition from Supervisor Bulova's office.

Greg Budnik presented the applicant's request as outlined in the statement of justification submitted with the application. He said the application met the required standards for a variance and would not set a precedent in the neighborhood. Mr. Budnik said work was conducted with OCP, before submission of the application, to format the lot according to the Comprehensive Plan. He stated that the neighbors most affected by the variance had voiced no objection. Mr. Budnik said other neighbors objected to the application for the following reasons: increased runoff, increased erosion potential, potential drain field leakage, and visual impact. He said a certified soil scientist was hired by the applicant to address the neighbors' concerns and that removing any clearing and grading on the north side of the high point of the property would resolve some issues. Mr. Budnik added that a row of 10 foot high evergreen trees would be added to screen the property.

Chairman DiGiulian called for speakers.

Jan Zimmick, 9313 Briarwood Place, and Bob McCarthy, 9315 Briarwood Place, came forward to speak in opposition of the application. Ms. Zimmick noted a letter from Supervisor Bulova's office. The speakers expressed concerns pertaining to the drainage field and clearing and grading.

Mr. Budnik addressed the speakers' concerns in his rebuttal. He pointed out, on the view graph, the location of the neighbors' lots who supported the application. Mr. Budnik said there would be drainage field installed in accordance with the Health Department regulations, the Chesapeake Bay requirements, and 100% Reserve requirements. He said the applicant was willing to commit to development conditions imposed by the Board. Mr. Budnik said he had met with Supervisor Bulova and citizens and the issues raised had been satisfactorily addressed.

Mr. McPherson asked when the existing house was constructed. Mr. Roder, the applicant, replied in 1965.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that Supervisor Bulova's office had called staff to explain the outcome of the meeting held with the applicant. She said that Supervisor Bulova stated that she did not believe that the issues had been resolved.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 96-B-113 for the reasons set forth in the Resolution.

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-B-113 by PETER S. & PATRICIA L. RODER, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 10B2 having a lot width of 105.33 feet, on property located at 4701 Olley Lane, Tax Map Reference 69-2((2))10B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.35 acres.
4. The application does not meet the required standards for a variance.
5. There were concerns about runoff and the configuration of the road.
6. Granting the variance would set a precedent in the neighborhood.

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

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

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

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



Page 263, November 20, 1996, (Tape 1), PETER S. & PATRICIA L. RODER, VC 96-B-113, continued from Page 262)

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

Mr. Pammel seconded the motion which carried by a vote of 6-1. Mr. McPherson voted nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996.

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Page 263, November 20, 1996, Scheduled case of :

9:00 A.M. DOROTHY MARIE BOLLINGER, VC 96-B-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line. Located at 8609 Clydesdale Rd. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((6)) 223.

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 Bollinger, 8609 Clydesdale Road, Springfield, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by David Hunter. The applicant requested a variance of 3.0 feet to minimum side yard requirements.

Ms. Bollinger presented the variance request as outlined in the statement of justification submitted with the application. She said the addition would not be detrimental to the neighborhood and that the neighbors supported the application.

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

Mr. Pammel moved to grant VC 96-B-108 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-B-108 by DOROTHY MARIE BOLLINGER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.0 feet from side lot line, on property located at 8609 Clydesdale Road, Tax Map Reference 79-1((6))223, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.

4. The applicant presented testimony indicating compliance with the nine required standards for a variance.
5. The size of the lot is minimal.
6. Builders always position the Board in the dilemma of having to make decisions on variances because they don't locate the dwelling appropriately on the lot.

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

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

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

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

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

1. This variance is approved for the location of the garage and second floor addition shown on the plat prepared by Dewberry & Davis, dated July 30, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage and second floor 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. McPherson seconded the motion which carried 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 28, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN S. & JUDITH E. BUCHE, SP 96-M-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit addition to remain 20.8 ft. from rear lot line. Located at 3709 MacGregor Ct. on approx. 14,310 sq. ft. of land zoned R-3. Mason District. Tax Map 59-4 ((15)) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Buche, 3709 Mac Gregor Court, Annandale, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by David Hunter. The applicant requested a modification of 4.2 feet to the minimum rear yard requirements based on an error in building location.

Mr. Buche presented the special permit request as outlined in the statement of justification submitted with the application. He said the neighbors supported the application.

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

Mr. McPherson moved to grant SP 96-M-029 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-M-029 by JOHN S. & JUDITH E. BUCHE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 20.8 feet from rear lot line, on property located at 3709 MacGregor Court, Tax Map Reference 59-4((15))5, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the addition shown on the plat submitted with this application and is not transferable to other land.
2. This Special Permit is approved for the location of the family room addition shown on the plat prepared by Bartlett Consultants, Ltd., dated July 19, 1996, and revised through July 22, 1996.
3. The addition is required to pass all inspections required under the Code.

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. Dively was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 256, November 20, 1996, Scheduled case of:

9:00 A.M. MARK D. & PATRICIA GREEN ROTH, VC 96-D-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line and 34.0 ft. from front lot line. Located at 6317 N. Kensington St. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (6) 36. (Concurrent with SP 96-D-032). (OUT OF TURN HEARING GRANTED)

9:00 A.M. MARK D. & PATRICIA GREEN ROTH, SP 96-D-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit dwelling to remain 11.0 ft. from side lot line. Located at 6317 N. Kensington St. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (6) 36. (Concurrent with VC 96-D-116). (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Roth, 6317 N. Kensington Street, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch made staff's presentation as contained in the staff report prepared by David Hunter. The applicant requested variances of 4.6 feet to the minimum side yard requirement and 1.0 foot to the minimum front yard requirement. The applicant also requested a modification of 4.0 feet to the minimum side yard requirement based on an error in building location.

Mr. Roth presented the requests as outlined in the statement of justification submitted with the application. He said there were eight variances granted in the area. Mr. Roth requested a waiver of the eight day waiting period.

Mr. Pammel asked if the addition could be placed on the east side of the property. Thomas Hemphill, the applicant's architect, replied that topographical problems was the reason the addition could not be placed on the east side of the property.

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

Mr. Ribble moved to grant VC 96-D-116 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-D-116 by MARK D. & PATRICIA GREEN ROTH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.4 feet from side lot line and 34.0 feet from front lot line, on property located at 6317 Kensington Street, Tax Map Reference 41-1((13))(6)36, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,000 square feet.
4. The applicant met the nine required standards for a variance.
5. There are drainage difficulties on the east side of the house.
6. The lot is narrow and has topographic problems.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of the specified second floor bedroom addition shown on the plat prepared by Alexandria Surveys, Inc., dated January 10, 1994 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. McPherson and Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote. Mr. Ribble moved to waive the 8 day waiting period. Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Dively not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this variance.

Mr. Ribble moved to grant SP 96-D-032 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-D-032 by MARK D. AND PATRICIA GREEN ROTH, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 11.0 feet from side lot line, on property located at 6317 N. Kensington Street, Tax Map Reference 41-1((13))(6)36, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the dwelling shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated January 10, 1994, submitted with this application, as qualified by these development conditions.

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

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote. Mr. Ribble moved to waive the 8 day waiting period. Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Dively not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 260, November 20, 1996, Scheduled case of:

9:00 A.M. JOY M. PLANTE & MARGARET A. ENDICOTT, VC 96-M-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.8 ft. from front lot line and 19.4 ft. from side lot line. Located at 4724 Backlick Rd. on approx. 21,375 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 7A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joy M. Plante, 4724 Backlick Road, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested variances of 9.2 feet to the minimum front yard requirement and 0.6 feet to the minimum side yard requirement.

Ms. Plante presented the variance requests as outlined in the statement of justification submitted with the application. She said the addition would not be detrimental to the neighborhood.

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

Mr. Kelley moved to grant VC 96-M-109 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-109 by JOY M. PLANTE & MARGARET A. ENDICOTT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 30.8 feet from front lot line and 19.4 feet from side lot line, on property located at 4724 Backlick Road, Tax Map Reference 71-1((8))7A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all



Page 261, November 20, 1996, JOY M. PLANTE & MARGARET A. ENDICOTT, VC 96-M-109,  
continued from Page 260 )

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals;  
and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20,  
1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,375 square feet.
4. The applicant has met the nine required standards for a variance.
5. The lot is narrow and has exceptional topographical conditions.
6. The addition is compatible with the existing dwelling and is 50 feet from the adjacent dwelling.
7. A greater variance would have been needed if the addition was located 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Harry R. Furney, dated August 2, 1996, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 262, November 20, 1996, Scheduled case of :

9:00 A.M. RACHEL KIM, SP 96-L-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit dwelling to remain 1.3 ft. from side lot line. Located at 4321 Franconia Rd. on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((21)) 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. Rachel Kim, 2407 Clover Field Circle, Herndon, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Heidi Powell. The applicant requested a modification of 10.7 feet to the minimum side yard requirements based on an error in building location. Ms. Kelsey noted that the error was caused by the previous owner.

Rachel Kim presented the special permit request as outlined in the statement of justification submitted with the application.

Mr. Pammel asked if there were any records of a building permit being obtained. Staff informed the Board that there were no records of a building permit.

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

Mr. Hammack moved to grant SP 96-L-028 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 96-L-028 by RACHEL KIM, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 1.3 feet from side lot line, on property located at 4321 Franconia Road, Tax Map Reference 82-3((21))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by Dewberry & Davis, dated April 29, 1988, submitted with this application and is not transferable to other land.
2. The addition to the main building shall be inspected to comply with applicable code 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996. This date shall be deemed to be the final approval date of this special permit.

9:30 A.M. GARY SHAFER, VC 96-S-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1A having a lot width of 80.52 ft. Located at 8447 Lee Alan Dr. on approx. 8.80 ac. of land zoned R-1. Springfield District. Tax Map 97-4 ((5)) 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. Gary Shafer, 8447 Lee Alan Drive replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Stagg said that it was staff's position that the application does not conform with Standards 4 and 6 of Sect. 18-404 of the Zoning Ordinance.

Gary Shafer presented the variance request as outlined in the statement of justification submitted with the application.

Chairman DiGiulian called for speakers.

John Whalen, Lot 18, came forward to speak in support of the application. He asked where the tree line would be located.

In response, Mr. Shafer replied that the house would be located as close to the pond as possible with as little clearing and grading as feasible.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-S-101 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 15, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-101 by GARY SHAFER, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, with proposed lot 1A having a lot width of 80.52 feet, on property located at 8447 Lee Alan Drive, Tax Map Reference 97-4((5))1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 8.80 acres.
4. The unique part of this application is that Lot 1B does not have any frontage and is not in the application for a waiver of frontage requirement.
5. The applicant presented testimony indicating compliance with the nine required standards for a variance.
6. The lot is unusually configured.
7. The lot is being developed at a much lower density than the surrounding 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 **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8447 Lee Alan Drive (8.8 acres), and is not transferable to other land.
2. This Variance is granted only for the purpose(s), structures and/or use(s) indicated on the Variance plat prepared by Bartlett Consultants, Ltd., dated January 30, 1995 as revised through July 17, 1996, and approved with this application, as qualified by these development conditions.
3. The proposed ingress/egress easement shown on Proposed Lot 1A shall be recorded in the Land Records of the County of Fairfax. This easement shall remain in perpetuity in order to provide access to Proposed Lot 1B.
4. Driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
5. Proposed Lots 1A and 1B shall meet the 20% tree coverage requirement as required by the Department of Environmental Management (DEM).
6. Any subdivision or development of these lots shall also be in conformance with Public Street Waiver Number 015948 which was approved by the Board of Supervisors on June 3, 1996.

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 Variance shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 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, Virginia. 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. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel requested that staff prepare the necessary Zoning Ordinance amendments concerning cases of hardship or special privilege. He commented that an amendment to the Zoning Ordinance with regard to the subdivision of lots, if adopted, would allow the Board of Zoning Appeals to grant unusual situations without the application having to prove hardship. He suggested having it under the special permit provisions of the Ordinance. Mr. Pammel said that he had been uncomfortable with divisions of lots and waivers of frontage requirements and having to decide whether the application met the prescribed criteria set forth in the Zoning Ordinance.

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Page 266, November 20, 1996, Scheduled case of :

9:30 a.m. KEVIN M. FISCHER, VCA 95-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 95-D-007 to permit construction of addition 5.3 ft. from side lot line (second story addition). Located at 1635 Dempsey St. on approx. 14,314 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((34)) 10. (OUT OF TURN HEARING GRANTED)

(This case was deferred from November 19, 1996, to allow the County Attorney's office to be present to respond to questions.)

Mr. Ribble moved that the Board recess and go into executive session for consultation with legal counsel.

Karen Harwood, from the County Attorney's office, suggested that the inquiries about the 60 day provision as it applied to variance application VCA 95-D-007, could be discussed on the record. She said that David Stoner, with the County's Attorney office, was present on the issue of fee waivers and he preferred to go into executive session for that issue. Ms. Harwood said she was happy to proceed with the discussion on the variance. The Board concurred.

Ms. Harwood discussed the extent to which the State Code provisions in 15.1- 496.1 applied to the issuance of the building permit that occurred in the variance case VCA 95-D-007. She said the Code section, by its own terms, does not apply in the case of fraud. Ms. Harwood said she reviewed the original application that was approved in 1995 and found that the approval varied from what was built. She said the plat that was submitted with the building permit application had been altered from what the BZA had approved, which raised the issue of good faith and the issue of fraud. Ms. Harwood stated that under case law in Virginia, misrepresentation, be it good faith, an honest mistake, or an intentional mistake, under the law was still fraud. So, based on what the BZA approved and what was represented to staff in order to get a building permit, this would fall under that ambit, and therefore; this section would not apply.

She said even if there was no fraud, the statute that says "that 60 days after someone in good faith relies on a Zoning Administrator's determination..." does not apply in the case of a non-discretionary error. Ms. Harwood said staff has no discretion to modify a decision made by the BZA.

She said the decision of the Board of Zoning Appeals in 1995 was very clear and there was nothing to interpret. Ms. Harwood said the decision formed the permission that was given and staff had no discretion to amend a BZA variance approval which was, effectively, what the building permit application did because it was for a different structure than what the BZA approved.

Mr. Hammack said the applicant told the Board that staff informed him that he could build a second story because he had a variance. He asked if staff relied entirely on what was presented to them by an applicant as opposed to verifying what was on the variance plat

Jane Gwinn, Zoning Administrator, replied there was no question that staff did not double check the plat that was with the building permit against the variance plat. She said staff had a responsibility and failed in that regard which was tremendously unfortunate, but staff also had a responsibility to the neighbors to ensure that people were building in accordance with the approvals granted by the Board of Zoning Appeals or the Board of Supervisors.

Mr. Pammel noted that this was a \$75,000 error as estimated in the contract for the cost of the construction.

Ms. Harwood said she was questioning the good faith. She read the applicant's justification submitted with the original application. Ms. Harwood questioned how the applicant exercised good faith when they submitted the building permit application, if the addition was suddenly substantially higher with a bigger footprint.

Mr. Hammack said the BZA frequently hears cases where the applicant was given erroneous information that they act upon, yet, it is not done with an intent to defraud. He said the applicant relied on the issuance of a building permit issued by the County and the responsibility was with the County to see that the application was correct before issuing a permit.

Ms. Harwood said there was no basis, under what the BZA approved, for this applicant to represent that what they were proposing to build was in conformance with the Zoning Ordinance and other applicable laws and regulations.

Mr. Hammack and Ms. Harwood discussed the definition of "discretionary".

Mr. Kelley said he could not get past the fact that there was an alteration to the plat. He said he agreed with Ms. Harwood that there was definitely an alteration to the plat and the testimony indicated that no one seemed to know how it happened.

Mr. McPherson asked under what circumstances would a building permit not be granted. Ms. Harwood replied that a building permit should not be granted for a use that does not have a zoning approval in place, if the request violates the yard requirements, nor if it does not meet the height limitations. She added that a building permit is to be measured against the Zoning Ordinance with regard to setback, height, and use and the request has to comply with all those before it could be issued. Mr. McPherson asked if under those described circumstances would that involve a discretionary or non-discretionary action on behalf of the Zoning Administrator. Ms. Harwood said she believed it would be non-discretionary. Mr. McPherson asked if she believed the process of making the application, having it reviewed, and having a building permit issued would make the decision discretionary. Ms. Harwood said it appeared that, if the wording in the Zoning Ordinance is very clear, there is no discretion to the requirement.

A discussion took place between Mr. Hammack and Ms. Harwood with regard to the height limitations on residential dwellings. They also discussed what the granting of a variance technically entailed. Ms. Harwood noted that if the Board grants a variance to allow an addition so many feet from a lot line and the

applicant decides to construct to the 35 foot height limitation, the Board might view that addition differently. Mr. Hammack agreed.

Ms. Gwinn agreed that the granting of a variance is to vary the yard requirement and she then proceeded to read the wording in Condition Number 1 of the variance in question, which stipulated that the addition was approved based on the plat submitted with the application. She added that she had never viewed the granting of a variance as merely varying a yard requirement which then basically gave the applicant the right to do whatever they would like to do.

Mr. Hammack questioned who had the ultimate responsibility to determine if a building application is complete and should be granted. Ms. Gwinn said obviously the decision to grant is made by the Department of Environmental Management (DEM) and agreed that the County does have a responsibility to ensure that the application is proper and meets the requirements. She added that the building permit application requires that whomever makes the application certifies to its completeness, which she believed puts some responsibility on the applicant. Mr. Hammack questioned why the portion of the application dealing with the number of bedrooms, etc., was not filed out. Ms. Gwinn said she could not give the Board a definitive answer. Mr. Hammack questioned if staff pulls the variance and compares it to the building permit application during the building permit application review process. Ms. Gwinn replied that was staff's policy to do so.

Mr. Pammel noted that the Board had received numerous memoranda from Barbara Byron, Director of Zoning Evaluation, in response to applicants or their agents relative to conditions for both variances and special permits and those determinations are based on her discretion. Mr. Kelley noted those are interpretations.

Mr. Hammack asked if the Board had the authority to review a condition that was imposed on an applicant. Ms. Harwood said if it is truly discretionary with regard to the meaning of a condition and the time has gone by and the applicant acted upon it, the Board has that authority. She added that if an approval stipulates precise measurements, it is not a matter of discretion to change those measurements.

Mr. McPherson called the Board's attention to the contract that was clearly not a two car garage with an attic and said that until someone could convince him that a good faith mistake was made in what was to be constructed, he had a major problem with the request. He said he did not know if the general contractor could explain where the drawings came from, but the wording in the first sentence is a significant deviation from the approved variance.

In response to a question from Mr. McPherson with regard as to when the plans were submitted, Kevin Fischer, replied in April. He explained that he had discussed the possibility of the two-story addition with the contractor.

Mr. Ribble said it was his understanding that the applicant had considered the second story addition prior to his father-in-law coming to live with the Fischers. Mr. Fischer said he had verbally discussed the possibility with staff in the variance office but all he could afford at that time was what he had originally requested.

Mr. Hammack asked who had signed the building permit application and Mr. Fischer replied the contractor. In response to a question from Mr. Hammack as to who had changed the survey, Mr. Fischer said he did not know. He added that if his intentions were malicious why would he apply for a variance and added that he had submitted the sketches to the Board. Mr. McPherson pointed out that he submitted the request for the two-story addition to the Board after the fact. Mr. Fischer said he did not know why his neighbor was reacting so negatively.

Mr. McPherson asked the speaker if it was his and his contractor's position that the footprint that was approved in the variance application was not binding. Mr. Fischer said it was his understanding that the variance approved a variation to the yard requirement which he had met. Mr. McPherson said that did not answer his question. Mr. Fischer said he had misunderstood, and it had been his belief that the sketches did not matter.



There was no further discussion and Mr. Hammack made a motion to approve VCA 95-D-007 for the reasons noted in the Resolution. He added that it would be a real hardship for the applicant to remove the offending structure at the present time. Mr. Hammack said he understood how an applicant could believe that the granting of a variance is only to the side setback line, but in fact the Board does routinely consider the bulk and height requirements and word the conditions in such a manner as to limit the size and form of an addition. He said that for an engineer to express doubt as to those limitations gave him great reservations. On the other hand, the Board hears testimony from applicants about receiving misinformation from County staff with regard to setback requirements, height of building, etc. The applicant testified that the application for a building permit was different from the plat approved with the variance and the permit was approved and he believe that validated his previous understanding and he acted on that approval. Mr. Hammack said that testimony had swayed him towards the applicant's standpoint although he believed that someone with the applicant's sophistication should have known better.

Mr. Pammel seconded the motion for the purpose of discussion.

Chairman DiGiulian agreed with Mr. Hammack and said that he believed it was a difficult call, but at some point a citizen should have be able to rely on the County. He added that if staff had compared the building permit application against the variance plat, the permit would not have been issued.

Mr. Pammel expressed concern with the procedures and said he believed the complete file should be reviewed prior to the issuance of a building permit when a special permit or variance application is involved. He said he also believed the application should be reviewed by the staff coordinator who prepared the staff report.

Mr. Ribble said he believed if the request had been a part of the application previously and the neighbor had raised objections to the addition, the Board might not have granted the variance. He added there is conflicting testimony with regard to whether the neighbor was made aware of the second story addition, which did concern him. Mr. Ribble said he would reluctantly support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Amendment Application VCA 95-D-007 by KEVIN J. FISCHER, under Section 18-401 of the Zoning Ordinance to amend VC 95-D-007 to permit construction of addition 5.3 feet from side lot line (second story addition), on property located at 1635 Dempsey Street, Tax Map Reference 30-4((34))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 20, 1996; 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 14,314 square feet.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of second story bedroom and bathroom addition shown on the plat prepared by Robert S. Schwenger, dated December 30, 1994, and revised through September 10, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 4-2. Mr. McPherson and Mr. Kelley voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble made a motion to go into Executive Session for consultations with legal counsel and briefings by staff members, consultants, and attorneys pertaining to actual and probable litigation and to other legal

matters requiring provision of legal advice by counsel pursuant to the appropriate section of Virginia Code. Mr. McPherson seconded the motion. Hearing no objection, the Chair so ordered.

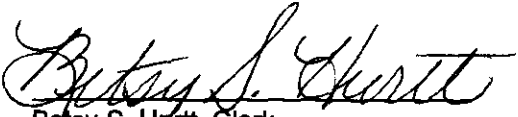
Upon reconvening in the Board Room, Mr. McPherson moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the opening meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion which carried by a vote of 6-0.

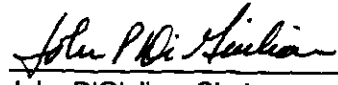
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As there was no other business to come before the Board, the meeting was adjourned at 12:11 p.m.

Minutes by: Regina Thorn

Approved on: March 4, 1997

  
Betsy S. Hartt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 26, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:04 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 213, November 26, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MURRAY JACOBSON, VC 96-Y-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from rear lot line. Located at 13126 Penndale Ln. on approx. 8,400 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((3)) (63) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Murray Jacobson, 13126 Penndale Lane, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 8.1 feet to allow an addition consisting of a sun room to be located 16.9 feet from the rear lot line.

Mr. Jacobson presented his request as outlined in the statement of justification submitted with the application. He noted that the proposed addition would go 2 feet further into the rear yard than the existing screen porch.

The applicant's contractor, Robert Eugene Beaver, 6826 Hill Park Drive, Lorton, Virginia, spoke in support of the application. He said the denial of this variance would create a hardship on the Jacobson's by taking away their enjoyment of the outdoors.

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

Mr. Hammack moved to grant VC 96-Y-119 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 96-Y-109 by MURRAY JACOBSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.9 feet from rear lot line, on property located at 13126 Penndale Lane, Tax Map Reference 45-1 ((3)) (63) 16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 and WS.
3. The area of the lot is 8,400 square feet.
4. The applicant met the nine required standards for a variance.

5. There is no other location on the property where you can construct this type of addition that would not require a variance.
6. The variance requested is minimal.

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

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

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

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

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

1. This variance is approved for the location of the sun room addition shown on the plat prepared by Kenneth W. White, dated July 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The sun room addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. REINOLD AND RIKSTINA VAN TIL, VC 96-D-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 2017 Franklin Ave. on approx. 21,562 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 16. (Concurrent with SP 96-D-039).

9:00 A.M. REINOLD AND RIKSTINA VAN TIL, SP 96-D-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.6 ft. from rear lot line and 10.3 ft. from side lot line. Located at 2017 Franklin Ave. on approx. 21,562 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 16. (Concurrent with VC 96-D-123).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Reinold Van Til, 2017 Franklin Avenue, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. He noted that the applicant had filed concurrent special permit and variance requests. The special permit request is for reduction to the minimum yard requirement based on error in building location to permit an accessory structure, a shed, to remain 7.6 feet from the rear lot line and 10.3 feet from the side lot line resulting in errors of 1.9 feet to the minimum rear yard requirement and 4.7 feet to the minimum side yard. The variance request was to allow an addition consisting of a garage to be located 8.1 feet from a side lot line; therefore, a variance of 6.9 feet was requested.

Mr. Van Til presented his request as outlined in the statement of justification submitted with the applications. He said the shed was constructed by the builder in 1989 and he was not aware it was in violation until after he filed for a variance and the error was discovered. With regards to the variance request, Mr. Van Til noted the lot has unusual shape; therefore, that was the only location where the garage could be placed.

In response to a question from Mr. Hammack, Mr. Van Til said the proposed garage would be an extension of the existing garage.

The applicant's contractor, Tom Hemphill, with Hemphill and Capart Architects and Builders, spoke in support of the application. He felt the variance request was minimal and the addition could not be placed anywhere else on the dwelling.

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

Mr. Pammel moved to grant SP 96-D-039 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 96-D-039 by REINOLD AND RIKSTINA VAN TIL, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.6 feet from rear lot line and 10.3 feet from side lot line, on property located at 2017 Franklin Avenue, Tax Map Reference 41-1 ((7)) 16, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

Page 276, November 26, 1996, (Tape 1), REINOLD AND RIKSTINA VAN TIL, VC 96-D-123 and SP 96-D-039, continued from Page 275)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the shed shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated June 26, 1996, submitted with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this special permit.



Mr. Pammel moved to grant VC 96-D-123 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-123 by REINOLD AND RIKSTINA VAN TIL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.1 feet from side lot line, on property located at 2017 Franklin Avenue, Tax Map Reference 41-1 ((7)) 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 November 26, 1996; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,562 square feet.
4. The applicant met the nine required standards for a variance.
5. The property lot lines are an unusual configuration. In particular, the rear lot line is 130 feet, the front lot line along Franklin Avenue is 100 feet, and the southern property line tapers in, creating the need for a variance on that side of the property.
7. There is no other location on the lot to put the garage addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specified garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 26, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 278, November 26, 1996, (Tape 1), Scheduled case of:

9:00 A.M. DERRICK O. CLUNIS, M.D., VC 96-P-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from rear lot line. Located at 3154 Borge St. on approx. 1,650 sq. ft. of land zoned R-20. Providence District. Tax Map 47-4 ((12)) 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. The applicant's agent, Robert Eugene Beaver, 6826 Hill Park Drive, Lorton, Virginia replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 7.7 feet to allow an addition consisting of a sun room 12.3 feet from the rear lot line.

Mr. Beaver presented the applicant's request. He cited medical reasons why the applicant needed a sun room and he felt denial of the variance would create a hardship by preventing the applicant from enjoying the outdoors and his hobby of collecting plants and flowers.

In response to a question from Mr. McPherson, Mr. Beaver said the applicant has received approval from the homeowner's association for the addition.

In response to a question from Mr. Kelley, Mr. Beaver said he did not know if this addition had been available to the homeowner when the townhouse was built.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 96-P-125 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

Chairman DiGiulian called for discussion.

Mr. Pammel said that he did not find this situation any different from the rest of the townhouse units. He felt if this variance was granted, they would have to grant similar variances for all the other units for the same reason. He noted that the backyard is shallow but that is the nature of that particular zoning district and townhouse developments; therefore, he would oppose the motion.

Mr. Kelley said that many townhouses were allowed this type of addition at the time of initial construction; therefore, he made a substitute motion to defer the vote for one week to find out if that was the case. Mr. Kelley stated that he would agree with Mr. Pammel's comments if that was not the case; however, if the addition was available to the original buyers he would vote in favor of the variance. The motion failed for lack of a second.

In response to a question from Mr. Ribble, Mr. Hunter said he was unaware of any sun room additions in the townhouse neighborhood.

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### **THE MOTION TO GRANT FAILED**

### **COUNTY OF FAIRFAX, VIRGINIA**

### **VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-P-125 by DERRICK O. CLUNIS, M.D., under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.3 feet from rear lot line, on property located at 3154 Borge Street, Tax Map Reference 47-4 ((12)) 135, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; 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-20.
3. The area of the lot is 1,650 square feet.
4. The applicant met the nine 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the sun room addition shown on the plat prepared by Kenneth W. White, dated July 16, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The sun room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which failed by a vote of 2-4 with Chairman DiGiulian, Mr. Pammel, Mr. Ribble and Mr. Kelley voting nay. The motion to grant failed due to the lack of four (4) affirmative votes which are needed to approve a variance. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996.

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Page 280, November 26, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOHN SENETA, VC 96-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.8 ft. from side lot line. Located at 6863 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-2 ((4)) (O) 18 and 20A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Cutforth, 7517 June Street, Springfield, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 4.2 feet to allow an addition consisting of a closet and storage room 5.8 feet from the side lot line.

Mr. Cutforth presented his request as outlined in the statement of justification submitted with the application. He said the applicant was requesting a variance because he recently had his elderly parents move in with him which created a need for additional storage space. He noted that the lots on Chelsea Road are very narrow and this was the only available location on the house that would allow access to the closet from the master bedroom. Mr. Cutforth submitted photographs of four houses in the same block that had been approved for building closer to the lot line than what the applicant was requesting.

In response to a question from Mr. Ribble, Mr. Cutforth stated that the height of the addition would be 17.0 feet from the existing grade.

Mr. McPherson wanted to know if there was already a shed on the other side of the house. Mr. Cutforth responded affirmatively. He said it was made part of the house when it was originally constructed and added that there is no access to the shed from the inside of the house.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 96-D-118 for the reasons set forth in the Resolution.

Chairman DiGiulian called for discussion.

Mr. Pammel noted that in this particular area the lots are uniformly narrow; therefore, the circumstances of this variance request was not unusual in this situation.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-118 by JOHN SENETA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.8 feet from side lot line, on property located at 6863 Chelsea Road, Tax Map Reference 30-2 ((4)) (O) 18 and 20A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 6,250 square feet.
4. Although the width of the addition would extend only 1 foot past the bay window, the height difference between the addition and the dwelling would be quite noticeable.
5. The application does not meet the hardship requirement.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996.

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Page 282, November 26, 1996, (Tape 1), Scheduled case of:

9:00 A.M. HENRY E. AHARI, VC 96-D-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from side lot line and permit accessory structures to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 8533 Georgetown Pi. on approx. 27,064 sq. ft. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Henry E. Ahari, 8533 Georgetown Pike, McLean, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested two variances. The first was a variance of 7.8 feet to allow an addition consisting of a family room 12.2 feet from the side lot line and the second variance was to allow an accessory use, a swimming pool, and accessory structure, a garage, to remain in the front yard of a lot containing less than 36,000 square feet.

Mr. Ahari presented his request as outlined in the statement of justification submitted with the application. He said he wanted to enclose the existing deck to create additional living space for his growing family. He noted that the lot is narrow and has several mature trees on the left hand side of house; therefore, this is the only place to construct the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 96-D-122 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-122 by HENRY E. AHARI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.2 feet from side lot line and permit accessory structures to remain in front yard of a lot containing less than 36,000 square feet, on property located at 8533 Georgetown Pike, Tax Map Reference 20-1 ((1)) 41, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-E.
- 3. The area of the lot is 27,064 square feet.
- 4. The applicant met the nine required standards for a variance.
- 5. The addition would go no closer to the side lot line than the existing dwelling.
- 6. The applicant would have to remove several mature trees in order to place the addition elsewhere on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation

as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition (family room), the swimming pool and the garage shown on the plat prepared by Joseph Monaco, Land Surveyor, dated August 20, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 284, November 26, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOHN EDWARD & JOSEPHINE MURPHY, VC 96-D-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.68 ft. from rear lot line. Located at 2334 Oak St. on approx. 9,332 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((15)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Josephine Murphy, 2334 North Oak Street, Falls Church, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 6.32 feet for an addition consisting of a screened porch to be located 18.68 feet from the rear lot line.

Ms. Murphy presented her request as outlined in the statement of justification submitted with the application. She pointed out that even though all the neighborhood lots have the same depth, the builder set her house back further on the lot in order to preserve some mature trees; therefore, her neighbors would be able to build the same addition without a variance. Ms. Murphy said the variance request would have little impact upon her neighbors by noting that her immediate backyard neighbor has a rear yard set back of 75 feet and the



owner of an uphill side lot had erected a privacy fence which would block all but the roof of the addition from their sight.

Beverly Gafsi, 2333 Highland Avenue, Falls Church, Virginia, spoke to the variance request by stating that she was not opposed to the screened porch request but would be opposed to any future enclosing or adding on to the porch.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 96-D-120 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-120 by JOHN EDWARD AND JOSEPHINE MURPHY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.68 feet from rear lot line, on property located at 2334 Oak Street, Tax Map Reference 40-4 ((15)) 8, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 9,332 square feet.
4. The applicants are requesting a variance for 6.32 feet which is a modest request.
5. There has been persuading testimony regarding the fact that the applicants house is set back further on the lot than the other houses; therefore, the neighbors could put the same addition on their lot without the need for a variance.
6. The variance would not be of a recurring 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.

Page 286, November 26, 1996, (Tape 1), EDWARD & JOSEPHINE MURPHY, VC 96-D-120, continued from Page 285

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the screen porch addition shown on the plat prepared by James Soyejima, Architect, dated August 27, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 286, November 26, 1996, (Tape 1), Scheduled case of:

9:30 A.M. ARLINE & LOWELL R. FLEISCHER, VC 96-H-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.1 ft. from rear lot line. Located at 8603 Coral Gables Ln. on approx. 10,268 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 29-3 ((14)) 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. The applicant, Lowell Fleischer, 8603 Coral Gables Lane, Vienna, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 8.9 feet for an addition consisting of a screened porch to be located 16.1 feet from the rear lot line.

Mr. Fleischer presented his request as outlined in the statement of justification submitted with the application. He said the lot is relatively small and diamond shaped and his house sits in the middle of the property, thereby creating the need for a variance for only one corner of the screened porch. He noted that the proposed screened porch would replace an already existing wood deck and there was no where else to place it on the lot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-H-121 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-H-121 by ARLINE AND LOWELL R. FLEISCHER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.1 feet from rear lot line, on property located at 8603 Coral Gables Lane, Tax Map Reference 29-3 ((14)) 11, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 10,268 square feet.
4. The applicant met the nine required standards for a variance.
5. The dwelling sits diagonally on the lot so the variance request is only needed for one corner of the existing deck.
6. The applicants' property backs up to school property; therefore, the screened porch will not have any impact on residents in the neighborhood.
7. It would be difficult to construct a screened porch any place else 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.

Page 288, November 26, 1996, (Tape 1), ARLINE & LOWELL R. FLEISCHER, VC 96-H-121, continued from Page 287

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Laura L. Scott, dated August 22, 1996 and revised through September 3, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 288, November 26, 1996, (Tape 1), Scheduled case of:

9:30 A.M. ST. JOHN'S PROTESTANT EPISCOPAL CHURCH, SP 96-D-035 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 6715 Georgetown Pi. on approx. 12.14 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John McClosky, with the Law Firm of McGuire, Woods, Battle, and Boothe, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a church and the construction of several additions to be done in two phases. She noted that the church building has existed since 1956 prior to the Zoning Ordinance requirement that churches in residential districts be under special permit approval. Ms. Langdon submitted

to the Board revised Development Conditions dated November 22, 1996 and noted that the only change from the previous ones was Condition #11, which was reworded at the request of the applicant and concerned citizens. Staff recommended approval of the special permit.

In response to a question from Mr. Kelley, Ms. Langdon explained revised Development Condition #11. She said there was a question whether Virginia Department of Transportation (VDOT) would allow traffic to turn left into the entrance off of Georgetown Pike and it was decided that at the time of Site Plan Review, VDOT will discuss the situation with the applicant and their engineer to determine if that will continue to be allowed or not. She noted that VDOT has the authority to prohibit the left turn lane without this Development Condition but it was put in to address citizens' concerns over the increase in traffic and to make them aware of the possibility.

Mr. McClosky presented the applicant's request as outlined in the statement of justification submitted with the application. He said the special permit proposal for additions takes place in two phases. Phase 1 would add two temporary modular structures which would accommodate the current over flow of Sunday School classes that already exist. Phase 2 would allow the modernization and preservation of the existing church building based upon the current growth rate of 3 percent per year; therefore, there would be construction of additions onto the church.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 96-D-035 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1996 with the following changes to the Development Conditions: Development Condition #7 should read, "The maximum number of seats in the sanctuary should be 250. Upon completion of Phase II the number shall not exceed 500." The motion failed for lack of a second.

Mr. Hammack made a substitute motion to grant SP 96-D-035 for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions dated November 22, 1996 with the same above change to Development Condition #7 and the deletion of the last two sentences of Development Condition #11 since VDOT can prohibit a left turn lane by a matter of right he felt the BZA should not be imposing requirements of this type when there are no traffic statistics to show what the turn movements would be.

Mr. Pammel added for the record that he would have accepted an amendment to his previous motion, he just put it on the floor for discussion. He said he had no objections to the application.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-D-035 by ST. JOHN'S PROTESTANT EPISCOPAL CHURCH, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 6715 Georgetown Pike, Tax Map Reference 21-4 ((1)) 15, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 12.14 acres.

Page 290, November 26, 1996, (Tape 1), ST. JOHN'S PROTESTANT EPISCOPAL CHURCH, SP 96-D-035, continued from Page 289)

4. The existing church predates the Zoning Ordinance which now requires a special permit to allow a church and related facilities.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6715 Georgetown Pike, 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 GJB Engineering, Inc., dated July 8, 1996, revised through November 11, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Existing vegetation along all lot lines shall be preserved and maintained as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1.

Coincident with Phase I, landscaping shall be planted in conformance with the landscape plan depicted on page 2 of the approved special permit plat, notwithstanding Note #16 on the plat which states that the landscaping shown is for illustrative purposes only.

Coincident with Phase II, foundation plantings shall be provided around the church building to soften the visual impact of the structure. The species, size and location of the plant material shall be determined by the Urban Forestry Branch at the time of site plan review. These plantings shall be in addition to the landscaping approved with Phase 1 of the development.

6. The barrier requirements shall be waived along all lot lines.
7. Prior to the issuance of the Non-Rup for Phase II the maximum number of seats in the sanctuary shall be 250. Upon issuance of the Non-Rup for Phase II, the maximum number of seats shall not exceed 500.
8. One hundred and one (101) parking spaces shall be provided as shown on the special permit plat for Phase I. Pursuant to the construction of Phase II, the parking spaces shall increase to a minimum of 155 spaces and a maximum of 211 spaces as shown on the special permit plat. All parking shall be on site.
9. The two temporary modular trailers shall be approved for a time period not to exceed five (5) years from the date of approval of the Non-Residential Use Permit for the trailers.

- 10. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Environmental Management (DEM).
- 11. The applicant shall construct, at the time of Phase II construction, a right turn deceleration lane along Route 193 (Georgetown Pike) of approximately 100 feet to 110 feet in length with a 50 foot transition as measured from the existing Route 193 entrance.
- 12. Any proposed 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 of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - ▶ Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. 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. McPherson seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1996. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:13 a.m. and reconvened at 10:24 a.m.

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Page 291, November 26, 1996, (Tape 2), Scheduled case of:

9:30 A.M. BEHROUZ NOBARIAN AND AZAR BINA, Appeal 96-D-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants' property is not a buildable lot under Zoning Ordinance provisions. Located at 7701 Magarity Rd. on approx. 8,857 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 68A.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated November 19, 1996. At issue in the appeal is whether the appellants may build a single family detached dwelling on the property. Mr. Shoup explained that the lot in its current configuration was created in January of 1970 and while it did meet the minimum lot area requirements, it did not meet the minimum lot width requirements of the Zoning Ordinance in effect at the time. In particular, along Ware Road the road frontage at the setback line does not meet the 95 foot requirement. He noted that the property was created when the Water Authority conveyed a portion of outlot 4 and 5. It was also discovered that the conveyance did not go through Subdivision Review under the Subdivision Ordinance; therefore, it was staff's position that the lot is

Page 292, November 26, 1996, (Tape 2), BEHROUZ NOBARIAN AND AZAR BINA, Appeal 96-D-037, continued from Page 291

not a buildable lot and the request to construct a building on this lot cannot be approved absent a variance and approval by DEM of a subdivision plat which would address the consolidation and density requirements of the Zoning Ordinance.

Mr. Kelley questioned staff about an adjacent property that appeared to be the same size but has a dwelling constructed on it. Mr. Shoup advised that at the time that lot was created there was only a 65 foot minimum lot width requirement which, the lot meets.

In response to a question from Mr. Dively, Mr. Shoup said he had a discussion with the appellants about filing a variance and he thought there may have been some confusion about what they were applying for. He felt the appellants were only requesting permission to be able to use the lot.

Chairman DiGiulian questioned Mr. Shoup on the staff report that mentioned the subdivision needed to have adequate density. He expressed concern over pushing the appellants to file for a variance then finding out there is a density issue and they would not be able to obtain a variance. Mr. Shoup said the appellants need to retain an engineer to take a look at the whole subdivision and come up with calculations on density. He felt it would require an engineer to do all the calculations because the property was approved when the County did not regulate by density. Mr. Pammel felt it should not be an issue because the lot was developed around 1950 and the lots had only to meet a minimum lot size. Chairman DiGiulian again reiterated that the question of density was mentioned in the staff report; therefore, he felt the appellants should have some indication on that question before they go any further.

Mr. Kelley made a motion to defer this appeal for 30 days to allow the appellants time to meet with staff to find out what other avenues are open to them because he felt there was only one result if they pursued this appeal today and vote on it. He also felt the Chairman's question over density should be answered before the appellants file for a variance. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

Mr. Shoup suggested a hearing date of the morning of January 7, 1997 and the Board concurred.

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Page 292, November 26, 1996, (Tape 2), Scheduled case of:

#### William Reeder et al Acceptance Request

Mr. Pammel said Mr. Reeder brought up some interesting issues in his follow-up memorandum dated November 25, 1996; therefore, he moved to accept this appeal for public hearing. Staff suggested a hearing date of February 11, 1997 and Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Pammel further noted Mr. Reeder's request that the Board immediately effect a stay of proceedings as per Zoning Ordinance 18-307 since the subsequent approval of the Target Site Plan on November 11, 1996 could not have occurred nor building permits issued without the October 3, 1996 determination now under appeal; therefore, the appellant requested that the site plan be returned to its status when he filed the notice of appeal on November 4, 1996.

Mr. Pammel made a motion to request that DEM stay the matter until the BZA resolves the issues on the appeal. He expressed concern over what would happen if the Board finds on February 11, 1996 that the appellant has presented convincing evidence and the site plan has not been stayed. Mr. Pammel pointed out that the motion is a request to DEM only. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 293, November 26, 1996, (Tape 2), Scheduled case of:

Approval of Minutes  
September 10, 1996 Hearing

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 293, November 26, 1996, (Tape 2), Scheduled case of:

Request for Reconsideration  
for Peter and Patricia Roder, VC 96-B-113

The Board did not take action with regards to the request for reconsideration; therefore, it was denied.

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Page 293, November 26, 1996, (Tape 2), Scheduled case of:

Out of Turn Hearing Request  
from The Montessori School of Alexandria, Inc.

Mr. Dively made a motion to deny the request. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 293, November 26, 1996, (Tape 2), Scheduled case of:

Approval of Resolutions  
from November 20, 1996 hearing

Mr. Hammack made a motion to approve the Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Teresa M. Wang

Approved on: February 11, 1997



Betsy S. Hurt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 3, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called for Board Matters and hearing no reply he called for the first scheduled case.

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Page 295, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. RENZO J. & MARCIA J. RENZI, VC 96-P-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.0 ft. from side lot line. Located at 8605 Cottage St. on approx. 11,852 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (R) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Renzo Renzi, 8605 Cottage Street, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. The applicant requested a variance of 5.0 feet in order to construct a carport 2.0 feet from the side lot line. Ms. Powell noted for the record that carports are allowed to extend 5.0 feet into a side yard.

Mr. Hammack pointed out that the legal notice showed that the subject property was located in the Dranesville District. Ms. Powell said that had been corrected and subsequent legal notices were mailed noting the correction stating that the subject property is located in the Dranesville District.

Mr. Renzi said the lot is very narrow and noted that Cottage Street has become a "cut through" street since the restrictions on I-66 were implemented. He said the construction of the carport would allow him to remove both his vehicles off the street.

A discussion took place between Mr. Hammack and the applicant regarding the width and depth of the proposed carport. Mr. Renzi explained that he would be willing to reduce the width of the carport to 20 feet but that he would like to retain the 26 foot depth so that the carport would be the same depth as the existing dwelling, making it architecturally compatible.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made motion to deny VC 96-P-124 for the reasons noted in the Resolution.

Mr. Kelley said he could not support the motion as he believed the variance should be granted based on the applicant agreeing to reduce the width of the garage to 20 feet, which would reduce the amount of the requested variance. He added that only the portion of the carport closest to Cottage Street required the variance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-124 by RENZO J. AND MARCIA J. RENZI, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.0 feet from side lot line, on property located at 8605 Cottage Street, Tax Map Reference 49-1((9))(R)6, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,852 square feet.
4. This kind of application is in some ways difficult because it is understandable that a homeowner wishes to construct a carport and develop their property in a way they believe is the most functional at the least amount of cost and in a way they believe would be the most architecturally satisfactory. In this case, the structure would be constructed 2.0 feet from the side lot line at the nearest point and the depth of the carport would run the entire length of the house. The applicant could build an oversize carport in the rear yard without a variance or possibly locate the proposed structure in the rear yard which would not require a variance.
5. The property's lot lines converge slightly, but this is not unusual in this subdivision.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Dively seconded the motion which carried by a vote of 6-1 with Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996.

Page 297, December 3, 1996, (Tape 1), RECOGNITION:

Mr. Ribble recognized his daughter, Courtney Ribble, in the audience and announced her recent engagement to Kenneth Walker, Jr.

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Page 296, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PAUL G. & LYNN L. MUNCH, VCA 95-V-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 95-V-116 to permit enlargement and increase in height of structure previously approved to be 10.3 ft. from side lot line and to permit construction of addition 9.5 ft. from side lot line. Located at 8419 Doyle Dr. on approx. 14,920 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (3) 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. The applicant, Lynn Munch, 8419 Doyle Drive, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested an amendment to VC 95-V-116 to permit an enlargement and increase in height in a previously approved family room addition to be located 10.3 feet from a side lot line and to allow a carport 9.5 feet, which required a variance of 1.7 feet. (It was subsequently determined that the variance to allow the carport 9.5 feet from the side lot line was not necessary.)

Ms. Munch said the amendment would allow them to increase and enlarge the proposed addition and allow them to widen the carport. She said in October 1995 they requested a variance to allow them to convert their existing screened porch to a year-round family room using the existing roof and foundation. Following discussions with perspective contractors, they were told there was not sufficient space between the existing roof and foundation to build a room that would meet the insulation codes. Ms. Munch explained that in order to take advantage of the additional cost that would be required to improve the foundation and build a new roof, they determined that they would like to lengthen the room, widen the carport, and change the roof configuration. She said they requested an interpretation from County staff regarding the proposed changes and were told they would need to submit a variance amendment. In closing, Ms. Munch said there were no objections from the neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VCA 95-V-116 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 26, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Amendment Application VCA 95-V-116 by PAUL G. AND LYNN L. MUNCH, under Section 18-401 of the Zoning Ordinance to amend VC 95-V-116 to permit enlargement and increase in height of structure previously approved to be 10.3 feet from side lot line and to permit construction of addition 9.5 feet from side lot line, on property located at 8419 Doyle Drive, Tax Map Reference 102-4((5))(3)7, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; 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 14,920 square feet.
4. The applicant has met the nine required standards for the granting of a variance; specifically in this case, the variances are minimal.
5. The nearest encroachment for living space is 1.7 feet and, technically, the 9.5 feet is because the corner of the carport, which is being enlarged, comes to within 9.5 feet of the lot line which is not living space.
6. Unlike a similar application that came before the BZA just recently, this applicant has requested the increase in height prior to construction.
7. The lot does have converging lot lines as it extends toward the rear of the lot creating the narrowness at the building restriction line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the family room addition shown on the plat prepared by Larry N. Scartz, dated September 22, 1982, and revised through September 9, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 299, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM H. & PATRICIA J. BARRETT, VCA 84-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 84-D-117 to permit previously approved structure to remain 5.3 ft. from side lot line and permit construction of addition 5.3 ft. from side lot line. Located at 6122 Old Dominion Dr. on approx. 40,897 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 28A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, William Barrett, 6122 Old Dominion Drive, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested an amendment to a previously approved garage addition and a proposed room addition to remain 5.3 feet from the side lot line requiring a variance of 9.7 feet for each. Mr. Hunter noted that the adjacent property is developed with a single-family detached dwelling.

A discussion took place between Mr. McPherson and Mr. Hunter regarding the development of the adjacent property, Lot 29. Mr. McPherson asked staff if the applicant could build an addition 15 feet from the side lot line without a variance. Mr. Hunter replied it could be done if the addition were redesigned.

Mr. Barrett explained that when he bought the property, he was a bachelor and has since married and had two children and the size of the house is now inadequate to accommodate his growing family. He said the lot and house are very unique and they would like to remain on the property. Following discussions with several architects, they determined that building on the east side of the house and extending the garage was the most feasible solution. Mr. Barrett reiterated comments presented in the statement of justification submitted with the application. He called the Board's attention to the photographs depicting the topography of the lot and discussed the heavily wooded nature of the lot and the surrounding lots. Mr. Barrett explained they had researched the possibility of expanding the house vertically, but the fact that the house is built on concrete piers makes that impossible without constructing a new foundation.

Mr. McPherson asked the speaker to address the improper location of the existing garage. Mr. Barrett replied that he believed the garage was not in error, and that he could not account for the disparity of 4 inches between the measurement when the garage was constructed in 1984 and now. They also discussed the location of the dwelling on Lot 29. Mr. Barrett said there are three structures on the adjacent lot with the closest being approximately 100 feet from the shared lot line. Mr. McPherson said it was his understanding that the proposed addition would be a two-story addition with one story being partially underground. Mr. Barrett said that was correct. They discussed the possibility of constructing the extension staying within the 15 foot setback. Mr. Barrett said they had not considered that because they believed the rooms would be too small.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant VCA 84-D-117 in part and to allow the previously approved structure to remain in its present location for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 26, 1996.

Mr. Pammel pointed out that the error was 6 inches rather than 4 inches as the applicant had stated earlier.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Amendment Application VCA 84-D-117 by WILLIAM H. AND PATRICIA J. BARRETT, under Section 18-401 of the Zoning Ordinance to amend VC 84-D-117 to permit previously approved structure to remain 5.3 feet from side lot line and permit construction of addition 5.3 feet from side lot line (**THE BZA DENIED THE CONSTRUCTION OF AN ADDITION 5.3 FEET FROM THE SIDE LOT LINE**), on property located at 6122 Old Dominion Drive, Tax Map Reference 41-1((1))28A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 40,897 square feet.
4. The mistake was made in good faith and although there was not a lot of time spent on discussing the previously approved structure it does involve a nominal change and it would be appropriate to approve under the circumstances.
5. The lot does have an unusual topography, but the addition would just be too much.
6. The request may be the only functional way of developing the lot, but as a practical matter it generates such a side presentation that it would a matter of convenience.
7. The applicant could build some type of addition without a variance or with a lesser 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.



Page 301, December 3, 1996, (Tape 1), WILLIAM H. & PATRICIA J. BARRETT, VCA 84-D-117, continued from Page 300)

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location of the previously approved and previously constructed garage addition shown on the plat prepared by Delashmutt Associates Ltd., dated August 16, 1996, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 301, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ELLEN SHELTON MCCLOSKEY, VC 96-V-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. and 5.0 ft. from side lot lines. Located at 6408 Potomac Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (28) 25 and 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Ellen Shelton McCloskey, 6408 Potomac Avenue, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested variances of 4.5 and 7.0 feet, respectively, in order to construct a two-story addition 7.5 from the northern side lot line and 5.0 from the southern side lot line.

Mr. Ribble asked staff if the addition would be any closer to the side lot line than the existing dwelling and Mr. Hunter replied that it would not.

Ms. McCloskey said the property consists of two 25-foot wide lots and noted that the existing dwelling does not meet the current side yard requirements. She said the neighborhood was built in the 1940s and

proceeded to reiterate her comments addressing the standards set forth in the statement of justification submitted with the application. Ms. McCloskey explained that she would like to extend the dining room and kitchen to line up with the existing utility room, construct a second story addition above the existing patio space, and raise the existing roofline on the front portion of the dwelling.

Mr. McPherson asked the applicant to clarify her request. Ms. McCloskey said she planned to "pop up the front" and go out the back with a one-story addition in the back and a second story addition located on the rear of the house.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 96-V-128 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 26, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-128 by ELLEN SHELTON MCCLOSKEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.5 feet and 5.0 feet from side lot lines, on property located at 6408 Potomac Avenue, Tax Map Reference 83-4((2))(28)25 and 26, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; 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 7,000 square feet.
4. The applicant has met the nine required standards for the granting of a variance, in particular the narrowness of the lot.
5. The applicant testified that the house was built in the 1940s.
6. The area is somewhat transitional and many of the homeowners have constructed additions to improve their property.
7. The addition will be no closer to the lot lines than the original dwelling.
8. The lots are substandard and the zoning district in which they are located requires the lots to meet the requirements of an R-3 Zoning District, which is a hardship.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance

and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by R. C. Field, Jr. & Associates, dated August 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The dwelling addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN H. NEAL, VC 96-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. from side lot line and accessory structure 5.0 ft. from side lot line. Located at 1256 Spring Hill Rd. on approx. 13,242 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Linda Smith, 1200 Braddock Place, #511,

Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The applicant requested a variance of .2 feet for the construction of a bedroom addition to be located 19.8 feet from the southern side lot line and a variance of 15 feet for the construction of a detached carport to be located 5.0 feet from the southern lot line. Ms. Langdon noted that a revised affidavit was received by staff yesterday and copies had been distributed to the Board just prior to the public hearing.

Ms. Smith explained that the house was built in 1936 and the applicant acquired the property in 1977 and would now like to enlarge a bedroom for his seven year old daughter. The applicant would also like to construct a carport to provide protected access to the house in inclement weather. Ms. Smith called the Board's attention to the letters in support of the request from the neighbors who would be the most impacted.

Mr. Kelley asked how far the carport would be from the adjacent neighbor's house. The speaker said she would have to defer to the architect, John Binder, with Greenwald, Cassel Associates. Mr. Binder came forward and said the dwelling on the adjacent lot was approximately 15 feet from the location of the proposed carport.

Mr. McPherson asked if the proposed carport would be in the same location as the existing driveway. Ms. Smith replied that was correct and although the carport will extend back further the width has been kept to a minimum and will allow one car to be parked behind another.

John Binder, with Greenwald, Cassel Associates, 1443 Emerson Avenue, explained that the encroachment was a nominal .2 to basically bring the room size to 12 feet. He added that the applicant's request had originally proposed the carport to be attached to the house with a minimal roof. The applicant revised the request to a freestanding structure in the hopes of improving his chances of having the variance granted. Mr. Binder said the applicant would be willing to construct the carport either as an attached or detached structure. He added that the applicant was proposing to construct the carport off the entrance into the kitchen in order to be architecturally compatible with the 1936 Cape Cod design.

Mr. McPherson asked if any thought had been given to attaching the carport to the addition to reduce the amount of the variance. Mr. Binder said that was the original proposal and said the applicant would be happy with either design.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 96-D-127 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 26, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-127 by JOHN H. NEAL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.8 feet from side lot line and accessory structure 5.0 feet from side lot line, on property located at 1256 Spring Hill Road, Tax Map Reference 29-1((2))3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The present zoning is R-1.
3. The area of the lot is 13,242 square feet.
4. The applicant has met the nine required standards for the granting of a variance.
5. The lot is exceptionally narrow.
6. The applicant has developed a well thought-out plan and although it is possible to construct the addition with a lesser variance, the applicant's explanation was adequate for granting the request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the bedroom addition and accessory structure (carport) shown on the plat prepared by Alexandria Surveys, Inc., dated February 22, 1994, and revised through October 24, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition and carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 306, December 3, 1996, (Tape 1), JOHN H. NEAL, VC 96-D-127, continued from Page 305

Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Mr. Hammack abstaining.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 306, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MILES A. & SUSAN A. MICIOTTO, VC 96-H-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot two having a lot width of 6.5 ft. Located at 2307 Hunter Mill Rd. on approx. 4.23 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 20. (MOVED FROM 11/7/96 AT APPL'S. REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Susan Miciotto, 2307 Hunter Mill Road, Vienna, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said on October 29, 1996 a staff report was published with staff's concerns with regard to the proposed subdivision into two lots with Lot 2 having a lot width of 7.5 feet. In response to staff's concerns regarding the widening of Hunter Mill Road adjacent to the subject property, the applicant revised the variance plat to show 45 feet of right of way dedication along Hunter Mill Road. Because of the dedication and due to the converging northern and southern lot lines toward the rear of the site, the lot width for proposed Lot 2 at the new building restriction line is 6.5 feet in a zoning district where a minimum lot width of 200 feet is required. Mr. Hunter said the applicant was requesting a variance of 93.5 feet for proposed Lot 2 with a proposed density of 0.47 dwelling units per acre, which is below the planned density range of .5 to 1 dwelling units per acre. He added that although density is not an issue in this case, staff was concerned with the proliferation of pipestem lots in an area where there are several lots with other similar characteristics.

Mr. Dively asked staff to point out lots in the area that caused them concern and Mr. Hunter did so on the view graph.

A discussion took place between Mr. McPherson and staff regarding access to the lots east of the subject property. Mr. Hunter said all the lots are developed.

Ms. Miciotto said they purchased the property in July 1985 and they would now like to subdivide the property into two lots reducing the lot size where they reside to 2.230 acres with proposed Lot 2 having a lot size of 2 acres. She said both lots will meet the R-E Zoning District lot size requirement and will be compatible with the neighborhood. Ms. Miciotto said the Board had approved V-337-79 in 1979 allowing a 6.99 acre parcel to be split into three lots of 2.23 acres per lot using a 6 foot wide pipestem and proceeded to cite other lots and their lot sizes located in the County Deed Books. On a personal note, Ms. Miciotto said their house was built by relatives who raised Mr. Miciotto and they would like to keep it in the family and hope to entice their daughter and her husband to build a house on proposed Lot 2. She introduced a petition signed by the adjoining neighbors in support of the request.

There were no speakers in support of the request and Chairman DiGiulian called for opposition.

Steve Myer, 10201 East Hunter Valley Road, owner of Lot 5, opposed the application based on the creation of a pipestem, the additional traffic that would be generated by the additional lot, and that he believed the property had been listed with a realtor and that the request was for the applicant's personal gain.

In rebuttal, Ms. Miciotto said the lot was not listed with a real estate agent and that one of the neighbor's holding soccer practices on his property generates more traffic than the requested use.

Mr. Miciotto came forward and explained there is an easement that runs along the length of their property with eight houses presently utilizing the road and that he did not believe one more would be much impact.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant VC 96-H-112 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 26, 1996 and revised November 29, 1996.

Mr. McPherson said he would support the motion since he did not see any distinction between this application and one the Board heard recently.

Mr. Pammel said he would not support the application as he did not believe the hardship requirement had been met, that it would set a precedent, and agreed that staff did have legitimate concerns.

Mr. Ribble said each case was different and each applicant would have to prove a hardship and noted the easement that runs the length of the property.

Mr. Hammack said when the applicants bought the property it had the same constraints that it has now from which the applicants now seek relief and he believed it to be a classic example of a lot that should be developed under the subdivision ordinance.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-H-112 by MILES A. AND SUSAN A. MICIOTTO, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having a lot width of 6.5 feet, on property located at 2307 Hunter Mill Road, Tax Map Reference 37-2((1))20, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 4.23 acres.
4. The testimony relating to whether the applicants will benefit financially from the subdivision and the activities occurring on a neighbor's property is irrelevant to the request since the BZA only considers the issues dealing with land use.
5. The plan is reasonable based on land use.
6. The subject property is located in a R-E Zoning District which requires a .5 to 1 dwelling units per acre, and the proposed lot will be well within those guidelines.
7. Pipestems are allowed in the County and there is nothing to indicate that this request is not within the Board of Supervisors' approved requirements for pipestem lots.
8. There is insufficient evidence to show that there is a proliferation of pipestem lots in the area and because the lots noted on Tax Map 37-2((22)) 2 and 3 are pipestem lots supports the request.
9. The easement involving East Hunter Valley Road will have to be resolved, but it makes the request more appealing than Lots 2 and 3, above.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of one (1) lot into two (2) lots, as shown on the plat prepared by Peter F. Moran, Certified Land Surveyor and dated May 14, 1985, revised through October 28, 1996.
2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and individual deeds to each lot to assure that future owners are aware of these restrictions.
3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual, as determined by the Department of Environmental Management (DEM).
4. In order to preserve the water quality in the Angelico Branch watershed, the Environmental Quality Corridor (EQC) located on the eastern portion of Lot 2 shall be preserved in open space. There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading except for necessary utilities. There shall be no structures located in the EQC area. All subdivision plats and construction plans submitted to DEM shall show the limits of the EQC as defined in the Comprehensive Plan.
5. The lot width of proposed Lot 1 shall meet the minimum bulk requirements of the R-E District.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded within the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the



Page 309, December 3, 1996, (Tape 1), MILES A. & SUSAN A. MICIOTTO, VC 96-H-112, continued from Page 308

variance. The request must specify 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 with Mr. Hammack and Mr. Pammel voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 309, December 3, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ROSEMARIE AND JOHN C., III, DUNCAN, SP 96-P-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification of minimum yard requirements based on error in building location to permit deck to remain 5.2 ft. from side lot line such that side yards total 33.4 ft. Located at 11205 Cranbrook Ln. on approx. 21,764 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((9)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Sekas, with Property Professionals, Inc., 9434 Lakeside Drive, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The applicant requested approval of a special permit for an error in building location to permit a deck 5.2 feet from a side lot line such that side yards total 33.4 feet resulting in a modification of 6.8 feet to the side yard requirement and with a modification of 6.6 feet for the total side yards. Ms. Langdon said page 1 of the staff report stated that a building permit was not obtained for the deck and the applicant has now supplied a copy of the building permit for the dwelling, which included a deck, and the applicant will explain how the stairs were moved which caused the error.

Mr. Sekas said the applicants purchased the property from his company in May 1996; however, the carpenters who were constructing the deck believed it would be better to locate the stairs in their present location for lighting and access purposes. He said if the special permit was not granted, the deck would have to be reconstructed which would cause a hardship to the applicants. Mr. Sekas addressed the standards and said there would be no adverse impact on the neighbors and noted one letter in support of the request.

Mr. Kelley asked why the house was sited so far back on the lot. Mr. Sekas explained that the septic field is in the front yard which forced the house toward the rear of the lot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 96-P-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-P-040 by ROSEMARIE AND JOHN C., III, DUNCAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 5.2 feet from side lot line such that side yards total 33.40 feet, on property located at 11205 Cranbrook Lane, Tax Map Reference 47-1((9))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

Page 310, December 3, 1996, (Tape 1), ROSEMARIE AND JOHN C., III, DUNCAN, SP 96-P-040, continued from Page 309)

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- H. The error was made in good faith at the suggestion of the carpenters that the stairs be relocated to the side.
- I. The error is minimal and it does not impact the adjoining property owner.

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.

That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the deck shown on the plat prepared by Ned A. Marshall, dated January 24, 1996, revised September 18, 1996, 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 with Mr. Ribble not present for the vote.

Page 311, December 3, 1996, (Tape 1), ROSEMARIE AND JOHN C., III, DUNCAN, SP 96-P-040, continued from Page 310)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 311, December 3, 1996, (Tape 1), Scheduled case of:

9:30 A.M. KIM C. AND FRANCES C. SHELTON, Appeal 96-D-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are keeping four (4) dogs on a lot containing 10,044 sq. ft. in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 6518 Chesterfield Ave. on approx. 10,044 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 14. (DEF. FROM 9/10/96)

Chairman DiGiulian noted for the record that the appellants were requesting a continuation until such time as their special permit application could be heard. Kim C. Shelton, 6518 Chesterfield Avenue, McLean, Virginia, came forward and reiterated his written request.

William Shoup, Deputy Zoning Administrator, explained that the appeal involved a Notice of Violation that had been issued to the appellants for the keeping of four dogs. He added that at the Board's September 10th public hearing a discussion took place regarding which was the most appropriate process for the appellants to pursue, one being a special permit application which they have now filed. Mr. Shoup said it was his understanding that the application had not yet been accepted pending approval of the affidavit by the County Attorney's office. He suggested that the Board continue the public hearing to the morning of March 4, 1997.

Mr. McPherson so moved. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 311, December 3, 1996, (Tape 1), Scheduled case of:

9:30 A.M. ERIBERTO L. JOSE, Appeal 96-L-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining four (4) separate dwelling units on the property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7004 Richmond Hwy. on approx. 8,315 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 65.

William Shoup, Deputy Zoning Administrator, noted for the record that the appeal had inadvertently been accepted as being located in the Mount Vernon District, but it is actually located in the Lee District and the application was corrected accordingly. He said at issue in the appeal is the four dwelling units located on the subject property in a structure which was constructed in 1958 pursuant to a building permit which specified one single-family detached dwelling. Mr. Shoup said the June 21, 1996 Notice of Violation, which is at issue in this appeal, indicates that there was a 1954 Board of Zoning Appeals' approval to allow a duplex dwelling unit on the subject property but he noted that actually approval applied to an adjoining parcel of land, not to the subject property.

The appellant, Eriberto L. Jose, 7004 Oriole Avenue, Springfield, Virginia, said he purchased the property, which had been condemned by the County because of fire damage, in 1982 and it was designed with the individual dwelling units at that time. Mr. Jose said when he received the Notice he contacted the tenants and talked to them and they expressed their desire to remain on the property and file the appeal. He said the tenants gave him the money to file the appeal and if the appeal was denied there would be four families without a place to live.

Mr. Hammack asked the appellant how many families reside on the property. Mr. Jose said there were two black families and two white families and added that the money he receives from rent pays the mortgage, real estate taxes, and the utilities.

Staff had no closing comments.

Page 312, December 3, 1996, (Tape 1), ERIBERTO L. JOSE, Appeal 96-L-028, continued from Page 311 )

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he was sympathetic to the appellant's dilemma and that he certainly did not want to be the one who puts four families onto the street, but this was a legal issue before the Board with regard to interpreting the Zoning Ordinance. He added that to interpret it in any other way than what the Zoning Administrator has done would be an error on the Board's part as it was very clear that there are four units on one lot and how they occurred was in violation of the Zoning Ordinance. Mr. Pammel made a motion to uphold the interpretation of the Zoning Administrator.

Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 312, December 3, 1996, (Tape 1), Information Item:

Approval of November 26, 1996 Resolutions


Mr. McPherson made a motion to approve the Resolutions as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

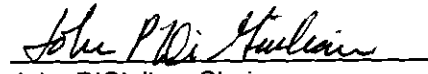
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As there was no other business to come before the Board, the meeting was adjourned at 10:42 a.m.

Minutes by: Betsy S. Hurtt

Approved on: January 21, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 10, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley. James Pammel and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 313, December 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. TERESA PINHEIRO, VC 96-P-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.8 ft. from side lot line. Located at 2601 Hillsman St. on approx. 10,589 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((17)) 16. (MOVED FROM 10/22/96 DUE TO CANCELLATION OF 10/22/96 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. The applicant, Teresa Pinheiro, 2601 Hillsman Street, Falls Church, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 7.2 feet to allow an addition consisting of a garage to be located 4.8 feet from the side lot line. Ms. Langdon noted that a violation was issued by the Zoning Enforcement Branch of the Office of Comprehensive Planning (OCP) on the applicant's property dated October 24, 1996; however, since the variance was not a result of the violation it was not addressed in the staff report.

Ms. Pinheiro presented her request as outlined in the statement of justification submitted with the application. She cited safety and storage issues as to why she was requesting the garage and added that there was no other place on the lot to put the addition.

Chairman DiGiulian mentioned several letters of opposition sent in from neighbors and questioned Ms. Pinheiro about them. Ms. Pinheiro said she was aware of the letters and felt that the opposition stemmed from her allowing a friend to move into her home who brought some items which created several zoning violations. She said that she was working with the Zoning Enforcement Branch to rectify the situation and the variance was not being requested as a solution to the violation.

Mr. McPherson questioned Ms. Pinheiro on how close her proposed garage would be to the adjacent dwelling and what was the difference in safety issues today versus when she bought the property in 1993. Ms. Pinheiro said the proposed garage would be 16.8 feet from the adjacent dwelling and that the safety concern was present when she bought the house but she could not afford to do the construction until now.

In response to a question from Mr. Hammack, Ms. Pinheiro said she decided on a two-car garage versus a one-car because the expense of having it built would be the same, the value of the property would be greater, and the possibility of future family expansion.

Chairman DiGiulian called for speakers in support, and hearing no response he called for speakers in opposition.

Ed Barber, 1404 Ellison Street, Falls Church, Virginia, was opposed to the application because he felt the proposed garage would be too close to his side lot line and it should be scaled down to match the others in the neighborhood. Mr. Barber felt that the applicant did not meet the hardship requirements for a variance because she could build a smaller one-car garage and still meet the setback requirements.

In response to a question from Mr. Hammack, Mr. Barber said his concern about the garage was not over its depth, but rather with the width because that is what comes close to his property line. He added that it was his understanding that Ms. Pinheiro could build the garage as deeply as she chose within the setback requirements of her backyard; therefore, it could be longer.

In rebuttal, Ms. Pinheiro said she felt the proposed garage would not alter the character of the neighborhood and added that she wanted the garage to be at least 20 by 20 feet so it could be useful and of value to her.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 96-P-111 for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-P-111 by TERESA PINHEIRO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.8 feet from side lot line, on property located at 2601 Hillsman Street, Tax Map Reference 49-2((17))16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-3.
- 3. The area of the lot is 10,589 square feet.
- 4. The applicant could construct an over-sized one car garage within the existing setback requirements.
- 5. The applicant's testimony showed the request for a two car garage is for convenience. She stated that she only owned one car and wanted to get more value for her money.
- 6. The requested variance would have a detrimental impact on the adjacent property owner.
- 7. The applicant does not meet the nine required standards for a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

Page 316, December 10, 1996, (Tape 1), TERESA PINHEIRO, VC 96-P-111, continued from Page 314

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 December 18, 1996.

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Page 315, December 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ALBERT J. AND LISA CLAIRE DWOSKIN, VCA 70-D-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.7 ft. from side lot line. Located at 1255 Crest Ln. on approx. 2.77 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((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. The applicant's agent, Grayson Hanes, of Hazel and Thomas, P.C., replied that it was and distributed documents to the Board.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant's agent requested a variance of 16.3 feet in order to enclose an existing deck over a walk out basement to be located 3.7 feet from the side lot line.

Mr. Hanes said he had distributed to the Board a copy of the letter from Mrs. Bowman, the property owner who would be the most affected by the request, and a report from Thomas Reed, an appraiser, in Fairfax County. He said the house is over 100 years old and back in 1970, prior to the applicant's purchasing the property, a variance request was submitted to the Board for the exact distance as in this application in order to construct a patio on the property. Mr. Hanes said what the applicants would like to do now is enclose the structure and added that the distance from the lot line will remain the same. He addressed the required standards for the granting of a variance citing the unusual topography of the lot and added that there were no objections from the neighbors.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply he closed the public hearing.

Mr. McPherson made a motion to approve VC 96-D-063 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 3, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VCA 70-D-063 by ALBERT J. AND LISA CLAIRE DWOSKIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.7 feet from side lot line, on property located at

Page 316, December 10, 1996, (Tape 1), ALBERT J. AND LISA CLAIRE DWOSKIN, VCA 70-D-063, continued from Page 315)

1255 Crest Lane, Tax Map Reference 31-2((1))23, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.77 acres.
4. There is no real change from the variance request that was granted in 1970. The factors are still there that existed at that time.
5. The neighbors have no objections to the variance request.
6. The lot is an unusual shape.
7. The topographic conditions indicate that this property would be subject to a variance.
8. The applicant meets the nine 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 **GRANTED** with the following limitations:



1. This variance is approved for the location of second story addition shown on the plat prepared by D. Lee Triplett, L.S., dated September 17, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 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 December 18, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 317, December 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES A. CROSS C/O WOLFTRAP CREEK NO. 1, L.C., SP 96-H-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 20.3 ft. from rear lot line. Located at 1830 Foxstone Dr. on approx. 11,629 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((33)) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Chuck Dunlap, with the firm of Walter L. Phillips, replied that it was.

Susan Langdon, Senior 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 20.3 feet from the rear lot line; thus, a modification of 4.7 feet was requested.

Mr. Dunlap said he believed this was a fairly straight forward application as the house was originally shown on a grading plan approved on April 26, 1996, by the Department of Environmental Management (DEM), which showed the house complying with all the Zoning Ordinance setback requirements. The building permit was subsequently issued on May 12, 1996, and the house was staked out the following day and it appeared the house was erroneously shifted 5 feet to the rear of the lot at the time the basement was excavated. Mr. Dunlap explained that by the time the error was discovered during a wall check, the footings, walls, and the basement were in place and the first floor had been constructed. Since that time, the house has been completed, a Non-Residential Use Permit (NON-Rup) issued, and it has been sold and is now occupied by the new owners. He outlined the reasons as to why the request should be approved.

Mr. Hammack said it appeared that only one corner of the house was constructed in error. Mr. Dunlap said that was correct.

Mr. McPherson asked the speaker if he believed the error occurred because of the extra space that was needed over the two-car garage or due to the fact that the house was incorrectly measured from the front of the house. Mr. Dunlap said he believed it was due to an error in measuring.

Page 318, December 10, 1996, (Tape 1), CHARLES A. CROSS C/O WOLFTRAP CREEK NO. 1, L.C., SP 96-H-042, continued from Page 317

Chairman DiGiulian called for speakers, either in support or in opposition, to the request and hearing no reply he closed the public hearing.

Mr. Dively made a motion to SP 96-H-042 to grant for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 3, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-H-042 by CHARLES A. CROSS C/O WOLFTRAP CREEK NO. 1, L.C., under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 20.3 feet from rear lot line, on property located at 1830 Foxstone Drive, Tax Map Reference 28-4((33))9, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by Charles F. Dunlap, dated August, 1996, revised September 9, 1996, 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 5-0. Mr. Ribble 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 December 18, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 319, December 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. LOUIS S. POLSTER, SP 96-V-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.5 ft. from side lot line. Located at 2205 Martha's Rd. on approx. 15,990 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 111. (MOVED FROM 11/12 AND 12/3/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Louis Polster, 2205 Martha's Road, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for error in building location to permit a shed and workshop to remain 3.5 feet from the side lot line; therefore, a modification of 11.5 feet was requested.

Mr. Polster presented his request as outlined in the statement of justification submitted with the application. He briefly outlined the events that lead up to the violation notice he received from the Zoning Enforcement Branch and the discovery that the shed was built in error. He explained he had contacted the County to see if he needed a special permit and was advised that he did not; however, he did not realize that because he had bolted the two sheds together and put a door connecting them it would be considered one structure which would require a special permit. He submitted a letter of support from an adjacent neighbor who felt the shed was built in the most unobtrusive location on the property. Mr. Polster said if he relocated the shed to where it would meet the setback requirements it would be much more visible to the neighbors. In sum, he felt he had placed the shed in the best location with the least amount of impact on the neighbors and it would be a financial burden to move.

Mr. Hammack and the applicant had a discussion on the height of the shed at its highest point. As a result, it was discovered that the plat incorrectly showed the height of the shed as 9.13 feet when it should have been 9 to 13 feet in height.

Chairman DiGiulian called for speakers in support, hearing no reply he called for speakers in opposition.

Mary Ellen Fitzpatrick-Hopkins, 7409 Rebecca Drive, Alexandria, Virginia, submitted photographs depicting the visibility of the shed from her property, two letters in opposition from neighbors, a copy of the Hollin Hills Covenants and the Philosophy and Overview of the Design Review Committee, a copy of a letter from the Design Review Committee stating that no application was received from Mr. Polster to allow him to build a shed, and a copy of her statement to the Board. Her main points dealt with the large size and close proximity of the shed to her property. Ms. Hopkins felt the applicant was aware of the homeowners association

covenants and the zoning requirements prior to building the shed. In sum, Ms. Hopkins felt the building should never have been constructed in that location in the first place and that the applicant did not make a good faith effort to present plans to anyone prior to the construction of the shed.

In response to a question from Mr. Hammack, Ms. Hopkins said she made her complaint to Zoning Enforcement in May of 1996 after the building was constructed.

In rebuttal, Mr. Polster said the photographs that Ms. Hopkins submitted depicted the view of the shed from the side of her house while his depicted the view of the shed from her patio and front entrance; therefore, he felt his photographs were more accurate. He reiterated that he had contacted the County prior to constructing the shed but due to an apparent miscommunication he was told he did not need a special permit.

In response to questions from Mr. Hammack, Mr. Polster said he was an inventor and needed additional space to archive and develop items. He said he did not work in the shed in the evening; therefore, it does not have electricity. On occasion, he noted that he would take a flashlight or drag a service light into the shed when he needed something at night.

Mr. Hammack discussed with Mr. Polster how he had described his plans to staff regarding the construction of the two sheds in order to determine if a permit was needed or not.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, brought to the Board's attention the Notice of Violation from the Zoning Enforcement Branch which showed the height of the shed as approximately 16 feet and the location as 13 1/2 feet from the rear lot line. Ms. Kelsey said if that was the correct height then the shed would also require a special permit to allow it to remain closer to the rear lot line. Ms. Kelsey discussed with Mr. Hammack how the height of the shed would be measured, noting that the lowest point would include the pilings under it. Mr. Polster responded that he was advised by the County not to fill in the pilings around the shed so it could be inspected if the special permit was approved. He said the final height of the shed will be 13 feet. Mr. Hammack asked Mr. Polster if he was aware of the fact that you need a permit to fill in more than 1 1/2 feet. Mr. Polster said he was not advised of that but would obtain any necessary permits needed to complete the shed.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SP 96-V-033 for the reasons set forth in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-V-033 by LOUIS S. POLSTER, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.5 feet from side lot line, on property located at 2205 Martha's Road, Tax Map Reference 93-3 ((4)) 111, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,990 square feet.

Page 321, December 10, 1996, (Tape 1), LOUIS S. POLSTER, SP 96-V-033, continued from Page 320)

4. The applicant did not meet the nine required standards for a variance but it was noted that the error exceeds ten percent of the measurement.
5. The applicant's testimony did not show the error was done in good faith.
6. The special permit request will have a detrimental impact on the adjacent property owners.
7. The shed is 16 feet in height which is larger than any normal shed.
8. The fact that the shed may be more intrusive to the neighbors if it is moved is not a relevant issue.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 December 18, 1996.

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Page 321, December 10, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ANNIE H. PARRA, SP 96-Y-037 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 5411 Hampton Forest Way on approx. 13,080 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 55-4 ((7)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Annie Parra, 5411 Hampton Forest Way, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was currently operating a home child care facility for 7 children by right under the provisions of Section 10-103 of the Zoning Ordinance. The applicant was requesting a special permit to allow a home child care facility for up to 10 children.

Ms. Parra presented her request as outlined in the statement of justification submitted with the application. She said most of the children she cares for live in her neighborhood; therefore, she would not be generating any additional traffic.

In response to a question from Mr. McPherson, Ms. Parra said the children range from 1 ½ years to elementary school age, with the school age children only being cared for in the afternoon. She said she was currently taking care of 10 children and was licensed by the State to care for 12.

Mr. Hammack then questioned staff on the applicant being limited to 7 children by right. Ms. Powell said that was correct but it was her understanding that the applicant cares for a total of 7 at any one time, with a total of 10 throughout the day. She said the Zoning Ordinance only specifies at any one time, not maximum daily enrollment.

When Mr. McPherson questioned Ms. Parra on how many total children she had in the afternoon, she responded that she currently had a total of 8.

Chairman DiGiulian called for speakers, hearing no reply he closed the public hearing.

Mr. Hammack moved to grant SP 96-Y-037 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff reported dated December 3, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-Y-037 by ANNIE H. PARRA, under Section 3-203 of the Zoning Ordinance to permit a home child care facility, on property located at 5411 Hampton Forest Way, Tax Map Reference 55-4((7))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 December 10, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster) and WS.
3. The area of the lot is 13,080 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5411 Hampton Forest Way (13,080 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 Andrew V. Wyczalkowski, dated August 18, 1995, revised by A.H. Parra, August 30, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of children on site at any one time shall not exceed ten (10) children; the maximum daily enrollment shall not exceed ten (10) children.
5. The hours of operation shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday. Arrival and departure times shall be staggered to prevent traffic congestion in the neighborhood and to allow sufficient on-site parking.
6. The number of non-resident employees shall be limited to one (1). Only one (1) employee in addition to the applicant shall be on site at any one time during normal hours of operation.

7. The applicant and employee shall park their vehicles in the garage and in the driveway closest to the dwelling, respectively. The remainder of the driveway shall be available during all hours of operation for drop-off and pick-up of children.
8. There shall be no signs associated with this use.
9. This special permit for a home child care facility is approved for a period of three (3) years from the final date of approval of this Special Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 December 18, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 323, December 10, 1996, (Tape 1), Scheduled case of:

9:30 A.M. POHICK EPISCOPAL CHURCH, SPA 81-L-037-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-L-037 for church and related facilities to permit the addition of two trailers. Located at 9301 Richmond Hwy. on approx. 39.50 ac. of land zoned R-1 and HD. Mt. Vernon District. Tax Map 108-1 ((1)) 27. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Myers, 7814 Richfield Road, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 87-L-037 for a church and related facilities to seek the approval of the addition of two temporary classroom trailers for a period of five years. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in Appendix 1 of the Staff Report; therefore, staff recommended approval. Mr. Hunter said staff also recommended that the transitional screening and barrier requirements be modified as noted in the Proposed Development Conditions in Appendix 1.

Mr. Myers said the church needs the trailers to accommodate the overcrowding in the Christian Education Department and the church is proposing a time period of no more than five years. He said the site consists of 39 acres; therefore, he did not believe the trailers would have any visual impact on the neighbors on Route 1 or Old Colchester Road. Mr. Myers asked that the road dedication referenced in Condition Number 7 be deferred until such time as the widening of Route 1 is directed by the Virginia Department of Transportation (VDOT).

Mr. Kelley said the grounds of the church were lovely and asked the speaker if the church had any plans to expand the cemetery. Mr. Myers said not at this time, but he believed it was very doubtful in the future.

In response to a question from Mr. Hammack with regard to the seating capacity, Mr. Myers said the church was not requesting an increase in the church buildings themselves and added that the church was only trying to address the overcrowding in the Christian Education Department.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply he closed the public hearing.

Mr. McPherson made a motion to approve SPA 81-L-037-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with the deletion of Number 7 with the remaining Conditions renumbered.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 81-L-037-2 by POHICK EPISCOPAL CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 81-L-037 for church and related facilities to permit the addition of two (2) temporary classroom trailers, on property located at 9301 Richmond Highway, Tax Map Reference 108-1((1))27, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 and HD.
3. The area of the lot is 39.50 acres.
4. The applicant has met 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 Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9301 Richmond Highway 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 Springfield Associates, Inc. dated June 2, 1981, revised through September 25, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*



Page 325, December 10, 1996, (Tape 1), POHICK EPISCOPAL CHURCH, SPA 81-L-037-2, continued from Page 324)

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The maximum number of seats in the sanctuary shall be two-hundred and four (204).
6. Sixty-seven (67) parking spaces shall be provided for this special permit use as shown on the special permit plat. All parking shall be on site.\*
7. The existing vegetation shall be retained in a twenty-five (25) foot buffer area between the proposed addition and Old Colchester Road. Transitional screening shall be modified along all other lot lines in order to allow the existing vegetation to satisfy this requirement. The barrier requirement shall be waived along all lot lines. The trailers shall be skirted and landscaped with plants which will facilitate the retention of the historic integrity of the site.\*
8. Any proposed lighting of the parking lot areas shall be in accordance with the following:
  - The combined height of any new light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.
9. The term for the location of the (2) temporary classroom trailers on the subject property shall be limited to five (5) years from the date of final approval of this special permit.

These development conditions incorporate and supersede all previous development conditions. The previous conditions imposed whole or in-part are followed by an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless 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 and Mr. Pammel were absent from the meeting.

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Page 325, December 10, 1996, (Tape 1), Scheduled case of:

9:30 A.M. EDWARD A. CERCONE, APPEAL 96-B-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a Home Occupation Permit may not be issued to the appellant as a firearms dealer because the nature of the business cannot comply with use limitations of Sect. 10-304 of the Zoning Ordinance. Located at 9220 Winbourne Rd. on approx. 10,857 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-4 ((10)) 244. (MOVED FROM 10/29/96 AT APPLICANT'S REQUEST)

Chairman DiGiulian noted for the record that the Board had received a letter from the appellant requesting a withdrawal of the appeal. Mr. Hammack moved to grant the appellant's request. Mr. Dively seconded the

Page 326, December 10, 1996, (Tape 1), EDWARD A. CERCONE, APPEAL 96-B-033, continued from Page 325

motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 326, December 10, 1996, (Tape 1), Scheduled case of:

9:30 A.M. STEVEN M. COOLEY, Appeal 96-D-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a business for the retail sale of produce, bedding plants and garden supplies, has erected two accessory structures without Building Permits and has erected a portable sign, all in violation of the Zoning Ordinance provisions. Located at 6732 Lowell Ave. on approx. 13,795 sq. ft. of land zoned R-4, HC and SC. Dranesville District. Tax Map 30-2 ((9)) 56.

Chairman DiGiulian noted for the record that the appellant was requesting a deferral.

William Shoup, Deputy Zoning Administrator, referenced staff's memorandum dated December 2, 1996, which included a copy of the appellant's request. He added that staff had talked to the appellant and informed him that he should be present, but he did not appear to be in the Board Room. Mr. Shoup said given the circumstances staff would ask that the Board dismiss the appeal. He added that there was one nearby resident present who wished to address the issue.

Helen Hartzog, 1643 Chain Bridge Road, McLean, Virginia, submitted a document to the Board listing her questions and concerns. The issues she brought forth dealt with no on-site vehicular access into the property either from Lowell or Loflen Street, no on-site parking, and no on-site access to water. She questioned how these issues would be resolved.

Mr. Hammack pointed out that the Notice of Violation was dated July 23, 1996 and asked if the appellant had provided staff with a site plan or filed a special permit application. Mr. Shoup said staff had discussed this with the appellant but as of this date, nothing has been filed. He added that during conversations with staff the appellant had indicated that he believed filing a special permit would be the better option. Mr. Hammack asked if the appellant was still operating. Mr. Shoup said he believed so but noted that the operation was seasonal and should be ending soon but reopening in the spring. Staff would like to resolve this appeal issue and take action in the spring, if necessary, prior to the appellant opening his operation.

Mr. Kelley said he saw no harm in deferring the appeal to January 21, 1997, but asked that staff convey to the appellant that he would be prepared to make a motion to dismiss the appeal if the appellant was not prepared to present his case on that date in lieu of a special permit being filed. He incorporated these comments into a formal motion. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 326, December 10, 1996, (Tape 1), Information Item:

Jerry and Karen Stone, SP 95-S-054 and VC 95-S-094

David Hunter, Staff Coordinator, said the applicant's attorney, Tom Thomas, was requesting additional time in order to submit revised plats to the Board. He said staff recommended that the item be placed on the after agenda list for January 28, 1997. Mr. Hammack questioned if that was enough time. Mr. McPherson said it was his understanding that Mr. Thomas had requested 60-days and asked staff for a date in late February. Mr. Hunter suggested February 25th. Mr. McPherson so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 327, December 10, 1996, (Tape 1), Information Item:

Approval of October 1, 1996 and November 7, 1996 Minutes

Mr. Hammack so moved. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 327, December 10, 1996, (Tape 1), Information Item:

Request for Intent to Defer from The Montessori Children's Center, SP 96-H-041

Mr. McPherson made a motion to grant the appellant's request. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 327, December 10, 1996, (Tape 1), Information Item:

Approval of December 3, 1996 Resolutions

Mr. McPherson made a motion to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 327, December 10, 1996, (Tape 1), Information Item:

Expiration of term for John DiGiulian

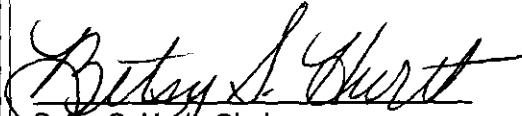
Mr. Hammack called the Board's attention to the memorandum from Betsy Hurtt, Clerk to the Board of Zoning Appeals, regarding the expiration of term for Chairman DiGiulian. He made a motion that the Board unanimously go on record supporting the reappointment of Chairman DiGiulian. Mr. Kelley said he was more than happy to second the motion and that he hoped the Chairman would accept renomination. Mr. Hammack noted that two members were absent. Mr. Kelley said he would like to proceed with the vote and asked that staff poll the two absent members. The motion carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

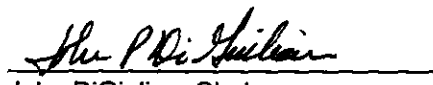
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As there was no other business to come before the Board, the meeting was adjourned at 10:51 a.m.

Minutes by: Teresa Wang

Approved on: March 11, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 17, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:02 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 329, December 17, 1996, (Tape 1), Scheduled case of:

8:00 P.M. CALVARY CHRISTIAN CHURCH, SPA 76-S-200 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-S-200 for a church and related facilities to permit building additions and site modifications. Located at 9800 Old Keene Mill Rd. on approx. 9.96 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((2)) 8 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. The applicant's agent, Cleve E. Dryden, 8101 Phillips Highway, Suite One, Jacksonville, Florida, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested an amendment to SP 76-S-200 for a church and related facilities to permit building additions and additional parking spaces in three phases. Phases I and III will include classrooms, offices and a future kitchen, and Phase II will include a proposed family life/fellowship hall approximately 28 feet in height with no additional seating being proposed.

The applicant also requested a modification of the transitional screening requirement to allow the existing vegetation to serve as transitional screening adjacent to the proposed building additions. Staff was of the opinion that the proposed evergreen plantings will help to soften the visual impact of the proposed construction. In conclusion, Mr. Hunter said that the subject application would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in Appendix 1 of the Staff Report; therefore, staff recommended approval of SPA 76-S-200.

Mr. McPherson asked staff for a clarification of the wording in Condition Number 8 which addressed the provision of a fence if such is desired by an adjacent homeowner. Mr. Hunter said the applicant had committed to provide screening along the lot lines where the proposed additions are shown in addition to a fence that is shown on the plat. At this time, the applicant has not had an opportunity to poll the adjacent property owners to determine if they would support the construction of a fence. In response to a question from Mr. Hammack as to the number of adjacent homeowners, Mr. Hunter replied three. Mr. Kelley said he recalled a similar condition in another application, and the Board had wisely removed the condition.

Mr. Dryden said the request consisted primarily of the addition of educational offices as well as a fellowship area and will be an asset to the community. He said the church has held awareness meetings with the neighborhood and there is not opposition to the request. Mr. Dryden said the church was in agreement with the staff report and had no objections to the development conditions. He thanked staff, Supervisor McConnell, and Rita Thomas, a member of Supervisor McConnell's staff, for their assistance during the process. Mr. Dryden displayed architectural renderings of the site as it now exists with the proposed additions.

Chairman DiGiulian called for speakers.

Martin Schuh, 6902 Courageous Circle, Burke, Virginia, head of the expansion committee at the church, shared how the church had arrived at the proposed additions. He read a prepared statement into the record citing the growth of the church as the reason for the requested additions. Mr. Schuh said the church had discussed the proposal with the neighbors and had tried to design an expansion which would have the least amount of environmental impact.

Mr. Ribble made a motion to grant SPA 76-S-200 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 10, 1996, with Condition Number 8 revised as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-S-200 by CALVARY CHRISTIAN CHURCH, under Section 3-103 of the Zoning Ordinance to permit amend SP 76-S-200 for a church and related facilities to permit building additions and site modifications, on property located at 9800 Old Keene Mill Road, Tax Map Reference 88-1((2))8 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 December 17, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 9.96 acres.
- 4. The applicant presented testimony indicating compliance with the General Standards for a special permit use and the additional standards for this use as contained in Sections 8-006 and 3-103 of the Zoning 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 Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9800 Old Keene Mill Road containing 9.96 acres of land, 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 Prosser, Hallock, & Kristoff dated June 25, 1996, revised through November 18, 1996, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

Page 331, December 17, 1996, (Tape 1-2), CALVARY CHRISTIAN CHURCH, SPA 76-S-200, continued from Page 330 )

5. The maximum number of seats shall be 300.
6. There shall be ninety-three (93) parking spaces provided as shown on the special permit plat. All parking shall be on site.
7. Transitional Screening 1 shall be modified to that shown on the special permit plat along all property lines to allow the existing vegetation to satisfy this requirement. Evergreen trees and shrubs shall be planted along the western lot line adjacent to the proposed additions in order to screen the addition from adjacent properties, and the location, size and type of plantings shall be approved by DEM.
8. The barrier requirement shall be waived along all lot lines.
9. Stormwater Best Management Practices (BMP's) shall be provided on site as shown on the special permit plat as determined by DEM.
10. Signs shall be permitted in accordance with Article 12, Signs.
11. Any proposed lighting of the parking lot areas shall be in accordance with the following:
  - The combined height of any new light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.

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. Commencement of construction of Phase I shall constitute commencement of construction for all three phases. 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. McPherson seconded the motion which carried 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 7, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 331, December 17, 1996, (Tape 1), Scheduled case of:

8:00 P.M. MONTESSORI CHILDREN'S CENTER, INC., SP 96-H-041 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 2745 Centreville Rd. on approx. 1.54 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 34D.

Chairman DiGiulian noted for the record that the Board had issued an intent to defer this application to February 4, 1997, at 9:00 a.m. at its December 10th public hearing. Mr. Pammel made a motion to defer SP 96-H-041 to the date specified by the Chairman. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 332, December 17, 1996, (Tape 1), Information Item:

Approval of October 15, 1996 Minutes.

Mr. Hammack made a motion to approve the Minutes as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 332, December 17, 1996, (Tape 1), Information Item:

Request for Reconsideration from Louis Polster, SP 96-V-033

Mr. Hammack asked that the applicant's letter be made a part of the record noting that the issues outlined in the letter were part of the testimony presented at the December 10th public hearing. He made a motion to deny the applicant's request for Reconsideration. Mr. Kelley agreed with Mr. Hammack's comments and seconded the motion which carried by a vote 6-0-1. Mr. Pammel abstained from participating as he was absent from the December 10th public hearing.

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Page 332, December 17, 1996, (Tape 1), Information Item:

Out of Turn Hearing Request from William and Julia Turner, VC 96-P-148

Mr. Hammack asked the nature of the request. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant was requesting approval of a variance in order to construct an addition 25 feet from a street line of a corner lot, a 6 ft. high fence in a front yard, and an accessory structure in a front yard. Mr. Ribble made a motion to deny the application's request. Mr. Dively seconded the motion which carried by a vote of 7-0. The hearing is currently scheduled for March 4, 1996.

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Page 332, December 17, 1996, (Tape 1), Information Item:

Out of Turn Hearing Request from Stephen V. McBrien, VCA 92-C-082

Mr. Dively said the applicant had valid reasons for requesting an out of turn hearing since he will be out of the country on active military service for the month of March. Following a discussion between the Board and staff, Mr. Dively made a motion to schedule the application for February 4, 1997 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 332, December 17, 1996, (Tape 1), Information Item:

Approval of Resolutions from December 10, 1996 Meeting

Mr. McPherson made a motion to approve the Resolutions as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining from the vote as he was not present at the December 10th public hearing.

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Page 333, December 17, 1996, (Tape 1), Adjournment:

333

As there was no other business to come before the Board, the meeting was adjourned at 8:19 p.m.

Minutes by: Betsy S. Hurtt

Approved on: January 7, 1997



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 7, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting

Chairman DiGiulian called the meeting to order at 9:10 a.m.

The first order of business was the election of Chairman, Vice Chairman, and Clerk to the Board of Zoning Appeals for the 1997 calendar year.

Mr. Hammack nominated John DiGiulian for Chairman. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

Mr. Kelley nominated Paul Hammack and John Ribble to serve as Vice Chairmen. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

Mr. Kelley nominated Betsy Hurtt to serve as Clerk to the Board of Zoning Appeals. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 335 January 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. GERARD J. RUELLE, SP 96-B-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 4.4 ft. from side lot line. Located at 5410 Inverchapel Rd. on approx. 13,982 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((3)) (3) 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. Gerard Ruelle, 5410 Inverchapel Road, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a modification of 7.6 feet to the minimum side yard requirements based on an error in building location.

Mr. Ruelle presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Ruelle said he contacted the County's Help/Hotline to obtain information pertaining to the proximity and the height of the carport, and information on how to construct the carport. He said the information had been found to be incorrect and he had since learned from a representative of the County, that an internal audit showed that the Help/Hotline occasionally gave incorrect advice up to 10% of the time. He said he was told by the County that he could build a free standing structure with no height restrictions and no setback requirements as long as it was a free standing structure. Mr. Ruelle said the structure conforms with the general appearance of the house and with other carports in the neighborhood. He submitted letters supporting the application from some of the surrounding neighbors.

Mr. Hammack asked if there were any electrical hook-ups in the carport. Mr. Ruelle stated that there was a light connected to the carport, but it was an extension of the light on his front porch.

Mr. Hammack asked Mr. Ruelle if he had obtained a building permit. He said he was in the process of obtaining a building permit when the error was discovered.

Chairman DiGiulian called for speakers.

Jeffery T. Twortey, Attorney representing George and Nancy Merkel, adjacent property owners, came forward to speak in opposition to the application. He expressed concerns about the applicant's failure to obtain a building permit and the structure not being a free standing structure, as stated by the applicant. Mr. Twortey also said that the applicant had approached his clients referencing purchase of a strip of their land immediately adjacent to the property line. He submitted photographs of the carport to the Board. Mr.

Twortey said his clients believed that the carport was an eyesore. He suggested that if the Board granted the application that they enforce building code, screening, and electrical regulations. He referenced a previous application granted to the applicant in which the applicant did not comply with the development conditions. Mr. Twortey stated that the applicant had changed the dimensions of the approved addition on his previous application which caused the addition not to be in compliance with the development conditions.

William Merkel and Nancy Merkel, 5412 Inverchapel Road, spoke in opposition, stating concern about decreased property values. Mr. Merkel also expressed concern about the application not meeting the required standards.

Mr. Hammack asked how far away the Merkel's residence is from the property line. Mr. Twortey replied, "Approximately 25 feet."

Mr. Ruelle stated in his rebuttal that he approached the Merckels and asked to purchase a strip of their land because he originally planned to have a bigger carport. He said the carport was not attached and the reason it may have been an eyesore was because it was unfinished. Mr. Ruelle noted that the other neighbors did not oppose the application. Mr. Ruelle said he believed that the previous application had no bearing on this public hearing.

Mr. Hammack said that the roof of the carport appeared to be attached to the house as shown on the photographs. Mr. Ruelle said the carport was right up against the house but, was not attached. Mr. Hammack said the issue was whether the applicant acted in good faith and the history of the projects that he had constructed had a bearing on that issue.

Mr. Dively asked the applicant when he began construction of the carport and when he had applied for a building permit. Mr. Ruelle replied that he began construction in November of 1994 and applied for a building permit sometime prior to November, but he couldn't recall exactly. Mr. Dively asked what happened once the building permit application was submitted. Mr. Ruelle said the application was never technically submitted. He said he visited the office and began the process, but the permit office discovered that the structure was too close and would not grant a building permit. Mr. Dively asked the applicant why he had built the structure knowing that the building permit was not going to be granted. Mr. Ruelle replied that he knew a building permit wouldn't be granted for a carport, but thought he could build a free standing structure, as long as it was not attached to the house.

Chairman DiGiulian questioned the applicant about the concrete slab being connected to the house. Mr. Ruelle replied that the concrete slab, the floor of the carport, was actually the driveway and that it was connected to the house. Mr. Dively said that the Board was not asking ridiculous questions and that the structure looked identical to an attached garage and it seemed as if the applicant was trying to "hoodwink" the Zoning Administrator.

Mr. Kelley said if the applicant knew a building permit was required in one instance, how had he come to the conclusion that it wasn't needed in the other instance. Mr. Ruelle replied that the information obtained from the County Help/Hotline indicated that he did not need a building permit for a free standing structure.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he had difficulty finding that the applicant had satisfied the standards for this type of a special permit to be granted, and it was difficult for him to believe that the applicant acted in good faith. Mr. Hammack said in view of the applicant's testimony, and that the applicant went to the Zoning Administrator and was denied a building permit application, made it seem as if he had tried to manipulate the Ordinance to justify the construction without a building permit. Therefore, Mr. Hammack moved to deny SP 96-B-044 for the reasons set forth in the Resolution.

Mr. Hammack added that the photographs submitted by the applicant, gave the appearance of a carport attached to the building. He noted that in typical construction, the understanding is that a concrete slab adjacent to a residence and is an attachment to the residence; he said it was strange to say that the structure was not attached, when it was under any normal definition, an attached structure.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-B-044 by GERARD J. RUELLE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 feet from side lot line, on property located at 5410 Inverchapel Road, Tax Map Reference 79-2((3))(3)1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,982 square feet.
4. Based on the applicant's testimony, it is difficult to believe that this error was made in good faith and in view of the applicant's testimony, a building permit was denied and it appears as though the applicant has tried to manipulate the Ordinance.
5. The photos submitted by the applicant gives the appearance of a carport that is attached to the building and it has a concrete slab that is attached to the house and to say it is not an attached structure is a circumvention of the Ordinance.

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. 8-903 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997.

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Page 331, January 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & WANDA SMITH, VC 96-L-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line such that side yards total 18.0 ft. Located at 3809 Stonebridge Rd. on approx. 8,677 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-2 ((22)) 472.

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 Smith, 3809 Stonebridge Road, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 2.0 feet to the total minimum side yard requirements.

Mr. Smith presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was minimal and there was no conflict with the neighbors. Mr. Smith noted a letter from an adjacent neighbor supporting the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-L-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 30, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-L-134 by WILLIAM & WANDA SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.0 feet from side lot line such that side yards total 18.0 feet, on property located at 3809 Stonebridge Road, Tax Map Reference 92-2((22))472, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-3.
- 3. The area of the lot is 8,677 square feet.
- 4. The applicant met the required standards for a variance.
- 5. The variance request was minimal.
- 6. The lot has an irregular shape.
- 7. The lot lines converge towards 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Rice Associates, P.C., dated October 1, 1996, signed October 4, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 339, January 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. PAUL JOSEPH & PATRICIA ELLEN HOLLIS, SP 96-M-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 25.9 ft. from front lot line and accessory structure 2.0 ft. from side lot line and 9.2 ft. from rear lot line. Located at 3290 Blue Heron Dr. on approx. 9,309 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((42)) 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. Paul Hollis, 3290 Blue Heron Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification of 4.1 feet to the minimum front yard requirement, 8.0 feet to the

minimum side yard requirement, and 8.8 feet to the minimum rear yard requirement, for the workshop, based on an error in building location.

Mr. Hollis presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Hollis said he received a Notice of Violation from the County and was concerned because he thought he had complied with the requirements for obtaining all the necessary permits and inspections. He said he contacted the Office of Plans Review and was told that a permit would not be needed to renovate the shed because he currently held an open permit for other construction. Mr. Hollis presented photographs to the Board. He added that the workshop was designed to match the house.

Mr. Hammack asked Mr. Hollis if he had informed the County of his intentions to enlarge the existing shed and if he had discussed the dimensions of the shed. Mr. Hollis said he told the County he had a permit for an existing shed and was under construction with an open permit for some other renovations. He said he asked the County if he needed a building permit to expand the existing shed and was told he could build under the open permit. Mr. Hollis said the dimensions of the shed were never discussed.

Chairman DiGiulian called for speakers.

Kevin and Patricia McEvoy, 3288 Blue Heron Drive; Sharon Belanger, 3285 Blue Heron Drive; Michael Beckner, 3292 Blue Heron Drive; and J.D. Evans, 3295 Blue Heron Drive, came forward to speak in support of the application. The speakers indicated that the addition to the property was attractive, consistent with the neighborhood, and increased property values.

There were numerous speakers present to speak in support of the application. Chairman DiGiulian asked the members of the audience who were present to support the application to do so by a show of hands. Consequently, the Chairman asked that the speakers only come forward if they had any additional testimony. He said a show of hands was a sufficient means of showing support for the application.

Carolyn Contos, 3236 Annandale Road, spoke in opposition. She expressed concern about the applicant trimming the trees along the rear property line.

Mr. Hollis stated in his rebuttal that the speaker's concern was not a relevant issue to the public hearing. Chairman DiGiulian agreed that it was not a relevant issue and closed the public hearing.

Mr. Ribble moved to grant SP 96-M-046 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 30, 1996.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-M-046 by PAUL JOSEPH & PATRICIA ELLEN HOLLIS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 25.9 feet from front lot line and accessory structure 2.0 feet from side lot line and 9.2 feet from rear lot line, on property located at 3290 Blue Heron Drive, Tax Map Reference 60-2((42))46, 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 7, 1997; and



Page 341, January 7, 1997, (Tape 1), PAUL JOSEPH & PATRICIA ELLEN HOLLIS, SP 96-M-046,  
continued from Page 340)

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the dwelling and accessory structure shown on the plat prepared by Thomas B. Wheatley, Jr., dated April 1975, and revised by James R. Marshall, dated through July 1, 1996, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively made a motion to obtain a report from staff concerning the process in which phone inquiries are handled. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

9:00 A.M. GABRIEL E. NASSAR, JR., VC 96-M-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure in the front yard of a lot containing less than 36,000 sq. ft., 13.0 ft. from front lot line and 9.0 ft. from side lot line. Located at 6436 Lakeview Dr. on approx. 21,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 374. (MOVED FROM 5/14/96,7/2/96,8/6/96 &9/10/96. APPL. AMENDED 11/5/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gabriel Nassar, 6436 Lakeview Drive, Falls Church, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 22.0 feet to the minimum front yard requirement and 6.0 feet to the minimum side yard requirement.

Mr. Nassar presented the variance request as outlined in the statement of justification submitted with the application. He said virtually every house in the neighborhood had a garage structure of some sort. Mr. Nassar said a 10.0 foot side yard storm drainage easement wasn't recorded on the plat. Therefore, they wanted to amend the side yard setback to 10.0 feet. He said the public works office told him that building in an easement was almost impossible. Consequently, they would amend the side yard easement to 10.0 feet, as opposed to the 9.0 feet, shown in the original application.

Mr. Kelley asked if the neighbors' garages were in the front of their houses. Mr. Nassar replied that most of the garages were in line with the house. He added that the builders constructed the garages of the other houses when they were built, but that was not his circumstance.

Chairman DiGiulian called for speakers.

William Kling, 6434 Lakeview Drive, came forward to speak in opposition to the application. He expressed concerns about the application changing the character of the neighborhood and property values being lowered. Mr. Kling presented photographs to the Board.

Mr. Nassar addressed the speaker's concerns in his rebuttal. He said the addition would enhance the neighborhood and would not lower property values. Mr. Nassar stated that there was no other location for the addition.

Chairman DiGiulian closed the public hearing.

Mr. Kelley said he had been through the subject area several times and he believed there was no other location for the addition. He moved to Grant-in-Part for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 30, 1997. A revised plat should be submitted within 30 days to reflect the easement that exists.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-023 by GABRIEL E. NASSAR, JR., under Section 18-401 of the Zoning Ordinance to permit construction of an accessory structure in the front yard of a lot containing less than 36,000 square feet, 13.0 from front lot line and 9.0 feet from side lot line, **(THE BOARD GRANTED A VARIANCE OF 10.0 FEET FROM SIDE LOT LINE)** on property located at 6436 Lakeview Drive, Tax Map Reference 61-3((14))374, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals;

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,900 square feet.
4. The applicant met the required standards for a variance.
5. The lot has exceptional topographical conditions and is very steep.
6. The addition can only be placed in the proposed location.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART** 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, Land Surveyor, dated January 24, 1994, revised by Nicholas Lucarelli, Architect, received on February 28, 1997 and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The accessory structure shall be architecturally compatible with the existing dwelling.
4. The garage shall be constructed in accordance with Section 6-0902.21 of the 1993 Public Facilities Manual.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997, the date that the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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Page 344, January 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ESC, L.L.C., SP 96-Y-043 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard and pool hall. Located at 13891 Metrotech Dr. on approx. 1.07 ac. of land zoned C-8, HC and WS. Sully District. Tax Map 34-4 ((1)) pt. 16E.

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 Early, 4201 St. Jerome Drive, Annandale, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a billiard and pool hall. Ms. Powell noted a change in the development conditions to reflect 152 seats for the eating establishment with 36 of the seats to be located in an outdoor area and 36 at the bar counter. She said the issues associated with the application had been addressed by the Revised Proposed Development Conditions. Therefore, with the implementation of the development conditions, the proposed use was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance Provisions. Staff recommended approval, subject to the Revised Development Conditions dated January 6, 1997.

Mr. Dively asked what had been the standard hours for billiard halls in the County recently. Ms. Powell replied that the latest time had been 2:00 a.m.

Mr. Early presented the special permit request as outlined in the statement of justification submitted with the application.

Chairman DiGiulian called for speakers.

Barbara Wilson, 13704 Birch Drive, came forward to speak in opposition of the application. She expressed concern about the applicant's customers trespassing onto her property through a hole in the fence between her property and the shopping center. Ms. Wilson said she had contacted the shopping center's management to replace the fence but it had not been replaced.

Mr. Early addressed the speaker's concern in his rebuttal. He said he would speak with the landlord about the fence. Mr. Early added that his customers had to be over 21 unless accompanied by their parent.

In response to Mr. Pammel's question, Mr. Early replied that the restaurant had been in operation for 2 years.

Chairman DiGiulian closed the public hearing.

Mr. Dively said the fence issue was the responsibility of the landlord, and that was a separate issue from the subject application. He moved to grant SP 96-Y-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 6, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-Y-043 by ESC, L.L.C., under Section 4-803 of the Zoning Ordinance to permit a billiard and pool hall, on property located at 13891 Metrotech Drive, Tax Map Reference 34-4((1))pt. 16E, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is C-8, HC and WS.
- 3. The area of the lot is 1.07 acres.
- 4. The applicant met 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. 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 13891 Metrotech Drive (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 Dewberry & Davis, dated August 9, 1996, revised through December 23, 1996, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The hours of operation shall be limited to 11:00 a.m. to 2:00 a.m., daily.
6. Any sign erected on the building shall be of a size and materials which are compatible with existing signs on site and shall be subject to the requirements of Article 12 of the Zoning Ordinance.
7. If required by the Department of Environmental Management (DEM), prior to issuance of the Non Residential Use Permit, a parking tabulation shall be submitted to and approved by the Department of Environmental Management which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.
8. The maximum number of billiard/pool tables shall be sixteen (16) and the maximum number of seats in the eating establishment shall be 152, with no more than 36 of those seats located outside and 36 at the bar counter. A canopy may be allowed in order to shelter outdoor tables. The maximum size and configuration of the canopy shall be as determined by the Director of DEM to assure conformance with all applicable Codes.
9. The applicant shall comply with all alcoholic beverage control laws of the State of Virginia.

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 was not present for the vote and Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997. This date shall be deemed to be the final approval date of this special permit. .

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Mr. Kelley said when the last billiard parlor came before the BZA, they had asked staff to develop a draft Ordinance to the Board of Supervisors and for the Board of Supervisors to consider taking the use and grouping it with sports bars or whatever use would be applicable. He asked staff to provide a verbal report on that issue.

Ms. Kelsey responded saying that she could not provide an oral report at that time but would try to accommodate his request the following week. She added that the BZA's request had been transmitted to the Zoning Administrator.

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Page 346, January 7, 1997, (Tape 1 & 2), Scheduled case of:

9:00 A.M. MOSTAFA NADIMI, VC 96-D-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2B having a lot width of 143.00 ft. Located at 8325 Old Dominion Dr. on approx. 5.00 ac. of land zoned R-E. Dranesville District. Tax Map 20-3 ((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. Lily K. Nadimi, 8325 Old Dominion Drive, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 57.0 feet for a subdivision of one lot into two lots. Staff believed that the application did not meet the applicable Zoning Ordinance provisions, particularly Standards 2, 3, 4, 5 and 6 of Sect. 18-404.

In response to Mr. Pammel's question, Ms. Powell replied 75,000 square feet was the minimal lot size in the R-E District.

Ms. Nadimi presented the variance request as outlined in the statement of justification submitted with the application. The applicants requested the variance due to the exceptional narrowness of the lot. Ms. Nadimi said the denial of the application would cause undue hardship on her family because they would not be able to use the full potential and all reasonable uses of the land. She said she wanted to house her immediate family nearby. Ms. Nadimi noted a statement signed by some of the neighbors.

Chairman DiGiulian called for speakers.

Richard Wing, son of Martha Robinson Wing, owner of Lot 1, came forward to speak in opposition to the application. He expressed concern that the applicant could not meet the necessary standards required for a subdivision variance. Mr. Wing believed that subdividing the lot would be similar to stuffing an extra house in the backyard of an existing house, by the creation of a pipestem lot.

Mr. Pammel asked if the proposed drainfield would have an impact on the trees. Mr. Wing replied that he objected to that issue as well, and that two drainfields above Lot 1 would be asking to contaminate the ground water of Lot 1.

Sheila Ryan, 8404 Parham Court, came forward to speak to the application. She said that her family was not opposed to the applicant building a house on the property, but their concern was having access to Old Dominion Drive. Ms. Ryan said when they purchased the property, the County told them they couldn't access Old Dominion Drive due to safety reasons and she felt if the property was going to be rezoned and more houses added then her family should have access to Old Dominion as well.

Chairman DiGiulian noted that the proposed subdivision plan showed that the existing driveway would serve both lots.

Debra Howard, 8400 Parham Court, came forward to speak in opposition to the application. She expressed concern stating that granting the variance was not a necessity under current zoning regulations. She said the application would set an undesirable precedent for adjacent properties and change the nature of the neighborhood.

Ms. Nadimi addressed the speakers' concerns in her rebuttal. She said the proposal would not deviate from the existing character of the neighborhood. Ms. Nadimi added that the drainfield was approved by the health department and that they had no plans to cut trees unnecessarily.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the subject application was difficult and that concerns were expressed in the past about the variance requirements and compliance with the hardship provisions for these types of applications. He said the subject lot was uniform and no different from any other lot that fronts on Old Dominion. Mr. Pammel stated that the lot may be a little larger, but there was already a single family dwelling being used for residential purposes, and granting a variance would double the density on the property. He added that even though the lot created would be larger than the minimum required for the district, the requirements for a variance had not been met. Mr. Pammel said staff clearly indicated that in the staff report and he moved to deny VC 96-D-129 for the reasons set forth in the Resolution.

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-129 by MOSTAFA NADIMI, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2B having a lot width of 143.00 feet, on property located at 8325 Old Dominion Drive, Tax Map Reference 20-3((2))2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.00 acres.
4. The lot may be a little larger and there is a single family dwelling on the lot now and to grant a variance would double the density, even though the lot being created is larger than the minimum required for the zoning district, the application doesn't meet the required standards as set forth in the Zoning Ordinance and as stated in the staff report.

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.



Page 349, January 7, 1997, (Tape 1 & 2), MOSTAFA NADIMI, VC 96-D-129, continued from Page 348

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997.

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Page 349, January 7, 1997, (Tape 2), Scheduled case of:

9:00 A.M. GREAT FALLS SWIM & TENNIS CLUB, INC., SPA 82-D-019-7 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-D-019 for community swimming and tennis club to permit building additions and site modifications. Located at 761 Walker Rd. on approx. 5.52 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 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. Toni McMahon, agent for the applicant, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow building additions, site modifications, and a change in the hours of operation of the tennis courts. Staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions, and recommended approval of the application with the implementation of the Proposed Development Conditions.

Mr. Hammack asked if there were residences in the vicinity of the tennis courts that would be adversely impacted by the change of hours. Ms. Langdon replied there were residences immediately adjacent to the tennis club.

Ms. McMahon presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant concurred with the staff report and agreed to abide by the conditions contained therein. Ms. McMahon said the applicant had met with the community, including those that backed up to the tennis courts, the Great Falls Civic Association, and the Supervisor's Office, and had received support across the board for their proposal. She said the tennis courts exceeded the 25.0 foot minimum because there is more than a 25.0 foot buffer of trees along the property line.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SPA 82-D-019-7 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 30, 1996.

Mr. Hammack seconded the motion for purposes of discussion. He said there was no problem with the application and there was no opposition, but the Board should be careful about granting early times. Mr. Hammack supported the motion and added that if complaints should occur, then the Board would have to revisit that issue at the time of the complaint.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-D-019-7 by GREAT FALLS SWIM AND TENNIS CLUB, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-D-019 for community swimming and tennis club to permit building additions and site modifications, on property located at 761 Walker Road, Tax Map Reference 13-1((1))27, 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 7, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.52 acres.
4. The applicant cooperated well with the neighbors and put buffers around the tennis courts.

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. 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 761 Walker Road, and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William C. Putman dated June 17, 1996, revised through December 16, 1996, and approved with this application, as qualified by these development conditions.\*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The existing vegetation shall be deemed to satisfy the Transitional Screening 1 requirements and shall be maintained along all lot lines. The existing chain link fence which encircles the pool and tennis courts shall remain to satisfy the barrier requirement.\*
6. The tennis pro shop shall be for the use of the swim and tennis club members only. No outside sales or repair of equipment shall be permitted.
7. The hours of operation for the facility shall be limited to the following:\*
 

▶ Tennis & Platform Tennis Courts:	6:00 a.m. to 10:00 p.m.
▶ Swimming Pool Regular Hours:	9:00 a.m. to 9:00 p.m.*
▶ Adult Swim (18 & over):	6:00 a.m. to 8:00 a.m. Monday through Saturday*
▶ Swim Team Practice & Meets:	8:00 a.m. to 9:00 a.m. Monday through Saturday*
8. After-hour parties for the swimming pool shall be governed by the following:\*

- ▶ Limited to six (6) per year\*
  - ▶ Limited to Friday, Saturday and pre-holiday evenings\*
  - ▶ Shall not exceed beyond 12:00 midnight\*
  - ▶ A written request shall be submitted at least ten (10) days in advance to the Zoning Administrator for each individual party or activity\*
  - ▶ Request shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.\*
9. No bullhorns, loudspeakers, radios or setting up of facilities shall be permitted before 9:00 a.m. These devices may be used at or after 8:00 a.m. on the two to four occasions of a swim meet at the facility.\*
  10. All loudspeakers, bullhorns and lighting shall be directed on site.\*
  11. There shall be not more than four (4) "A" level swim meets per year at this facility.\*
  12. There shall be a minimum of sixty-seven (67) parking spaces and a maximum of one hundred and eighteen (118) parking spaces provided on site as shown on the special permit plat.\*
  13. All activities shall comply with the provisions of Chapter 108 of the County Code, Noise Ordinance, and the glare performance standards in the Zoning Ordinance.\*
  14. The maximum number of family memberships shall be four hundred (400).\*
  15. Bicycle racks shall be provided to accommodate a minimum of twenty-five (25) bicycles.\*
  16. The applicant shall provide ancillary easements necessary for any future improvements to Walker Road.
  17. If a waiver of the dustless surface requirement is approved by the Department of Environmental Management (DEM), the gravel areas shall be maintained in accordance with the standard practices approved by the Director, DEM, and shall include but may not be limited to the following:\*
    - ▶ Travel speeds in the parking areas shall be limited to 10 mph.\*
    - ▶ During dry periods, application of water shall be made in order to control dust.\*
    - ▶ Routine maintenance shall be performed to prevent surface unevenness, wear-through or subsoil exposure. Resurfacing shall be conducted when stone becomes thin.\*
    - ▶ Runoff shall be channeled away from and around the parking areas.\*
    - ▶ The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction, and migration of stone.\*
  18. All required accessible parking spaces shall be maintained with a dustless surface and shall be signed in accordance with the provisions of the Zoning Ordinance.\*

These conditions incorporate and supersede all previous development conditions. All previous conditions are designated with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Page 352, January 7, 1997, (Tape 2), GREAT FALLS SWIM & TENNIS CLUB, INC., SPA 82-D-019-7, continued from Page 351)

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.

Messrs. Dively and Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1997. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:07 a.m. and reconvened at 11:16 a.m.

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Page 352, January 7, 1997, (Tape 2), Scheduled case of:

9:30 A.M. BEHROUZ NOBARIAN AND AZAR BINA, Appeal A 96-D-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants' property is not a buildable lot under Zoning Ordinance provisions. Located at 7701 Magarity Rd. on approx. 8,857 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 68A. (DEF. FROM 11/26/96 TO ALLOW THE APPELLANT AN OPPORTUNITY TO FILE A VARIANCE APPLICATION)

Jack Conner, Attorney representing the appellant, came forward and requested a withdrawal of the subject application. He said staff's analysis was correct and the appellant had retained an engineer to file a simple subdivision application, and the applicant would be filing for a variance at the proper time in the future.

Mr. Ribble moved to accept the withdrawal of A 96-D-037. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 352, January 7, 1997, (Tape 2), Scheduled case of:

9:30 A.M. RAYMOND J. REPERT AND MARY G. REPERT, Appeal A 96-L-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is parking the tractor portion of a tractor-trailer truck on residential property in violation of Zoning Ordinance provisions. Located at 8100 Cooper St. on approx. 22,058 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((2)) 545.

John Willard, Attorney representing the appellants, came forward and presented the arguments forming the basis for the appeal. Mr. Willard explained to the Board that the appellant's occupation was to drive a tractor trailer across country and that he was only home 8-10 days out of every month. The appellant's request was that the Board allow him to leave the tractor part of the trailer parked on his property during the days of the month he was home. Mr. Willard said the tractor would not be visible from the street and that it would not cause a noise problem. He added that the vehicle was susceptible to robbery which was one reason for the request. Mr. Willard said that 27 out of the 28 neighbors in that area signed a statement supporting the appellant's position. He submitted photographs of the tractor trailer.

Page 353, January 7, 1997, (Tape 2), RAYMOND J. REPERT AND MARY G. REPERT, Appeal A 96-L-039, continued from Page 352

Mr. Hammack asked if the appellant had sold the other vehicle that was parked on the property. Mr. Willard replied there would only be one tractor parked there and that all the other vehicles had been removed.

Mr. Hammack said the major issue of the appeal was to establish that parking the tractor was within the guidelines of the Ordinance. He asked Mr. Willard to explain why the Ordinance wouldn't apply to this vehicle.

Mr. Willard said the Ordinance does not provide for tractor trailers in a residential neighborhood. He said the Board had the authority and should give the appellant special permission to park the vehicle in a residential area because there was no detriment to the neighborhood and no noise factor.

Mr. Pammel said the appellant should understand that if the BZA overruled the Zoning Administrator, that decision would then become applicable to the entire County. Consequently, someone could park a tractor in any residential area anywhere in the County. Mr. Pammel said the subject application was an isolated situation where the community had no problem with it, but that the appellant needed to find another solution to the problem.

Mr. Ribble said maybe staff could look into a modification of the Zoning Ordinance, but that would not help the appellant at the moment.

Mr. Willard said a precedence would not be set by this application because there had never been a similar request before the BZA to his knowledge.

The Board disagreed and indicated that they had heard a number of similar applications.

Mr. Hammack asked staff if there was any procedural type of remedy that Mr. Reppert could apply for, such as a variance or special permit.

William Shoup, Deputy Zoning Administrator, said there were no other provisions in the Zoning Ordinance that would provide a mechanism to obtain special permission. He added that parking of a vehicle such as this, is specifically precluded under Par. 16A of Sect. 10-102 of the Zoning Ordinance, and the only place it could be parked would be in an I-6 District.

Mr. Shoup said this was an appeal process and not a process whereby special permission could be granted. He stated that the Ordinance is very clear, while one commercial vehicle is permitted to be parked on residential property, there are several types of vehicles that are specifically prohibited, and this was one of them. Mr. Shoup said staff was correct with their Notice of Violation and asked that the BZA uphold that determination.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack said there was no mis-application of the Ordinance by the Zoning Administrator in this particular case. He said the Ordinance seemed to be clear on its face, even though he was sympathetic to the problems faced by the Repperts and where the appellant could park his tractor. Mr. Hammack said the ruling would create a hardship initially, but that the Ordinance was clear and applied properly. He said if there had been any other remedy, the Board could defer a decision so the person could make an application for variance, special permit or get legislative relief. However, that option was not available in this case. Mr. Hammack moved to uphold the Zoning Administrator's decision regarding to A 96-L-039. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 354, January 7, 1997, (Tape 2), Scheduled case of:

9:30 A.M. CEDAR KNOLL, INC., Appeal 96-V-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a nonconforming restaurant use has been expanded and a separate building is being used as a dwelling, all in violation of Zoning Ordinance provisions. Located at 9030 Lucia Ln. on approx. 1.0 ac. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((1)) 5. (MOVED FROM 10/22/96)

Chairman DiGiulian noted the letter requesting withdrawal. Mr. Pammel moved to accept the withdrawal. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 354, January 7, 1997, (Tape 2), Action Item:

Approval of October 8, 1996 and December 17, 1996 Minutes

Mr. Pammel noted one correction to the October 8, 1996 Minutes and moved to approve the Minutes as corrected. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 354, January 7, 1997, (Tape 2), Action Item:

Request for Additional Time  
Unity of Fairfax Church of the Daily Word, SPA 73-P-007-3

Mr. Dively moved to approve the request for Additional Time. Mr. Hammack seconded the motion.

Mr. Pammel asked staff how long the trailers could remain. Julie Schilling, Staff Coordinator, replied the special permit was for a church and related facilities, and as part of that approval the church was allowed to have temporary buildings on the site. The condition read that the application was to expire five years after the date of the final approval or upon construction of the addition to the church, whichever occurred first. The addition had not occurred to date and the five years expired about 18 months ago.

Mr. Pammel reiterated that the request was to extend the construction period and that the trailers were a non-issue. Ms. Schilling stated that a special permit amendment would be required to extend the use of the trailers.

Mr. Hammack asked if the trailers had been removed. Ms. Schilling replied not to her knowledge. Mr. Pammel stated that the applicant should submit an amendment before the Board as soon as possible because the church was in violation.

Ms. Kelsey said that the agent for the applicant was present, and that the issue had been discussed with the agent. She said the applicant had submitted a request for an interpretation on the subject condition.

Mr. Hammack said he was reluctant to grant temporary trailers because they never seem to disappear. He said many temporary trailers that are approved tend to have one problem after another and the trailers never seem to be temporary.

Ms. Kelsey introduced Marie Travesky, the applicant's agent, and informed the Board that Ms. Travesky was available to answer their questions.

Ms. Travesky said the church construction had been delayed longer than what normally occurs because the church had undergone several changes on the Board of Directors, several new ministers, and they were currently in the planning process. She said the applicant hoped that the additional time would be granted so they would be able to move on with the construction. Ms. Travesky said the issue of the trailers never came to their attention until they requested additional time. She said the applicant was

under the impression that the previous additional time, granted 18 months ago, included the trailers. She said no one had tried to keep something there without permission, that it was just a lack of understanding of all of the conditions. Ms. Travesky said there was room for disagreement about how the condition was worded and how the additional time is granted. She said there was a request for interpretation of that, but it appeared that both of the issues were separate. Ms. Travesky stated that the Board could grant the additional time and the applicant would deal with the trailer issue separately.

Mr. Hammack said with the understanding that the temporary trailers are a separate issue, staff had recommended an additional time of 18 months. He asked if there had been any land use changes. Ms. Schilling replied there were no other land use changes with the exception of Condition #14.

Chairman DiGiulian noted that there was a motion and a second on the floor to grant the additional time for a period of 18 months. All were in favor of the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting. The new expiration date is June 29, 1998.

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Approval of December 17, 1997 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

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Discussion Regarding Briefing by Housing and Community Development

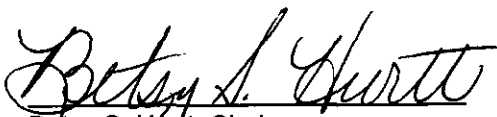
During the Board of Zoning Appeals (BZA) meeting of January 7, 1997, Mr. Dively made a motion requesting that the County Attorney advise the BZA as to whether or not they have the authority to condition a special permit use to require that the applicant submit and implement a landscaping plan, a lighting and signage plan, and pedestrian linkage in accordance with the Urban Design Guidelines of the Annandale Community Business Center. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

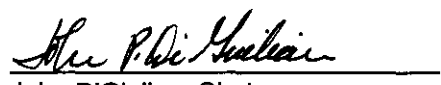
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As there was no other business to come before the Board, the meeting was adjourned at 11:45 a.m.

Minutes by: Regina Thorn

Approved on: March 11, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 14, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 357, January 14, 1997, (Tape 1), Action Item:

9:00 A.M. JOHN C. GILBERT, VC 96-S-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from side lot line. Located at 5514 Sandy Folly Ct. on approx. 1.39 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((15)) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John C. Gilbert, of 5514 Sandy Folly Court, Fairfax Station, Virginia replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He noted that the applicant was requesting a 4-foot variance in order to construct a screened porch addition to his home.

Mr. Gilbert pointed out that his builder had to place the house on the far side of the lot due to the lot's topography and septic field. He further explained that the home's unusual placement mandated that future additions could only be constructed in two places. Mr. Gilbert offered that his porch, if approved, would be only slightly visible to one neighbor and that neighbor had no objection to the addition.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Mr. McPherson moved to grant VC 96-S-132, JOHN C. GILBERT, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-S-132 by JOHN C. GILBERT, under Section 18-401 of the Zoning Ordinance to permit construction of an addition 16.0 feet from side lot line, on property located at 5514 Sandy Folly Court, Tax Map Reference 68-3((15))21, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 1.39 acres.
4. The lot is of an unusual shape and is on a pipestem driveway.
5. The house is considerably off-center having been placed in the lot's far left-hand corner.
6. The adjoining property owner has no objection.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the screened porch addition shown on the plat prepared by Gilbert M. Glaubinger, architects, and dated February 20, 1986 and revised through September 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The screened porch addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining; Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 359, January 14, 1997 (Tape 1), Action Item:

9:00 A.M. DONALD F. & MARTHA J. LEIPERTZ, SP 96-V-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition 13.4 ft. from side lot line. Located at 10721 Greene Dr. on approx. 21,865 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((2)) 38.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald F. Leipertz, Junior, residing at 10721 Greene Drive, Lorton, Virginia replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicants sought a special permit, because of an error in building location, which would allow an existing storage shed to remain 13.4 feet from a side lot line. She noted that the minimum side yard requirement in an R-E zoned area was 20 feet.

Donald Leipertz informed the Board that, when he purchased the property, it required numerous improvements and he hired contractors to perform most of the renovations. He explained that there was an existing shed attached to the house that was in a dilapidated condition and the contractor who was replacing the home's vinyl siding was also to renovate the shed. Mr. Leipertz maintained that he had no idea that the existing structure encroached onto the adjoining property and that he stood before the Board today to request that the shed be permitted to remain. Mr. Leipertz added that his neighbors had no opposition to the variance request.

Chairman DiGiulian called for speakers in support.

Sally Clark, 10717 Greene Drive, Lorton, Virginia, a next door neighbor, stated her appreciation that the Leipertzs were renovating the shed because it was a terrible eyesore as well as being dangerous due to its fallen down condition and because it housed snakes and rodents.

Chairman DiGiulian called for speakers in opposition and receiving no response, he closed the public hearing.

Mr. Ribble moved to grant SP 96-V-045 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-V-045 by DONALD F. AND MARTHA J. LEIPERTZ, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition 13.4 feet from side lot line, on property located at 10721 Greene Drive, Tax Map Reference 117-2((2))38, 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 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition (storage shed) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated September 12, 1996, 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 unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 360, January 14, 1997 (Tape 1), Action Item:

9:00 A.M. SHARRON M. & RICHARD D. LAROCHE, VC 96-P-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from rear lot line. Located at 13002 Maple View Ln. on approx. 10,185 sq. ft. of land zoned R-3 and WS. Providence District. Tax Map 45-4 ((3)) (39) 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. Sharron M. LaRoche, residing at 13002 Maple View Lane, Fairfax, Virginia replied that it was. Richard D. LaRoche, the co-applicant, residing at 14606 Northwest Place, Chantilly, Virginia, also affirmed the affidavit.

Susan Johnson, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. She noted that the applicants sought a variance of 10.2 feet in order to construct an addition to their home.

Sharron LaRoche informed the Board that she required a variance in order to build an addition onto the rear of her home to house her elderly mother. In response to Mr. McPherson's question, she explained that the variance requested related to the rear of the house where they, she and her son, Richard, proposed to convert the existing garage into a sitting room and then add a garage to the front of the house.

Chairman DiGiulian called for speakers either in support or opposition but received no response. He then closed the public hearing.

Mr. Kelley moved to grant VC 96-P-133 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-P-133 by SHARRON M. AND RICHARD D. LAROCHE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.8 feet from rear lot line, on property located at 13002 Maple View Lane, Tax Map Reference 45-4((3))(39)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 January 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-3 (Cluster), WSPOD.
- 3. The area of the lot is 10,185 square feet.
- 4. The rear of the lot backs up to wooded County property, trails and a bike path, and the variance won't affect any 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Rice Associates, dated October 10, 1996, signed October 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The applicant shall comply with Section 2-602 of the Zoning Ordinance regarding construction in a Chesapeake Bay Resource Protection Area, as determined by DEM.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 362, January 14, 1997 (Tape 1), Action Item:

9:00 A.M. MICHAEL H. & PARVIN S. GOLDBERG, VC 96-D-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 32.7 ft. from front lot line. Located at 7310 Linganore Ct. on approx. 43,370 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((23)) 8.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kamran Adell, the architect representing the Goldbergs, residing at 937 Rolling Holly Drive, Great Falls, Virginia, replied that it was.

Susan Johnson, Staff Coordinator, presented the staff report. She explained that the applicant sought a variance of 7.3 feet to construct a portico off the front of the house.

Kamran Adell explained the topography of the Goldberg's lot pointing out its unusual shape in that it was extremely wide in front and tapers down quite narrowly in the rear as well as setting on a severe slope. He pointed out how the house was placed on the lot which mandated, both for safety's sake and comfort and convenience, a portico to shelter the front door from the elements.

Chairman DiGiulian called for speakers either in support or in opposition. Upon receiving no response, he closed the public hearing.

Mr. Dively moved to grant VC 96-D-130 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-130 by MICHAEL H. AND PARVIN S. GOLDBERG, under Section 18-401 of the Zoning Ordinance to permit addition 32.7 feet from front lot line, on property located at 7310 Linganore Court, Tax Map Reference 21-3((23))8, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 43,370 square feet.
- 4. The topography of the property is severely sloped.
- 5. The lot is quite narrow.
- 6. This is a very 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the portico addition shown on the plat prepared by Kamran Adell, received by the Office of Comprehensive Planning date stamped August 30, 1996 and October 11, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 364, January 14, 1997 (Tape 1), Action Item:

9:00 A.M. MCDONALD'S CORPORATION, VC 96-M-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines. Located at 7600 Little River Tnpk. on approx. 26,806 sq. ft. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((2)) 3. (IN ASSOCIATION W/SE 96-M-038)

Chairman DiGiulian noted that the next scheduled agenda item, McDonald's Corporation, had a deferral request from the applicant's representative, Tracy Steele, Esquire, with Walsh, Colucci, et al.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant had requested a deferral of this case until after the Board of Supervisors hears its concurrent Special Exception application SE 96-M-038. Ms. Kelsey noted that staff suggested a deferral date of February 4, 1997 at 9:00 A.M.

Mr. Dively so moved and the motion was seconded by Mr. McPherson and passed unanimously by a vote of 6-0. Mr. Hammack was absent from the meeting.

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9:00 A.M. WILLIAM J. MCMENAMIN, VC 96-Y-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 9.97 ft. from rear lot line. Located at 5610 Clifton Rd. on approx. 9,086 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 55-3 ((3)) pt 26. (IN ASSOCIATION W/RZ 95-V-031) (MOVED FROM 12/3/96)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Yantis, a Planner with the law firm of Walsh, Colucci, et al., replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She explained that the subject of this variance request was a reduction in the rear yard setback from 25 feet to 9.97 feet so as to allow an existing single family detached dwelling to remain on a smaller lot as part of a smaller reconfigured lot. Ms. Schilling noted that because of a recent rezoning, the subject parcel would now take its access from a soon-to-be constructed cul-de-sac instead of from Clifton Road and because of the reorientation of its ingress and egress and the new contiguous development, the subject lot's former side yard would now be its rear yard.

Ms. Yantis explained the particulars of the R-3 Cluster rezoning for an infill development and the recommendation, during the rezoning process, to retain four of the existing homes and to consolidate all 23 lots as well as eliminate the existing driveway entrances along Clifton Road by providing a new access/easement from a cull-de-sac. Ms. Yantis stated that the sole purpose of this variance request, which was specific to the newly proposed Lot 9, was to allow an existing home to be retained within the new subdivision. She outlined the subject parcel's need for a variance due to the lot's reconfiguration.

Chairman DiGiulian called for speakers from the audience either in support or opposed to the variance request. Receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 96-Y-126 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 23, 1996.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-Y-126 by WILLIAM J. MCMENAMIN, under Section 18-401 of the Zoning Ordinance to permit dwelling to remain 9.97 feet from rear lot line, on property located at 5610 Clifton Road, Tax Map Reference 55-3((3)), pt 26, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 and WS (cluster subdivision proposed.)
3. The area of the lot is 9,086 square feet.
4. This is a very reasonable request and it supports the goals and objectives of the Comprehensive Plan concerning consolidation.
5. The lot has an unusual configuration and 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
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an existing house shown on the plat prepared by Rinker-Detwiler & Associates, PC, dated September 25, 1996, 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. McPherson seconded the motion which carried by a unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 366, January 14, 1997 (Tape 1), Action Item:

9:00 A.M. LEO W. & MARINELL WEST, VC 96-Y-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from rear lot line. Located at 12985 Thistlethorn Dr. on approx. 7,929 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((14)) 68.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Leo W. West, residing at 12985 Thistlethorn Drive, Herndon, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that a variance of 14.4 feet was being requested by the Wests in order to construct an addition, a screened porch, onto their home.

Leo West circulated photographs to the Board members in order to visually explain what he and his wife were requesting. He noted that his neighbors have decks on the rear of their houses and it was a personal matter of convenience and comfort that he intended to screen his existing deck. Mr. West believed that a screened-in deck onto the rear of his house, which backed up to the heavily wooded common area, would aesthetically have no adverse effect on anyone, would not interfere with anyone's view, and the design proposed was harmonious and compatible with the neighborhood. He also pointed out that the customized addition would increase his property value. Mr. West informed the Board that his homeowners association approved of his variance request and that he would submit the paperwork, if requested.

Chairman DiGiulian called for speakers either in support or in opposition to the variance request and receiving no response, he closed the public hearing.

Mr. McPherson moved to grant VC 96-Y-131 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-Y-131 by LEO W. AND MARINELL WEST, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.6 feet from rear lot, on property located at 12985 Thistlethorn Drive, Tax Map Reference 35-2((14))68, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 7,929 square feet.
4. This is a PDH development which, under certain circumstances, would be developed by-right.
5. The lot is relatively small and shallow with an easement at the rear of the property line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the screen porch addition shown on the plat prepared by Kenneth W. White, dated October 8, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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9:00 A.M. CHARLES & SUSAN JOHNSTON, VC 96-D-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 7.0 ft. from side lot line. Located at 1876 Massachusetts Ave. on approx. 18,750 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 25.

Chairman DiGiulian called the applicants' representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The Johnstons' agent, Laird Ueberroth, AIA,

1900 Foxhall Road, McLean, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting an 8-foot variance to permit the enclosure of an existing porch.

Laird Ueberroth explained that this matter involved the preservation of an original element of a 93 year old house and that its placement on the lot predated the current Zoning Ordinance. He pointed out that there was a history of variance requests throughout the neighborhood similar to the one the Johnstons were seeking. He explained that the raised porch was in dire need of renovation as it currently was dangerously dilapidated and the reason for it falling into such a deplorable state was because it was not used as it offered no protection from the weather and had no privacy. Mr. Ueberroth maintained that there would be no difference in the Johnston's porch's renovation than either of their next-door neighbors' variances. Mr. Ueberroth pointed out that each neighbor has submitted a letter of support for the Johnston's variance request.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Ribble moved to grant VC 96-D-138 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-138 by CHARLES AND SUSAN JOHNSTON, under Section 18-401 of the Zoning Ordinance to permit addition 7.0 feet from side lot line, on property located at 1876 Massachusetts Avenue, Tax Map Reference 41-1((13))(2)25, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 18,750 square feet.
4. The lot is exceptionally narrow.
5. There is an unusual placement 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 **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the room addition shown on the plat prepared by Laird Ueberroth, AIA and Associates, dated September 1, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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9:30 A.M. JOEL PATTEN, APPEAL A 96-B-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected two (2) portable signs in violation of Par. 2, Sect. 12-104 of the Zoning Ordinance. Located at 9561 Braddock Rd. on approx. 10.11 ac. of land zoned C-6. Braddock District. Tax Map 69-3 ((1)) 18A. (NOTICES NOT IN ORDER)

William Shoup, Deputy Zoning Administrator, pointed out that Mr. Joel Patten was present to address the issues of his notices not being in order.

Page 371, January 14, 1997 (Tape 1), JOEL PATTEN, APPEAL A 96-B-044, continued from Page 370

Joel Patten, 9561 Braddock Road, Fairfax, Virginia, explained that he was unaware of the Zoning requirements pertaining to signage and notification procedures. After speaking with fellow merchants, and realizing their interest in attending the BZA proceedings, he requested the opportunity to resend his notices and allow the neighboring merchants to participate.

Chairman DiGiulian asked Mr. Patten if staff's suggested deferral date of March 4, 1997 would be sufficient time for him to complete his notification mailings.

Mr. Patten agreed to the March deferral date.

Chairman DiGiulian asked if there were any speakers present to speak to the issue of deferral but received no response.

Mr. Kelley then moved to defer Appeal 96-B-044, Joel Patten, to March 4, 1997.

Mr. McPherson seconded the motion which carried by a unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 371, January 14, 1997 (Tape 1), Action Item:

9:30 A.M. ROBERT F. DE GRANDCOURT AND JUDITH H. DE GRANDCOURT, Appeal A 96-V-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot, in violation of Sect. 2-501 of the Zoning Ordinance. Located at 5629 Old Mill Rd. on approx. 31,782 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 3. (Moved from 12/10/96)

William Shoup, Deputy Zoning Administrator, informed the Board that Mr. de Grandcourt was in violation of Zoning Ordinance, Sect. 2-501, for having a second dwelling unit, in a freestanding garage, on the property and that it is being utilized as a rental residence. Mr. Shoup noted that at the time that the garage was built the Building Permit was conditioned such that the garage could be used for personal use but was not to be used as a dwelling unit. He referenced the December 9, 1986 letter from the Zoning Administrator, Jane Gwinn, which approved Mr. de Grandcourt's garage but qualified that it must be utilized for his family's use only, that it shall never be used for commercial activity and that it must never be converted into a dwelling unit. Mr. Shoup brought the Board's attention to several citizen letters which supported the Zoning Administrator's position in this matter.

Robert F. de Grandcourt affirmed that, when the detached structure was originally approved, it was intended solely for personal use but due to an illness in the family, they had moved out of town and leased their property. Mr. de Grandcourt explained that during that time, without his approval, the garage was utilized as a rented dwelling and upon their return, he elected to retain the tenant because of personal reasons, security, safety, and availability, which the tenant afforded his family.

Chairman DiGiulian called for speakers.

Irene Walsh, residing at 9111 McNair Drive, Alexandria, within the same subdivision as Mr. de Grandcourt, stated Woodlawn Manor Community Association's firm opposition to the request for two rental properties on his lot. She cited that this type of precedence would ruin her property value and that the de Grandcourt's request was unjustified.

Mr. de Grandcourt said that he appreciated and respected the neighborhood's feelings and that if he were in a different situation, he would not seek relief from the Zoning Ordinance's requirements. In response to Mr. McPherson's question, he acknowledged that he had not pursued a special permit as an alternative as it was nonapplicable to his situation.

There being no further questions or comments by the Board, Chairman DiGiulian closed the public hearing.

Page 372, January 14, 1997 (Tape 1), ROBERT F. DE GRANDCOURT AND JUDITH H. DE GRANDCOURT, Appeal A 96-V-041, continued from Page 371 )

Mr. Dively moved to uphold the Zoning Administrator's decision in Appeal A 96-V-041 of Robert F. de Grandcourt and Judith H. de Grandcourt.

The motion was seconded by Messieurs Ribble and Pammel and carried unanimously by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 372, January 14, 1997 (Tape 1), Action Item:

9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, Appeal A 96-S-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant added structures and storage/display areas without site plan, Building Permit, and Non-Residential Use Permit approval, and in noncompliance with applicable location regulations all in violation of Zoning Ordinance provisions. 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 7/23/96 AND DEF. 10/15/96)

Before commencing with this appeal determination, Chairman DiGiulian disclosed that his company is working on the site plan for the property that is the subject of this appeal and, therefore, he would recuse himself and turn the Chair over to Vice Chairman Ribble.

Vice Chairman Ribble noted that the applicant had requested a deferral and called upon William Shoup, Deputy Zoning Administrator, for an explanation.

William Shoup, Deputy Zoning Administrator, informed the Board that the applicant sought to resolve the violation and that their site plan was being pursued. He stated that staff supported the request for deferral and suggested the morning of April 22, 1997 as the deferral date.

Mr. Ribble entertained the motion to defer Appeal A 96-S-018, Donald E. Crump and Chesley Crump, to the date of April 22, 1997.

Mr. Dively seconded the motion.

Mr. Pammel noted that this appeal has been deferred a number of times, pointing out that there is an on-going violation. He commented that he found it difficult to understand why such matters can not be diligently executed and, as he understood it, the issue is that of an appeal of a decision/determination of the Zoning Administrator and it has no bearing on the site plan submission. Mr. Pammel stated that the Board should make a determination on this appeal as filed so, therefore, he could not support this deferral.

Vice Chairman Ribble called for a vote to defer the Appeal A 96-S-018, Donald E. Crump and Chesley Crump, to April 22, 1997 which carried by vote of 5-1-1 with Mr. Pammel opposed; Chairman DiGiulian abstaining; Mr. Hammack absent from the meeting.

Chairman DiGiulian resumed the Chair.

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Page 372, January 14, 1997 (Tape 1), Action Item:

Request for Additional Time, NORMAN SUMMERS, VC 94-M-047

Mr. McPherson moved to approve the request of Norman Summers, VC 94-M-047, for additional time with a new expiration date of January 13, 1999. Mr. Ribble seconded the motion which carried by a unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 373, January 14, 1997 (Tape 1), Action Item:

Approval of Minutes, November 12, 1996

Mr. Pammel moved to approve the November 12, 1996 minutes. The motion was seconded by Mr. Kelley and carried by a unanimous vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 373, January 14, 1997 (Tape ), Action Item:

Out-of-Turn Hearing Request, Dinesh K. Sharma, VC 97-P-001

Jane Kelsey, Chief, Special Permit and Variance Branch, responded to questions from Messieurs Pammel and McPherson concerning an available date prior to March 25, 1997 that the Board might hear this item. Mr. Pammel then moved to accept the Out-of-Turn Hearing Request of Dinesh K. Sharma, VC 97-P-001, to staff's suggested date of February 25, 1997 at 9:00 a.m.

Mr. Kelley seconded the motion which passed by a vote of 5-1 with Mr. Ribble opposed; Mr. Hammack absent from the meeting.

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Page 373, January 14, 1997 (Tape 1), Action Item:

Request for Reconsideration, Joe and Lily Nadimi, VC 96-D-129

Mr. Kelley moved to deny this request for reconsideration of VC 96-D-129, Joe and Lily Nadimi. Mr. Dively seconded the motion which carried unanimously by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 373, January 14, 1997 (Tape 1), Action Item:

Approval of Resolutions, January 7, 1997 Hearing.


Mr. Dively moved to approve the January 7, 1997 resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0-1 with Mr. McPherson abstaining; Mr. Hammack absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: Paula A. McFarland

Approved on: March 11, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

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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 21, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 37, January 21, 1997, (Tape 1), Scheduled case of :

8:00 P.M. BLUE RIDGE ARSENAL, INC., SPA 89-S-007-2 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 89-S-007 for an indoor firing range to permit expansion of use, reduction in land area and change in development conditions. Located at 14725-K Flint Lee Rd. on approx. 6.08 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((1)) 39B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hayward Long, the owner of Blue Ridge Arsenal, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Julie Schilling. The applicant requested an expansion of the indoor firing range to add an indoor video archery range, an increase in the hours of operation, and no limit to the number of patrons and employees on site at any one time. The applicant reduced the application property from 11.80 acres to 6.08 acres due to dedication to the Board of Supervisors for park purposes. Staff concluded that all issues were addressed with the implementation of the Proposed Development Conditions. Ms. Kelsey stated that staff had discussed the conditions with the applicant and he agreed to accept the conditions relating to the number of patrons and the number of employees. The applicant requested that the parking tabulation not be required. Staff had no problem with the deletion of the parking tabulation requirement since this use required no more parking than the previous use of their unit. Thus, staff recommended approval of the application.

Mr. Long presented the special permit request as outlined in the statement of justification submitted with the application. He asked the Board to waive the 8-day waiting period and make a recommendation to DEM that the Site Plan not be required since there were no alterations on the exterior of the building.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SPA 89-S-007-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 6, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 89-S-007-2 by BLUE RIDGE ARSENAL, INC., under Section 5-503 of the Zoning Ordinance to amend SP 89-S-007 for an indoor firing range to permit expansion of use, reduction in land area and change in development conditions, on property located at 14725-K Flint Lee Road, Tax Map Reference 34-3((1))39B, 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

Page 376, January 21, 1997, (Tape 1), BLUE RIDGE ARSENAL, INC., SPA 89-S-007-2, continued from Page 375

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 21, 1997; 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, AN and WS.
3. The area of the lot is 6.08 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. 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 14725-K Flint Lee Road, consisting of 6.08 acres, 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 Amendment is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Patton, Harris Rust and Associates, P.C., dated January 1989, as revised through October 11, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The BZA recommends to the Director, DEM, that under the provisions of Sect. 17-104, the applicant be exempted from the requirements of Article 17, Site Plans, since there are no proposed external improvements being made to the site and there are no conditions of the BZA's approval which would require compliance with Article 17.
5. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance, as determined by the Department of Environmental Management.
6. There shall be a maximum of 5 employees on site at any one time; however, the maximum number of employees may be increased provided that parking for employees is provided in accordance with Article 11 of the Zoning Ordinance.
7. There shall be a maximum of 24 patrons on-site at any one time, including a maximum of 15 students per class.
8. Classes conducted on-site shall be limited to a maximum of 15 students per class. No more than one class shall be conducted at a time.
9. Any signs erected shall be in conformance with Article 12 of the Zoning Ordinance.
10. Soundproofing shall be provided which is designed to reduce the noise generated on-site to 55 dBA or less in units adjacent to the firing range.

These development conditions incorporate and supersede all previous development conditions.

Page 377, January 21, 1997, (Tape 1), BLUE RIDGE ARSENAL, INC., SPA 89-S-007-2, continued from Page 376 )

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 21, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 377, January 21, 1997, (Tape 1), Scheduled case of :

8:00 P.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, Appeal A 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A.

Chairman DiGiulian noted the letter requesting a deferral. William Shoup, Deputy Zoning Administrator, said staff was concerned about delaying the subject appeal for too long because of the nature of the violations, but given the reasons stated in the deferral request, staff had no objections to a short deferral and suggested a date of March 11, 1997. Mr. McPherson moved to defer A 96-B-043 to March 11, 1997 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 377, January 21, 1997, (Tape 1), Scheduled case of :

8:00 P.M. STEVEN M. COOLEY, Appeal A 96-D-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a business for the retail sale of produce, bedding plants and garden supplies, has erected two accessory structures without Building Permits and has erected a portable sign, all in violation of the Zoning Ordinance provisions. Located at 6732 Lowell Ave. on approx. 13,795 sq. ft. of land zoned R-4, HC and SC. Dranesville District. Tax Map 30-2 ((9)) 56. (DEF. FROM 12/10/96 FOR NOTICES)

Chairman DiGiulian noted the letter requesting withdrawal. Mr. Pammel moved to withdraw A 96-D-036. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 378, January 21, 1997, (Tape 1), Action Item:

Approval of December 3, 1997 Minutes

Mr. Pammel noted two corrections in the Clerk's proposed minutes for December 3, 1997, and moved to approve the Minutes with the corrections. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 378, January 21, 1997, (Tape 1), Action Item:

Request for Additional Time  
Michael Hancher, VC 94-D-040

Mr. Pammel moved to approve the Request for Additional Time for VC 94-D-040. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The new expiration date is July 6, 1999.

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Page 378, January 21, 1997 (Tape 1), Action Item:

Staff Presentation/Response to the BZA  
Concerning Sheds

The following is a presentation made by William Shoup, Deputy Zoning Administrator, referencing sheds, as requested by the Board of Zoning Appeals.

On January 7, 1997, the BZA requested a response as to how phone and hotline inquiries regarding sheds and other free standing structures were handled. The request was prompted by special permit and variance cases where people were requesting modifications to location requirements for structures. During the hearings, the applicants suggested that they were given bad information by County staff which caused their predicament. The BZA's request prompted staff to consider how citizens attempted to get information from the County and, several ways were found. There is a County Info Line, which was referred to by one of the applicants as a hotline. The County Info Line is an automated message line, monitored by the Department of Public Affairs. There are also DEM and Zoning automated menu lines and the information presented on those lines is general. There are some specifics regarding building permits and inspections, but there were no messages devoted specifically to sheds or other freestanding structures. One DEM tape made reference to the size and wall height limitations for sheds. Under the BOCA Code, there is no building permit required for a shed under 150 square feet and under 8.5 feet in wall height. Generally, the taped messages were good, but, there were improvements that could be made such as, clarifying the information, making better cross referencing between DEM and Zoning, and developing a taped message specifically referencing sheds and other freestanding structures. Staff has begun to revise the text of those messages.

Another issue of concern was what people were being told when they talked directly with a staff person. The Zoning Ordinance provision for sheds require that a shed over 8.5 feet in height meet certain setbacks; other freestanding structures are subject to setbacks if they exceed a height of 7.0 feet. The confusion was that under the Zoning Ordinance the height is the total height from ground level to the highest point of the structure. Under the BOCA Code, they look at wall height. If the height of a wall of a shed is under 8.5 feet and if it's under 150 square feet in size, no building permit is required. The Board expressed concern about that issue previously and DEM, in response, revised their typical shed details to include a statement advising people to contact Zoning for location requirements and that took care of some of the problem.

We discussed information given from phone calls with the management staff of DEM, DEM's Permit Branch, and the Zoning Permit Review Branch were assured that staff is trained not to answer the other agencies' questions and to routinely refer calls to the other department so that information is not missed. Staff posed as citizens with questions about building a shed and called the County and found that the

responses were very good. The BOCA Code requirements were explained and they recommended that Zoning Administration be contacted in the case of set back requirements. Another issue is what citizens are told when they call Zoning Administration. That depends on how much information about the proposal staff gathers. Staff needs to ask questions and get into a discussion with an applicant about the type of structure, the size, the height from ground level to the highest point, and armed with the correct information, staff will provide an accurate response. The question of why these problems are continuing to arise is a combination of several factors. Staff is not infallible, errors will occur, and there may be times when proper information isn't gathered by staff. However, that's not a good excuse when someone spends a lot of money to build a shed or a freestanding structure that ends up in violation of the Zoning Ordinance. Another factor is that sometimes there is just an honest misunderstanding on both parts, the caller and staff. Sometimes a caller may not follow through, they may not make that call to Zoning Administration, if they are referred to Zoning by DEM or they may have been given the correct information and they just didn't like the answer and continue to proceed forward anyway. In conclusion, a combination of factors could help remedy the issue. The issue is not a systematic flaw, but we can continue to ensure that staff is reminded of the issue and the importance of providing accurate information, asking the right questions, and making the proper referrals. We can also do a better job of providing feedback when these situations occur, when they come before the BZA, or when the inspector is out in the field and told that the people received information from staff. We could provide ongoing training sessions and improve the automated dissemination of information.

Mr. Dively asked if there was a written statement of what the Ordinance stated, rather than giving opinions over the phone since it was hard to determine the dimensions and the proper measurements. He suggested a written statement of what the Ordinance says as opposed to giving specific advice over the phone. Mr. Dively stated that there could be honest misunderstandings and dishonest misunderstandings, and he said sometimes people hear what they want to hear, but that could be avoided with written statements.

Mr. Shoup said the problem was that people will seek interpretations or clarification of what the Ordinance provisions states. He stated that there is the risk of making some errors based on the conversation that takes place, but for the most part, the citizen gets the information they need. Mr. Shoup said numerous phone calls are received every week on these types of issues and the vast majority of them result in a structure that is properly built.

Mr. Dively said that he believed staff was used as a "scapegoat" more often than not and the telephone situation is an easy place for that to happen. Mr. Shoup added that sometimes people hear what they want to hear and then they proceed, and that was unfortunate because those situations end up before the BZA; however, those situations can never be totally eliminated.

Mr. McPherson asked if there was a standardized format used by the person answering the calls to obtain the information from citizens. Mr. Shoup replied that there wasn't a standardized format used but it may be something worth considering.

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Out of Turn Hearing Request  
SPA 94-D-049

Mr. McPherson moved to deny the request for an Out of Turn hearing with regard to SPA 94-D-049. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Approval of January 14, 1997 Resolutions

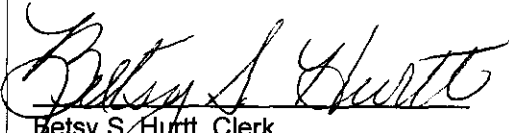
Mr. Ribble moved to approve the Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 8:30 p.m.

Minutes by: Regina Thorn

Approved on: March 11, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 28, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:18 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 381, January 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR V. KAY, VC 96-S-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.0 ft. high fence in front yard of a corner lot. Located at 7301 Walnut Knoll Dr. on approx. 10,732 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-4 ((9)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Arthur Kay, 7301 Walnut Knoll Drive, Springfield, Virginia, replied that it was.

Susan Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 3 feet to allow a 7 foot fence to be located in the front yard of a corner lot.

Mr. Kay presented his request as outlined in the statement of justification submitted with the application. He said the access road that runs behind his property has a grade 4 1/2 feet higher than his rear lot; therefore, the fence would provide privacy.

In response to a question from Mr. Hammack, Mr. Kay said the fence would not interfere with traffic going from Walnut Hill Drive onto Hooes Road because it will be set back from the road.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Hammack moved to grant VC 96-S-140 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-S-140 by ARTHUR V. KAY, under Section 18-401 of the Zoning Ordinance to permit 7.0 foot high fence in front yard of a corner lot, on property located at 7301 Walnut Knoll Drive, Tax Map Reference 89-4 ((9)) 1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,732 square feet.
4. The applicant meets the nine required standards for a variance.

5. The fence is located inside the property line and will not interfere with traffic visibility.
6. The topographic conditions of the property exposes the backyard to easy view.
7. The applicant suffers with a double front yard requirement that not all the lots in the zoning district have.
8. The fence addition is small and the variance is only needed across one part of the yard; therefore, the granting of the variance will not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the 7.0 foot high fence shown on the plat prepared by Larry N. Scartz, dated January 29, 1996 and received on September 9, 1996, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 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 4, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BLAIR G. CHILDS & ERIN E. SHAFFER, VC 96-D-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.4 ft. and 12.6 ft. from side lot line and 27.4 ft. from front lot line. Located at 1885 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Blair Childs, 1885 Virginia Avenue, McLean, Virginia, replied that it was.

Susan Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances of 2.4 feet, 2.6 feet, and 7.6 feet to allow an addition to be located 12.4 feet and 12.6 feet from the side lot line and 27.4 feet from the front lot line.

Mr. Childs presented his request as outlined in the statement of justification submitted with the application. He said there was no other place on the lot to put the additions because of the narrowness of the front yard. Mr. Childs referred to a letter from the homeowners association giving their approval of the additions and said an adjacent property owner, who would be most impacted by the variance, had no objections.

Mr. Pammel had the applicant address a letter from his neighbors, the Moreno's, who cited a problem with the applicant and illegally parking on the easement. Mr. Pammel noted that the Moreno's said they would support the application if parking was provided on the applicant's property; otherwise, they would be in opposition if he continues to use the easement. Mr. Childs said it is an exclusive easement for ingress and egress purposes. He said the easement is actually a driveway to an existing garage on his property and is for his exclusive use. About a year after he moved in, Mr. Childs said he received a letter from the Moreno's stating that they no longer wanted the applicant to use the driveway and requested he tear down the garage because they were going to take the property back over. After consulting with an attorney, Mr. Childs had a legal brief written to the Moreno's but he has received no response until now. In sum, Mr. Childs said the Moreno's have no legal right to the easement and that his documents show the exclusive easement is for his use as a driveway.

In response to a question from Mr. Pammel, Mr. Childs said he has not refurbished the garage but rather maintained and kept it in good working order.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Pammel moved to grant VC 96-D-137 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-137 by BLAIR G. CHILDS AND ERIN E. SHAFFER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 12.4 feet and 12.6 feet from side lot line and 27.4 feet from front lot line, on property located at 1885 Virginia Avenue, Tax Map Reference 41-1 ((13)) (4) 44, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 14,000 square feet.
4. The applicant meets the nine required standards for a variance.
5. The width of the property is narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the porch addition and the proposed room addition shown on the plat prepared by Alexandria Surveys, Inc., dated September 13, 1996 and revised through October 7, 1996, submitted with this application and is not transferable to other land.

Page 385, January 28, 1997, (Tape 1), BLAIR G. CHILDS & ERIN E. SHAFFER, VC 96-D-137, continued from Page 384)

- 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. McPherson seconded the motion which carried 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 4, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 385, January 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. PLAY N'LEARN, INC., VC 96-Y-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain 7.4 ft. from front lot line. Located at 5800 Old Centreville Rd. on approx. 1.51 ac. of land zoned C-8, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 59.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William Thomas, with the law firm of Fagelson, Schonberger, Payne, and Deichmeister, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a display area accessory to a retail use in a required yard in a commercial district.

Mr. Thomas presented the applicant's request as outlined in the statement of justification submitted with the application. He also submitted photographs depicting the outdoor display area as it currently exists. Mr. Thomas said the property was developed in the 1950's as an existing hardware store that had a history of outdoor displays. He noted that the Virginia Department of Transportation (VDOT) took, by-right, part of the property thereby decreasing the setback where the outdoor display area is located. With regards to safety, Mr. Thomas noted there were two barriers around the display, one the applicant erected as a protective fence for customers and a metal guard rail below the display area to set the property off from the highway. In sum, Mr. Thomas felt this variance was a unique request because it will be an interim use due to the applicant's expecting VDOT to take the building when Lee Highway is redeveloped.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. McPherson moved to grant VC 96-Y-142 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

under Section 18-401 of the Zoning Ordinance to permit accessory structures to remain 7.4 feet from front lot line (to permit a display area accessory to a retail use in a required yard in a commercial district), on property located at 5800 Old Centreville Road, Tax Map Reference 54-4 ((1)) 59, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-8, HC, SC, and WS.
3. The area of the lot is 1.51 acres.
4. There was some prior use on this property, as brought out in the testimony and although it was not critical to the granting of the variance it did have some influence.
5. The property is not functional for any other purpose except for this sort of display.
6. The property is located in a C-8 Zoning District; therefore, this is a reasonable use of the property, especially in light of the location of the property and its current configuration.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the outdoor display area shown on the plat prepared by Harold A. Logan, Associates P.C., dated July 30, 1996, and revised through August 2, 1996, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 387, January 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOHN W. H. SPENCER, VC 96-B-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from side lot line such that side yards total 22.0 ft. Located at 8319 Epinard Ct. on approx. 12,461 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-1 ((18)) 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. The applicant, John W. H. Spencer, 8319 Epinard Court, Annandale, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 2.0 feet for an addition consisting of a garage to be located 9.6 feet from the side lot line such that side yard totals 22 feet.

Mr. Spencer presented his request as outlined in the statement of justification submitted with the application. He noted the front yard is narrower than the back; therefore, a variance was needed for the front portion only. Mr. Spencer cited safety and security issues as to why he needed a garage. He added that the neighbors had no objections and submitted a copy of a letter from the home owners association approving his request.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Ribble moved to grant VC 96-B-139 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-B-139 by JOHN W. H. SPENCER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.6 feet from side lot line such that side yards total 22.0 feet, on property located at 8319 Epinard Court, Tax Map Reference 70-1 ((18)) 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 January 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 12,461 square feet.
4. The applicant meets the nine required standards for a variance. In particular, the converging lot lines toward the front of the property created the need for a variance.
5. The applicant is enclosing a carport which is a small variance request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition (carport enclosure) shown on the plat prepared by Stephen T. Palmer dated June 11, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written



Page 389, January 28, 1997, (Tape 1), JOHN W. H. SPENCER, VC 96-B-139, continued from Page 388 )

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 February 4, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 389, January 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ANNE B. & JOHN R. KRESS, VC 96-M-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 3303 Military Dr. on approx. 12,999 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((7)) 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. The applicant, John Kress, 3303 Military Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 1.6 feet to allow an addition consisting of a garage to be located 10.4 feet from the side lot line.

Mr. Kress presented his request as outlined in the statement of justification submitted with the application. He noted that the lot is pie-shaped creating the need for a variance for the front portion only. He said he talked to his neighbors and they had no objections to the variance.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Kelley moved to grant VC 96-M-141 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-141 by ANNE B. AND JOHN R. KRESS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.4 feet from side lot line, on property located at 3303 Military Drive, Tax Map Reference 61-1 ((7)) 37, 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 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.

3. The area of the lot is 12,999 square feet.
4. There would not be a need for a variance if the house was placed further back on the lot.
5. The applicant meets the nine 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by Dewberry and Davis, dated September 12, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 391, January 28, 1997, (Tape 1), ANNE B. & JOHN R. KRESS, VC 96-M-141, continued from Page 390 )

Mr. Ribble 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 January 28, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 391, January 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. GEOFFREY L. ROBSON, VC 96-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.7 ft. from side lot line. Located at 1711 Great Falls St. on approx. 11,482 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((10)) 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. The applicant, Geoffrey Robson, 1711 Great Falls Street, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 4.3 feet for an addition consisting of a carport to be located 2.7 feet from the side lot line.

Mr. Robson presented his request as outlined in the statement of justification submitted with the application. He noted that most of the other houses on Great Falls Street have carports but because his property is narrower at the front, he is required to have a variance. Mr. Robson said he has spoken to his neighbors and they support the request.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Dively moved to grant VC 96-D-135 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-D-135 by GEOFFREY L. ROBSON, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.7 feet from side lot line, on property located at 1711 Great Falls Street, Tax Map Reference 30-3 ((10)) 13A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,482 square feet.
4. The proposed location of the carport addition will be 2.7 feet from the side lot line and while that could be difficult to maintain, a carport is not as intrusive as other kinds of additions.

Also, the statement that the applicant submitted, dated March 20, 1996, points out that the closest structure to the proposed carport is 30 feet away.

- 5. The lot is pie-shaped and the house is configured close to the front yard and to the one side; therefore, the applicant meets the nine 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 **GRANTED** with the following limitations:

- 1. This variance is approved for the location of an attached carport shown on the plat prepared by Andrew P. Dunn, dated October 8, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

Page 393, January 28, 1997, (Tape 1), GEOFFREY L. ROBSON, VC 96-D-135, continued from Page 392

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 393, January 28, 1997, (Tape 1), Scheduled case of:

9:30 A.M. STANLEY J. GLOD, VC 96-D-136 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit subdivision of one lot into one lot and one outlot with proposed Lot 28A having a lot width of 130.65 ft. Located at 8444 Sparger St. on approx. 4.11 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((8)) 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. The applicant's agent, Meaghan Kiefer, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of Lot 28 into one lot and one outlot, with proposed Lot 28A having a minimum lot width of 130.65 feet. The minimum lot width of existing Lot 28 is 130.65 feet and was created with the subdivision of the lot in 1957. The Subdivision Ordinance requires a minimum lot width of 150 feet. The owner of adjacent Lot 10C of the Prospect Hill Subdivision proposes to purchase the proposed outlot and combine it with Lot 10C in order to construct one single family dwelling on the combined lots. It was staff's judgment that the application did not meet Variance Standards 4, 5, and 6 of the required standards of Section 18-404 of the Zoning Ordinance. Those standards require that undue hardship would result without the granting of the variance and all reasonable use of the land would be prohibited.

Ms. Kiefer presented the applicant's request as outlined in the statement of justification submitted with the application. She said the applicant was requesting permission to subdivide his property and convey his portion to Mr. and Mrs. Barris, who intend to construct one home on their property. Ms. Kiefer explained that this application is required because Lot 28 does not meet the lot width requirement and their proposal would not exacerbate that non-conformity. She said the exchange of land is desired by the Barrises because their property suffers from an extremely high water table which makes it difficult for them to site their house on their property. In sum, Ms. Kiefer said the consolidation of the parcels would allow the Barrises to reduce the amount of clearing and grading necessary to save trees, to locate their home further away from adjacent homes, and to avoid the high water table.

Mr. Barris, owner of Lot 10C, spoke in support of the application. He explained that there is a perched water table that runs east to west on his lot and a split septic field. He was told that it is undesirable to build over the water table and without the consolidation of the lots, he would be forced to place his house close to other property owners and the front street. In sum, Mr. Barris felt the advantages of consolidating the lots would be that he would be able to build his house on the other side of the perched water table which would require less grading and eliminate the need to build a retaining wall, minimize the need to cut down trees, and the house would be more centered on the lot.

Ms. Kiefer added that they had five letters of support from area neighbors and said the homeowners association had no objections. She also asked the Board to waive the eight day waiting period if the variance was granted.

Chairman DiGiulian called for speakers in opposition and hearing no reply he closed the public hearing.

Mr. Hammack moved to grant VC 96-D-136, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 28, 1997.

Chairman DiGiulian called for discussion.

Mr. Pammel noted that this non-conformity would not be increased as a result of the BZA's action today. He felt the problem resulted from a boundary line adjustment that was requested which brought the property under the current Zoning Ordinance standards and frontage standards; therefore, that was why the variance was needed.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-136 by STANLEY J. GLOD, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into one lot and one outlot with proposed Lot 28A having a lot width of 130.65 feet, on property located at 8444 Sparger Street, Tax Map Reference 20-3 ((8)) 28, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.11 acres.
4. The applicant meets the nine required standards for a variance.
5. This is an unusual case in many respects, as reflected in the testimony the variance is required for a lot that met the Zoning Ordinance originally and there is no exacerbation of the variance that is required at the present time.
6. The variance request is a lot line change based upon geologic reasons, it does not increase density in either subdivision, and would allow for the better siting and placement of a proposed dwelling on Lot 10C and 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 **GRANTED** with the following limitations:

1. This approval is approved for the subdivision of Lot 28 as shown on the plat prepared by J. Monaco and Associates, P.C., dated October, 1996, as revised through December, 1996. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The subdivision plat shall show the provision of an access easement which meets VDOT standards from Sparger Street to Outlot A through Lot 28, subject to the review and approval of the Department of Environmental Management. The access easement shall remain in place until such time as Outlot A is incorporated with Lot 10C of the Prospect Hill Subdivision in a plat of consolidation.
3. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance. A tree preservation plan shall be prepared for the review and approval of the Department of Environmental Management/Urban Forester to retain existing vegetation on Outlot A where feasible for the construction of a single family dwelling.
4. This variance is contingent upon Outlot A being consolidated with the adjacent Lot 10C in the Prospect Hill Subdivision and the two consolidated parcels being developed as a single building lot.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the plat if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. 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 January 28, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 395, January 28, 1997, (Tape 1 & 2), Scheduled case of:

9:30 A.M. MAUREEN HOOKER, JAMES STEWART HOOKER, DR. AND MRS. JOHN B. ROSS, Appeal A 96-P-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal approval of Building Permit #96268B0670 which was based on the determination that the southern lot line

of Lot 18 of Oakton Plantation Subdivision is a side yard and as a result, the proposed dwelling on the lot is subject to a 12' minimum side yard requirement. Located at 2772 Oakton Plantation Ln. on approx. 12,222 sq. ft. of land zoned R-3. Providence District. Tax Map 47-2 ((44)) 18.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated January 21, 1997. At issue in the appeal is a determination regarding the yard designation on the lot that is adjacent to the southern lot line. Mr. Shoup explained that a typical front lot line is defined as a street line which forms the boundary of a lot and the rear lot line is that line that is most distant from and parallel with the front lot line. He used the view graph to show the lot in question before the BZA and noted its odd shape. Mr. Shoup explained that on such lots it is more difficult to determine what the rear lot line is because even though the southern lot line is opposite the front lot line it was staff's judgment that the southern lot line is not parallel with the front lot line and is even relatively close at one point. Based on those observations and in looking at the total orientation of the lot, Mr. Shoup said staff believed that this is a lot that comes to a point in the rear and under the second part of the Zoning Ordinance rear lot line definition "...a lot that comes to a point in the rear, the rear lot line is deemed to be a 10 foot line parallel to the front lot line wholly within the lot for the purpose of establishing the minimum required rear yard"; therefore, it was staff's position that the rear lot line is back at that point resulting in the southern lot line becoming a side lot line requiring a 12 foot minimum side yard.

Mr. Dively and Mr. Shoup discussed how staff comes to the decision to impose the second portion of the rear lot line definition in order to determine a back yard.

Chairman DiGiulian read the definition of a rear lot line as stated in the staff report and said that he thought the southern lot line meets the definition of the Zoning Ordinance because it is the closest to being parallel than any of the other lines. Mr. Shoup responded that in looking at the lot, the southern lot line is far from parallel and a portion of it is far from being distant from the front lot line. He pointed out that even though it is the only lot line opposite the front lot line that would not be reason enough to deem it the rear lot line.

The appellant, Doctor John Ross, 10000 Donal Lane, presented his arguments forming the basis for the appeal. Dr. Ross acknowledged that it would be costly to the builder to correct the situation but he felt the building permit should never have been approved and that the builder, Dittmar, should have adjusted the property lines prior to construction of the house. He added that he had approached Dittmar about clearing out trees in a tree save area and he was told there was no such area on the current plans. Dr. Ross requested that Dittmar replace the trees and provide an adequate drainage for the site.

In response to a question from Mr. Kelley, Dr. Ross said they were told they waited too long to appeal the rezoning approval.

Maureen Hooker, co-appellant, spoke in support of the appellant's position. She said the approval of the building permit has negatively impacted her property because the property in question is on a higher grade than hers and having a 12 foot backyard imposes upon her property.

Laura Ann Mullens, adjacent property owner, spoke to the appeal by confirming that the trees in the tree save area had been removed by the builder and she felt a house should never have been constructed on this piece of property.

Art Walsh, representing Dittmar Builders, spoke in support of the Zoning Administrator's position. He said that this lot was created in a rezoning application and they filed the site plan which was approved by the County and subsequent building permits and Non-Residential Use Permits (Non-RUP). Mr. Walsh said the house is now ready for occupancy. It was their position that the County has judged this lot sufficiently and determined that this is the way the lot lines will be measured.

Mr. Shoup reiterated that this definition does not just apply to true triangular shaped lots. He noted that the final development plan (FDP) and subdivision plan illustrates how the lot was viewed throughout the process, with it shown as a side yard off of the southern lot line. With regards to the tree preservation



Page 397, January 28, 1997, (Tape 1 & 2), MAUREEN HOOKER, JAMES STEWART HOOKER, DR. AND MRS. JOHN B. ROSS, Appeal A 96-P-045, continued from Page 396 )

issue, Mr. Shoup referred to the staff report and said there is no zoning requirement for it on that lot because the proffered FDP did not show tree preservation; however, it did show on the grading plan and that issue has been referred to Department of Environmental Management (DEM) since it is not a zoning requirement.

Mr. McPherson discussed with Mr. Shoup various other lots in the surrounding area and what would be considered a rear lot line on each property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said this was a difficult decision and it left some unanswered questions. He said this issue could have gone at least two ways. Mr. Pammel said if the Zoning Administrator had deemed the side lot line as a rear lot line then the builders would have been required to obtain a variance prior to constructing the house and the BZA would have been confronted with a variance request. He said the other issue was that the BZA could find in favor of the appellant's position and then Dittmar would be required to file for a special permit request for approval of a building location already built that does not conform to the setback requirements of the Zoning Ordinance. Mr. Pammel made a motion to uphold the Zoning Administrator because the Zoning Administrator is empowered to use discretion in the performance of his duties and not every situation is going to be cut and dry in determining what is a rear and side yard. Mr. Pammel expressed concern over Dittmar Builders putting a tree save area on a plan then not following through. He felt it was the builder's obligation to respect what is placed on the plan by their engineers; however, Mr. Pammel noted that the BZA does not have the power to enforce that obligation. He suggested that Dittmar rectify the situation by replacing the trees. Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion and stated that he was going to oppose the motion because he could not agree with staff's application of the definition.

The motion was approved by a vote of 5-2, with Chairman DiGiulian and Mr. Ribble voting nay.

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Page 397, January 28, 1997, (Tape 2), Scheduled case of:

9:30 A.M. NABIL MANSOUR, Appeal A 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31. (DEF. FROM 6/11/96. MOVED FROM 9/17/96. DEF. FROM 11/7/96 FOR NOTICES)

The appellant's agent, Jack Connor, stated that the notices were not in order because the notice package containing the legal notice letter was sent to the appellant's impoundment lot instead of to his office, and subsequently it was misplaced by his employee. Mr. Connor said the appellant was not expecting the notice package to be sent to the lot because all other correspondence with the Zoning Administration Division had been mailed to his office. Mr. Connor apologized to the Board and requested a deferral of the public hearing.

Mr. Connor further noted that the engineer from Land Design Consultants had met with staff from the Department of Environmental Management (DEM) and they are currently in the process of developing and filing a proffered site plan which should take care of the problem.

William Shoup, Deputy Zoning Administrator, said this would be the third time the appellant has requested a deferral. Mr. Shoup said between the original hearing date of June 11, 1996 and the previous hearing date of November 7, 1996 the appellant was not diligent in pursuing the appeal. It was not until the appellant retained Mr. Connor as an agent right before the November 7 hearing that any effort was made to rectify the problem. In sum, Mr. Shoup said staff was requesting dismissal of the appeal due to the periods of lack of diligence on the appellant's part and his failure to send out legal notices for the second

time. He noted that staff mailed the legal notice package to the address that the appellant had requested on his appeal application.

In response to a question from Mr. Hammack, Mr. Connor said they are expecting to submit a site plan to DEM within two weeks.

In response to a question from Mr. Kelley, Mr. Connor said if the Board grants a deferral he will personally handle mailing out the legal notices within the required timeframe.

Mr. McPherson made a motion to defer the appeal to March 25, 1996. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 398, January 28, 1997, (Tape 2), Scheduled case of:

Approval of Minutes  
from the October 29, 1996 Meeting

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:59 a.m.

Minutes by: Teresa M. Wang

Approved on: April 1, 1997

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 4, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 399, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN V. MCBRIEN, VCA 92-C-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 92-C-082 to permit a second story addition 7.6 ft. from side lot line and stairs 5.8 ft. from side lot line. Located at 9204 Talisman Dr. on approx. 21,227 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((17)) 17. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Stephen V. McBrien, 9204 Talisman Drive, Vienna, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Susan Langdon. The applicant requested an amendment to a previously approved variance to allow construction of a second story addition 7.8 feet from a side lot line and stairs 5.8 feet from a side lot line. A side yard of 12.0 feet is required in the R-3 District; therefore, a variance of 4.2 feet was requested for the proposed addition. Stairs may extend 5.0 feet into a minimum required side yard, making the side yard requirement for the stairs 7.0 feet; therefore, a variance of 1.2 feet was requested for the stairs.

Mr. McBrien explained that he would like to construct a second story bedroom on top of an existing structure. He said he had believed that the stairs was part of the previous variance, which was incorrect; therefore, staff included the stairs in this application. Mr. McBrien said the lot slopes in such a way that without the variance there is no other feasible location to do the construction.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no response he closed the public hearing.

Mr. McPherson made a motion to grant VCA 92-C-082 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 28, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Amendment Application VCA 92-C-082 by STEPHEN V. MCBRIEN, under Section 18-401 of the Zoning Ordinance to amend VC 92-C-082 to permit a second story addition 7.6 ft. from side lot line and stairs 5.8 ft. from side lot line, on property located at 9204 Talisman Drive, Tax Map Reference 28-4((17))17, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 1997; 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 21,227 sq. ft.

4. The lot is very narrow and there is really no change to the footprint involved as it is simply a second story addition and a correction to the stairs.
5. The findings noted in the staff report were made a part of the granting as well as the testimony presented by the applicant.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the second story addition and stairs shown on the plat prepared by Alexandria Surveys, Inc., dated November 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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.

Page 401, February 4, 1997, (Tape 1), STEPHEN V. MCBRIEN, VCA 92-C-082, continued from Page 400

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 401, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ALBERT HAVINGA, VC 96-S-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.8 ft. from side lot line such that side yards total 19.1 ft. Located at 6723 Houndmaster Rd. on approx. 13,576 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((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. The applicant, Albert Havinga, 6723 Houndmaster Road, Springfield, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The applicant requested a garage addition 3.8 feet from the side lot line, such that the side yards equal 19.11 feet; therefore, a variance of 4.2 feet from the eastern lot line and a variance of 4.9 feet for the combined yards was requested.

Mr. Havinga said he has lived in the Orange Hunt subdivision for 11 years and when he purchased the property there was a carport on a concrete slab. When he began researching the possibility of constructing a garage, he discovered that he did not have sufficient space to the side lot line without a variance. Mr. Havinga said there is no other feasible place on the property to construct a garage and pointed out that there will be adequate space between the proposed structure and the side lot line to allow for maintenance. He called the Board's attention to letters he had submitted from his neighbors in support of the request.

In response to a question from Mr. McPherson regarding the footprint of the proposed structure, Mr. Havinga said the structure would probably be approximately 4 feet smaller than the concrete pad because the existing concrete pad extends to the lot line.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply he closed the public hearing.

Mr. Kelley made a motion to grant VC 96-S-145 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 28, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-145 by ALBERT HAVINGA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.8 ft. from side lot line, on property located at 6723 Houndmaster Road, Tax Map Reference 89-1((5))228, 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 13,576 sq. ft.
4. The applicant has met the nine required standards necessary for approval.
5. The applicant testified to the exceptional topographic conditions on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by Sikes Surveys, P.C., dated November 21, 1996, signed November 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JANE W. THARP, VC 96-D-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.67 ft. from side lot line. Located at 6512 Divine St. on approx. 11,342 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((33)) 59.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Christopher Reynolds, 6512 Divine Street, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Susan Langdon. The applicant requested a variance to permit construction of a garage addition 7.67 feet from a side lot line. A side yard of 12.0 feet is required in the R-3 District; therefore, a variance of 4.33 feet was being requested.

Mr. Reynolds said the lot is odd-shaped and there is no other feasible place for the construction. He said there are no objections from the neighbors. Mr. Reynolds said his mother-in-law is 77 years old and it is difficult for her to walk around in the yard, but the deck that he is proposing to construct on top of the addition will give her a place to enjoy the outdoors.

A discussion regarding the depth of the garage took place between Mr. McPherson and the speaker. Mr. Reynolds said they would like to construct the garage large enough to also be used for storage. Mr. McPherson asked the speaker to describe what he was proposing to construct and Mr. Reynolds did so.

Ms. Kelsey said staff was not aware that the applicant was proposing to construct a deck and asked for a clarification as to the location of the proposed deck. Mr. Reynolds said the deck would be constructed on top of the addition.

Mr. Ribble asked if the garage was going to be a one car garage and the speaker replied that was correct. Mr. Ribble pointed out that he could construct a 13 foot wide garage by right. Mr. Reynolds said there was a chimney extension which necessitated the need for the extra width.

Christopher Rival, 6514 Divine Street, McLean, Virginia, came forward and said he was the applicant's immediate neighbor and he had no objections to the request.

There was no speakers in opposition to the request and Chairman DiGiulian closed the public hearing.

Ms. Kelsey asked the Board for an opportunity to clarify whether the applicant could construct a deck on top of the proposed addition. Chairman DiGiulian said that was not part of the application therefore a clarification was not necessary.

Mr. Dively made a motion to grant VC 96-D-144 for the garage only as he believed the request was modest and it was his belief that if the garage was constructed in the rear yard it would be more intrusive on the neighbor. The motion failed for the lack of a second.

Mr. Pammel made a motion to deny VC 96-D-144 for the reasons noted in the Resolution.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-144 by JANE W. THARP, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.67 ft. from side lot line, on property located at 6512 Divine Street, Tax Map Reference 30-4((33))59, 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-3.
- 3. The area of the lot is 11,342 sq. ft.
- 4. The proposed addition is 44 feet in depth, which would only be 3 feet shorter than the length of the existing dwelling. This would simply be too much bulk as it would be like turning the house around to face the dwelling on the adjoining lot. It would be too much bulk within 25 feet from the dwelling on the adjoining lot.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.



Page 405, February 4, 1997, (Tape 1), JANE W. THARP, VC 96-D-144, continued from Page 404)

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Dively voting nay. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997.

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Page 405, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. LYNN G. TERHAR, SP 96-Y-050 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 35.8 ft. from front lot line. Located at 15113 Bernadette Ct. on approx. 10,560 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 404.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Lynn G. Terhar, 15113 Bernadette Court, Chantilly, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The applicant requested a modification to minimum yard requirements on certain R-C lots to allow construction of a porch to be located 35.8 feet from the front lot line; therefore, the applicant was proposing to extend 4.2 feet into the front yard setback. Ms. Schilling noted that Condition Number 1 should be corrected to reflect a "porch addition" as opposed to a garage addition should the Board grant the applicant's request.

Ms. Terhar said she would like to construct an open country style porch on her house similar to others in the neighborhood. She added that she has had knee and hip surgery within the past year and the railing on the porch will assist her when she is entering and leaving the house.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply he closed the public hearing.

Mr. Ribble made a motion to grant SP 96-Y-050 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 28, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-Y-050 by LYNN G. TERHAR, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements for R-C lots to permit construction of addition 35.8 ft. from front lot line, on property located at 15113 Bernadette Court, Tax Map Reference 33-4((2))404, 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS and AN.

3. The area of the lot is 10,560 sq. ft.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a porch addition shown on the plat prepared by Lynn G. Terhar, dated November 25, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The porch addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 406, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MONTESSORI CHILDREN'S CENTER, INC., SP 96-H-041 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 2745 Centreville Rd. on approx. 1.54 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 34C and 34D. (INT. TO DEF. TO 2/4/97 ISS. BY BZA ON 12/10. DEF. FROM 12/17/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Lynne J. Strobel, Walsh, Colucci, Stackhouse, Emrich & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Susan Langdon. On December 17, 1996, the public hearing for this application was deferred at the request of the applicant. The applicant had requested approval of a special permit to allow a child care center with an enrollment of 99 students on 1.54 acres of land in the R-1 District. The application at that time only included parcel 34D. In the staff report dated December 10, 1996, staff recommended that the application

be denied due to its failure to meet the standards of the Zoning Ordinance for a special permit and failure to be in harmony with the recommendations of the Comprehensive Plan as evidenced by some unresolved issues, and most importantly, failure to consolidate more property into the application. The Board deferred the public hearing to allow the applicant an opportunity to address those issues and pointed out that before the Board at this hearing was a plat showing the lot consolidation.

Ms. Kelsey stated that the applicant was still requesting a maximum daily enrollment of 99 students and approval to operate Monday through Friday between 6:30 am and 6:30 pm. The applicant proposed a 5,056 square foot one-story structure for the child care center with a 22,500 square foot play area proposed to be located around a portion of the building. The play area was proposed to be fenced with a combination of chain link and wood stockade fences. Access to the site will be via a driveway from Centreville Road with 19 parking spaces proposed southwest of the child care center with a drop-off area for the children located at the front, or west side of the building.

Staff recommended approval, subject to the Revised Proposed Development Conditions dated January 28, 1997. Ms. Kelsey said the revised conditions required full transitional screening along the northern and eastern lot line and a board on board fence around the entire play area. The conditions also require the removal of the proposed dwelling. The Zoning Administrator has made the determination that a caretakers dwelling is not commonly found in association with a child care center; therefore, it cannot be constructed on a site as an accessory structure. Ms. Kelsey said Condition Number 10 is worded in such a way that if the applicant does appeal the determination and the determination is reversed it will allow the dwelling without requiring the applicant to come back to the Board.

A discussion took place between Mr. McPherson and staff regarding access to the site and any improvements on the property. Ms. Kelsey said the access would be from Centreville Road and pointed out that there is an old barn on the site.

Ms. Strobel said the applicant was requesting a special permit to allow a child care center with an enrollment of up to 99 children and added that the center will be residential in appearance. She said the Floor Area Ratio (FAR) proposed for the site is .06, which is less than half of that which would be permitted in the R-1 District for non-residential uses. The access will be located at an existing median break. Ms. Strobel said the applicant has made numerous modifications to the original request in order to satisfy the concerns of both the staff and the adjacent neighbors. The applicant has now consolidated an adjacent parcel to the north which increases the land area and, as a result, the proposed center has been moved as far away as possible from the existing single-family homes located to the southeast of the property. The parking has also been located in proximity to Centreville Road, which is again as far away as possible from the adjacent residential neighborhood. Ms. Strobel said a large portion of the site will remain undisturbed and landscaping has been provided as well as fencing along the play area. She said they have remained in close contact with the neighbors and while the neighbors would prefer that the site not be developed they are pleased with the revised plan. The neighbors still request that the entrance to the site be relocated, but that cannot be done due to the location of the median break. Ms. Strobel said this application will also be beneficial in that the design will resolve certain pre-existing drainage issues which were clearly a concern of the citizens in this area. She said the proposed design will reduce the water flow by a minimum of approximately 70 percent with a potential of up to 90 percent, which exceeds the County requirement. Ms. Strobel stressed that the applicant would like the right to construct an accessory structure on the site to be used exclusively for the school and not for resale. She said it was her understanding that no formal determination by the Zoning Administrator had been issued, and if such a determination is made the applicant would like to reserve the right to appeal that decision to the Board of Zoning Appeals. She asked that Condition Number 10 be deleted. Ms. Strobel said the operator of the proposed center currently operates an existing facility in the County and several parents have written letters in support speaking to the benefits their children have received from attending the center. She noted letters from two adjacent property owners to the existing facility, speaking to what a good neighbor the existing facility has been. (Ms. Strobel introduced this letters into the record.)

A discussion took place between Mr. McPherson and the speaker with regard to the single-family dwelling that the applicant is proposing to construct on the site. Ms. Strobel said the dwelling would be used solely

for the operator of the center. At this time, the applicant does not have the funds to construct the dwelling but would like the opportunity to do so in the future.

Mr. Pammel said if the Board deleted Condition Number 10, then he believed the Board would be in the awkward position of having to do battle with the Zoning Administrator and that he would prefer that the Condition remain in the approval and leave it to the applicant to pursue the issue. Ms. Strobel agreed that it was confusing.

Chairman DiGiulian called for speakers and the following came forward to speak to how well run the existing facility is and to the education their children receive. Edward Pal, (no address given); Fiaza Haniffa, 13305 Jasper Road, Fairfax, Virginia; Maria Kovas (no street address given), Oakton, Virginia; and, Joe Jucha, 2912 Meadow Lane, Falls Church, Virginia.

Mr. Kelley said it was his understanding that the caretaker's residence would not be built at this time. Ms. Strobel said that was correct. Mr. Kelley suggested that Condition Number be amended to read, "... no residence shall be built." He said then the applicant could face the issue head on with a special permit amendment at the appropriate time. Ms. Strobel said she would prefer that the Condition remain as written and she could then request an interpretation from the Zoning Administrator. She suggested as an alternative that the Condition be modified to read, "... unless approved by the Zoning Administrator or as determined upon appeal to the Board of Zoning Appeals."

Ms. Kelsey said staff had no objection to the wording suggested by Ms. Strobel. The Board members voiced their objection to the wording. Ms. Strobel said she believed the wording in Condition Number 10 addressed the Board's concerns. Following further discussion among the Board members, Mr. Pammel suggested approving the application with no modifications to the conditions.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant SP 96-H-041 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 28, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-H-041 by MONTESSORI CHILDREN'S CENTER, under Section 3-103 of the Zoning Ordinance to permit a child care center, on property located at 2745 Centreville Road, Tax Map Reference 25-1((1))34C and 34D, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.69 acres.
4. This area of Herndon has been undergone quite a transition over the last several years.
5. Centreville Road was previously a two-lane road with a steep hill adjacent to the subject property, but it has now been updated to a four-lane road.
6. The proposed use would be particularly appropriate to the area.

Page 409, February 4, 1997, (Tape 1), MONTESSORI CHILDREN'S CENTER, INC., SP 96-H-041, continued from Page 408)

7. The applicant has done an admirable job in addressing concerns raised by the staff and citizens and they should be complimented.

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 Sects. 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2745 Centreville Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by GJB Engineering, Inc. dated December, 1996, revised through January 14, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The total maximum daily enrollment shall be limited to ninety-nine (99) children.
6. The hours of operation shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.
7. There shall be nineteen (19) parking spaces provided as shown on the special permit plat. All parking shall be on site.
8. Notwithstanding the landscaping depicted on the special permit plat, Transitional Screening 1 shall be provided along the northern, eastern and southwestern lot lines. All evergreen vegetation shall be a minimum of six (6) feet in height at the time of planting. The landscaping depicted on the plat along the western lot line may be a mixture of deciduous and evergreen trees. The evergreen trees shall be a minimum of six (6) feet in height and the deciduous trees a minimum of two (2) inches in caliper at the time of planting. The species and location of the plant material shall be determined by the Urban Forestry Branch, DEM at the time of site plan review.
9. Notwithstanding the barriers depicted on the special permit plat, a six (6) foot high board-on-board fence, solid from the ground up with no gaps, shall be provided around the play area. This fence shall fulfill the barrier requirements. However, that portion of the play area in the front yard shall be removed.
10. Notwithstanding the proposed single family dwelling depicted on the special permit plat, unless approved by the Zoning Administrator, this dwelling shall not be constructed and no residential use or caretaker's dwelling shall be allowed 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

Page 410, February 4, 1997, (Tape 1), MONTESSORI CHILDREN'S CENTER, INC., SP 96-H-041, continued from Page 409 )

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. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 410, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. COLUMBIA BAPTIST CHURCH, SPA 79-M-031-4 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 79-M-031 for church and related facilities to permit trailer use to continue. Located at 6200 Indian Run Pkwy. on approx. 5.00 ac. of land zoned R-4. Mason District. Tax Map 81-1 ((1)) 9B.

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. Frye, Business Administrator for Columbia Baptist Church, Columbia Baptist Church, 103 West Columbia Street, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The applicant requested a special permit amendment to continue the use of a temporary trailer in conjunction with an existing church. The trailer is located on the east side of the school adjacent to a vegetative buffer and is used for Sunday school classes. Ms. Schilling said there will be no physical or operational changes. Staff believed all land use, transportation, and environmental uses were addressed relative to the Development Conditions contained in the staff report.

Mr. Frye came forward and introduced the pastor of the church, Rev. Colton, who would address the Board.

Rev. Colton, pastor of the Bren Mar Baptist Church, said the children attended Sunday school classes in the trailer. He added that the church would like to continue this practice and to his knowledge there had been no adverse impact on the community.

Chairman DiGiulian called for speakers either in support or in opposition and hearing no reply closed the public hearing.

Mr. Pammel made a motion to grant SPA 79-M-031-4 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 79-M-031-4 by COLUMBIA BAPTIST CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 79-M-031 for church and related facilities to permit trailer use to continue, on property located at 6200 Indian Run Parkway, Tax Map Reference 81-1((1))9B, 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-4.
- 3. The area of the lot is 5.00 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. 8-301 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6200 Indian Run Parkway, 5.0 acres, and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, dated August 28, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. The maximum number of seats in the main sanctuary shall be one hundred (100).
- 6. Thirty (30) parking spaces shall be provided as depicted on the Special Permit Plat.
- 7. The trailer shall only be used as a Sunday school classroom or for other church related purposes.
- 8. The existing vegetation shall remain undisturbed, except for the removal of dead or dying trees as approved by the Department of Environmental Management (DEM)/Urban Forester. The tree line shown on the Special Permit Plat dated August 28, 1991 shall be the limits of clearing in order to protect the floodplain and EQC within that area. There shall be no clearing and grading within this area. Proposed grading for this facility shall be the minimum amount required as approved by the Office of Comprehensive Planning in coordination with DEM. There shall be no clearing, grading or structures located within the EQC.

9. The property shall be made available for inspection by Fairfax County personnel during normal working hours.
10. The trailer shall meet all applicable requirements of the County and State including those related to tie-down and skirting.
11. The existing vegetation shall satisfy the Transitional Screening 1 Requirement. The six foot board on board fence, shall be maintained in its current position, west of the play area, and interior to the existing vegetation. The barrier requirement shall be waived along all other lot lines.
12. A 20 foot public access easement shall be provided, as determined by the Fairfax County Park Authority, along the west side of the property along Indian Run. The easement shall comply with the Fairfax County Park's Plan and shall be subject to the review and approval of the Fairfax County Attorney prior to issuance of a Non-Residential Use Permit.
13. The skirting on the temporary trailer shall be maintained. The trailer shall be approved for a period of five (5) years only from the date of final approval of this Special Permit. A new Non-Residential Use Permit shall be obtained for the temporary trailer within 90 days of the final date of approval of this Special Permit Amendment.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless a new Non-Residential Use Permit has been obtained. 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. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 412, February 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MCDONALD'S CORPORATION, VC 96-M-102 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines. Located at 7600 Little River Tnpk. on approx. 26,806 sq. ft. f land zoned C-6, HC and SC. Mason District. Tax Map 1-1 ((2)) 3. (IN ASSOCIATION W/SE 96-M-038) (DEF. FROM 1/14/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Tracey Steele, Walsh, Colucci, Emrich & Lubeley, PC, 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The applicant was requesting a variance to allow 10 parking spaces to remain 4 feet from the front lot line adjacent to Woodland Drive and Little River Turnpike. The Zoning Ordinance requires parking spaces to be placed a minimum of 10 feet from the front lot line; therefore, a variance of 6 feet was requested. This site was also the subject of a Special



Exception to allow a drive through window and building additions to the existing McDonalds, which was approved by the Board of Supervisors on January 27, 1997.

Ms. Steele said this variance application was the result of a special exception application that was approved by the Board of Supervisors on January 27th for the addition of a drive-through service window on an existing McDonald's restaurant which has been operating since 1966 on Little River Turnpike in Annandale. She said the variance request was specific to the application property because the improvements constructed on the property were done in the 1960s under an approved site plan prior to the enactment of the current Zoning Ordinance, which requires parking spaces to be located no closer than 10 feet from a front lot line. Parking spaces are currently located 4 feet from the closest front lot line with 16 parking spaces located closer than 10 feet to a front lot line. Ms. Steele said no new parking lot construction will occur with the addition of the drive-through, but the parking lot will be restriped to accommodate the drive-through. As a result of the restriping, only 10 spaces will be located closer than 10 feet to a front lot line. She said if the applicant were to comply with the current Zoning Ordinance requirement for the location of parking spaces than the site would have only 17 of the required 27 parking spaces.

Chairman DiGiulian called for speakers, either in support or in opposition, to the request and hearing no reply closed the public hearing.

Mr. Kelley made a motion to grant VC 96-M-102 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-M-102 by MCDONALD'S CORPORATION, under Section 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 feet from front lot lines, on property located at 7600 Little River Turnpike, Tax Map Reference 71-1((2))3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-6, HC, and SC.
3. The area of the lot is 26,806 square feet.
4. The applicant met the nine required standards for the granting of a variance, which was very ably explained by the applicant's attorney.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of parking spaces along the eastern and southern portions of the parking lot shown on the plat prepared by Huntley Nyce & Associates, Ltd., dated May 27, 1996, as revised through October 31, 1996, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 414, February 4, 1997, (Tape 1), Scheduled case of:

9:30 A.M. PLAY N' LEARN, INC., Appeal 96-Y-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is displaying two sets of play equipment associated with the retail sales use in the minimum required front yards of the property which is zoned C-8, in violation of Sect. 2-504 of the Zoning Ordinance. Located at 5800 Old Centreville Rd. on approx. 1.51 ac. of land zoned C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 59. (DEF. FROM 6/4/96. MOVED FROM 10/22/96)

Page 415, February 4, 1997, (Tape 1), PLAY N' LEARN, INC., Appeal 96-Y-006, continued from Page 414)

The appellant's attorney, Tom Thomas, came forward to request that the appeal be withdrawn. Mr. Kelley made a motion to accept the withdrawal. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 415, February 4, 1997, (Tape 1), Information Item:

Discussion from January 28, 1997 Meeting tabled until February 4, 1997  
Memorandum dated January 28, 1997 from Jane W. Gwinn regarding  
Review of the Zoning Ordinance Provisions Regarding Variance Standards

Mr. Pammel called the Board's attention to a memorandum from Jane W. Gwinn, Zoning Administrator, and agreed that he believed that what she was suggesting was the appropriate way to proceed. The Board asked if staff knew if this was a high priority item on the list of Zoning Ordinance amendments. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she did not know but that staff would provide the Board with a list of the amendments when it becomes available.

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Page 415, February 4, 1997, (Tape 1), Information Item:

Approval of January 28, 1997 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 415, February 4, 1997, (Tape 1), Information Item:

Citizen Concern/County Response Item

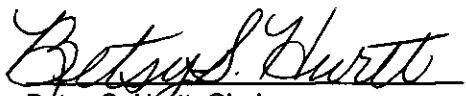
Jane C. Kelsey, Special Permit and Variance Branch called the Board's attention to Item 4 under Information Items on the Board's After Agenda Item Memorandum regarding the letter received from Jeff Harris dated January 31, 1997 regarding SP 96-L-028. The Board recognized the letter, but there was no discussion.

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As there was no other business to come before the Board, the meeting was adjourned at 10:02 a.m.

Minutes by: Betsy S. Hurtt

Approved on: March 25, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 11, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 417, February 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. DAVID JABLONSKI, VC 96-V-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.3 ft. and 10.1 ft. from side lot lines. Located at 8619 Curtis Ave. on approx. 4,400 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((10)) (13) 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. David Jablonski, P.O. Box 3615, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances of 10.7 feet and 4.9 feet to the minimum side yard requirement.

Mr. Jablonski presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-V-147 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-V-147 by DAVID JABLONSKI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.3 feet and 10.1 feet from side lot lines, on property located at 8619 Curtis Avenue, Tax Map Reference 101-4((10))(13)23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 4,400 square feet.
4. The applicant met the required standards for a variance.
5. There will be no further encroachment into the side yard.
6. The lot is undersized for the zone in which it is located and it is extremely narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by R.C. Fields, Jr., Land Surveyor, dated November 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 5-0-1. Mr. Ribble abstained from the vote and Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. BAILEY'S CROSSROADS VOLUNTEER FIRE DEPARTMENT, INC., VC 96-M-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 1.0 ft. from front lot line and parking spaces less than 10.0 ft. from front lot line. Located at 3601 Madison Ln. on approx. 1.02 ac. of land zoned C-2 and HC. Mason District. Tax Map 61-4 ((1)) 20A. (IN ASSOCIATION WITH SE 96-M-040).

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 Michal, agent for the applicant, replied that it was.

Susan Johnson, Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicant requested variances of 24.0 feet and 9.0 feet to the minimum front yard requirement.

Mr. Michal presented the variance request as outlined in the statement of justification submitted with the application. He said coming before the Board for an existing fire station which had been there for over 20 years was unusual. Mr. Michal said the reason for the request was due to a wireless company requesting to put a telecommunications facility on the volunteer fire station's property. Since the proposed structure was not shown on the original special permit plat, it was necessary for the fire station to come before the Board of Supervisors and the Planning Commission in order to reconstitute itself under the current special exception standards for volunteer fire stations and also to reaffirm its existing fire station building. Mr. Michal said the only change was the proposed telecommunication facility located immediately adjacent to the fire station and an equipment building. The communication facility had been approved by the Planning Commission and received 456 approval. He said the fire station building and the parking spaces were in the present location due to dedication of land for the improvement and expansion of Columbia Pike. He said the applicant met with the adjacent property owners and they supported the application. Mr. Michal introduced Chief Jerry Stryder, President of the Volunteer Fire Department, to explain to the Board, the importance of the fire station and the importance of the telecommunication facility to the fire station's operation.

Jerry Stryder, 5021 Seminary Road, stated that having the telecommunications facility on their property would allow the station to have adequate cellular service when responding to emergencies.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 96-M-114 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-M-114 by BAILEY'S CROSSROADS VOLUNTEER FIRE DEPARTMENT, INC., under Section 18-401 of the Zoning Ordinance to permit building to remain 1.0 foot from front lot line and parking spaces less than 10.0 feet from front lot line, on property located at 3601 Madison Lane, Tax Map Reference 61-4((1))20A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-2 and HC.
3. The area of the lot is 1.02 acres.

4. The condition is existing and was not caused by the applicant.
5. There will be no real change to the property.
6. 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the fire station building and the parking spaces shown on the plat entitled "Variance, Special Exception, Site and Landscape Plan for Bailey's Crossroads Volunteer Fire Department and Proposed Cellular Telephone Facilities" (Sheet 1); "Detail Sheet - Variance, Special Exception, Site and Landscape Plan for Bailey's Crossroads Volunteer Fire Department and Proposed Cellular Telephone Facilities" (Sheet 2) prepared by Ben Dyer Associates, dated April 1996 and revised through December 10, 1996, submitted with this application and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this variance.



Page 421, February 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-3 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 for church and related facilities to permit temporary trailers on site. Located at 10550 Georgetown Pi. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 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. Gary Peterson, Trustee, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow two temporary trailers on site. Staff recommended approval of the subject application with the implementation of the proposed development conditions.

Mr. Peterson presented the special permit request as outlined in the statement of justification submitted with the application. He said the church had become overwhelmed with children and the purpose of the trailers would be for Sunday School classes for them until the time of a permanent expansion.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelly moved to grant SPA 83-D-075-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-D-075-3 by CHRIST THE KING LUTHERAN CHURCH, under Section 3-E03 of the Zoning Ordinance to amend SP 83-D-075 for church and related facilities to permit temporary trailers on site, on property located at 10550 Georgetown Pike, Tax Map Reference 12-2((1))1B, 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 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 4.97 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. 8-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10550 Georgetown Pike (4.97 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 Kenneth W. White, Land Surveyor, dated June 27, 1996, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. All parking spaces shall be paved unless a waiver of the dustless surface requirement is approved by the Department of Environmental Management (DEM). If DEM approves a waiver, then the gravel surface shall be maintained in accordance with the *Public Facilities Manual* and the following guidelines.
  - Speed limits shall be kept low, generally 10 mph or less.
  - The areas shall be constructed with clean stone with as little fine material as possible.
  - The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.
  - Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
  - Runoff shall be channeled away from and around driveway and parking areas.
  - The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.
6. Transitional screening shall be modified as follows:
  - The existing vegetation along the northern and western lot lines shall be deemed to satisfy the transitional screening requirement.
  - Along the eastern lot line, the existing shrubs and the three evergreen trees between the proposed trailers and the eastern lot line shall be deemed to satisfy the transitional screening requirement.
  - Transitional screening along the front of the property shall consist of the plantings shown on the Landscape Plan approved in Special Permit Amendment 83-D-075-2.
7. The trailers shall be a maximum of 12' x 60' and shall remain on site no longer than five (5) years from the date of the issuance of the Non-Residential Use Permit. The trailers shall be skirted and shall meet all applicable codes.
8. The right-turn deceleration lane shall be retained.
9. Any signs on the property shall be located in accordance with Article 12, Signs.
10. Any lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.
11. The maximum seating capacity for the church sanctuary shall be limited to 300 seats.

Page 423, February 11, 1997, (Tape 1), CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-3, continued from Page 422

12. The maximum total daily enrollment for the child care center shall be limited to 30 children.
13. There shall be 96 parking spaces provided while the trailers are on site. All parking shall be on site as shown 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. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 423, February 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MARJORIE ANN STUBER, SP 96-Y-051 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit addition 15.0 ft. from side lot line. Located at 15308 Blueridge View Dr. on approx. 10,596 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 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. Marjorie Stuber, 15308 Blueridge View Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a modification of 5.0 feet to the minimum side yard requirement. Ms. Langdon noted that the lot had been previously zoned R-2 Cluster.

Ms. Stuber presented the special permit request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SP 96-Y-051 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-Y-051 by MARJORIE ANN STUBER, under Section 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit addition 15.0 feet from side lot line, on property

located at 15308 Blueridge View Drive, Tax Map Reference 53-4((5))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 February 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 10,596 square feet.
4. The applicant met 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 Sects. 8-903 and 8-913 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approval for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and /or use(s) indicated on the special permit plat certified by Douglas M. Detwiler, dated September 9, 1977, revised by Charlene M. Uaterkofler, dated November 13, 1996 submitted with this application and not transferable to other land.
3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
4. The addition shall be architecturally compatible with the existing dwelling.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 425, February 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. NADIM & ALEXANDRA KHALAF, VC 96-M-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having a lot width of 20.06 ft. Located at 4931 Sunset Ln. on approx. 1.00 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Don Smith, 5618 Wharton Lane, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into two lots. Staff believed that the application had not met Variance Standards 2-9 as noted in the staff report. Ms. Langdon said the applicant had submitted a revised statement of justification that morning.

The applicant's agent, Don Smith, presented the applicant's request as outlined in the statement of justification. Mr. Smith said that the land had been rezoned in 1959. He said another variance had been granted in the area which was a larger variance than what the applicant was requesting. Mr. Smith felt that the application complied with the required standards for a variance. He stated that the application would not adversely affect the neighborhood nor would the character of the neighborhood be changed.

Chairman DiGiulian called for speakers.

Kathleen McDermott, 4936 Sunset Lane, came forward to speak in opposition. She said the applicant's agent had represented the former owners of the subject property when they appeared before the Board previously to subdivide the subject property. She said the Board denied the previous application because none of the standards for a variance had been met. Ms. McDermott said staff re-evaluated the application and came to the same conclusion with the subject application as with the previous application. She said both owners were investors and had never lived on the property. Ms. McDermott said granting the variance would create triple stacking of lots and would be detrimental to the neighborhood and an eyesore. She asked that the Board deny the application.

Mr. Smith addressed the speaker's concerns in his rebuttal.

Mr. Ribble noted that the only two differences between the subject application and the previous application was different owners and a slight difference in the ingress and egress.

Mr. Pammel noted two letters received in opposition to the application.

Chairman DiGiulian closed the public hearing.

Mr. Dively said this was a reasonably close case but that he had questions regarding the good faith requirement. He said if the good faith requirement had any meaning, he would have serious reservations whether it was being met in this instance. He added that triple stacking was not the way the property should be developed and if that was not the situation, he might feel differently. Mr. Dively said the triple stacking effect was a definite negative and moved to deny VC 96-M-143 for the reasons set forth in the Resolution.

Chairman DiGiulian opposed the motion. He said the character of the neighborhood had been set with the existing outlet roads surrounding the property.

Mr. Pammel said he agreed with the Chairman's rationale, but that the Board had criteria for a variance and he believed that they had not been met as staff had indicated.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-143 by NADIM & ALEXANDRA KHALAF, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having a lot width of 20.06 feet, on property located at 4931 Sunset Lane, Tax Map Reference 71-4((1))6, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.00 acre.
4. There is a question on good faith, if it has any meaning at all, this meets it. This is a reasonably close case but there is concern about the good faith requirement being met. The triple stacking is not the way we should be developing the property here and, if that were not the situation, then it might be different. Consequently, the triple stacking effect is a negative.

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 4-2. Chairman DiGiulian and Mr. Kelley voted nay.

Page 421 February 11, 1997, (Tape 1), NADIM & ALEXANDRA KHALAF, VC 96-M-143, continued from Page 426)

Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997.

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Page 427, February 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ANITA L. BUCK, SP 96-V-048 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 2600 Popkins Ln. on approx. 21,780 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((6)) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Anita Buck, 2600 Popkins Lane, Alexandria, Virginia, replied that it was.

Susan Langdon, 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 and a maximum daily enrollment of 14 children. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions. Staff recommended approval of the application subject to the Proposed Development Conditions. Ms. Langdon noted five letters in support of the application that were submitted to the Board.

Ms. Buck presented the special permit request as outlined in the statement of justification submitted with the application. She said the complaint originally came from someone who did not live on Popkins Lane. Ms. Buck said she primarily serves the neighborhood, and activities done with the children frequently takes her away from the residence.

Chairman DiGiulian called for speakers.

Pat Kurlow, 2605 Popkins Lane, came forward to speak in opposition to the application. She expressed concerns about traffic, noise, and her property value being lowered. Ms. Kurlow was apprehensive about increasing the number of children.

Ms. Buck addressed the speaker's concerns in her rebuttal. She said the special permit request was not for additional children, that there would be 10 part-time children on site at any one time. Ms. Buck also indicated that the traffic problems were not caused by her child care.

Mr. Ribble asked Ms. Buck if she was aware of any complaints. Ms. Buck replied she was aware of one complaint.

Ms. Langdon told the Board that Rebecca Goodyear, from Zoning Enforcement, was present to address the violation.

Ms. Goodyear came forward and said she had issued the Notice of Violation to Ms. Buck. She said one complaint had been received and that the complainant wanted to verify that the child care provider was legally established.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said that day care centers, strategically located in the County, are necessary and, even though the population is aging somewhat, there is still a large number of youngsters and toddlers in the County that require day care treatment. He said Ms. Buck indicated that she was licensed by the State and met those standards and criteria. Mr. Pammel said this use was reasonable at this location and he moved to grant SP 96-V-048 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1997.

**COUNTY OF FAIRFAX, VIRGINIA****SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-V-048 by ANITA L. BUCK, under Section 3-303 of the Zoning Ordinance to permit a home child care facility, on property located at 2600 Popkins Lane, Tax Map Reference 93-3((6))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 11, 1997; 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 21,780 square feet.
4. Day care centers, strategically located in the County, are necessary. Even though the population is aging, there is still a large number of youngsters and toddlers in the County that require day care treatment. The applicant indicated that she was licensed by the State and met all of those standards and criteria. The use is reasonable for the location.

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 Sects. 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2600 Popkins 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 Alexandria Surveys, Inc., dated April 6, 1992, revised by Anita L. Buck, dated October 10, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of children on site at any one time shall not exceed ten (10) children; the maximum daily enrollment shall not exceed fourteen (14) children.
5. The hours of operation shall be limited to 6:30 a.m. to 9:30 p.m., Monday through Thursday and 6:30 a.m. to 7:00 p.m., Friday.
6. The number of non-residential employees shall be limited to two (2). Only one (1) employee in addition to the applicant shall be on site at any one time during normal hours of operation.
7. The carport and driveway, which can accommodate five (5) parking spaces, shall be deemed sufficient for the Home Child Care Facility. All parking for the use shall be on site.
8. There shall be no sign associated with this use.



Page 429, February 11, 1997, (Tape 1), ANITA L. BUCK, SP 96-V-048, continued from Page 428

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. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 429, February 11, 1997, (Tape 1), Scheduled case of:

9:30 A.M. THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SPA 87-A-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 87-A-006 for church and related facilities to permit building addition, freestanding spire, increase in parking spaces, reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 17.0 ft. from side lot line. Located at 4911 Ox Rd. on approx. 4.52 ac. of land zoned R-1. Braddock District. Tax Map 68-1 ((1)) 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. David Bryant, 22570 Markey Court, Dulles, Virginia, replied that it was. Mr. Bryant noted that his address had changed subsequent to the approval of the affidavit.

Julie Schilling, Staff Coordinator made staff's presentation as contained in the staff report. The applicant requested a special permit to construct an addition to the church, the relocate a freestanding church spire, provide a stormwater detention pond, and increase the parking. She said all issues had been addressed with the Revised Proposed Development Conditions dated February 11, 1997. Staff recommended approval of the application with the implementation of the Revised Proposed Development Conditions.

The applicant's agent, Mr. Bryant, presented the applicant's request as outlined in the statement of justification submitted with the application. He said the church proposed a substantial increase of almost 75% in the amount of landscaping. The church agreed to install a 6 foot wood barrier fence along the eastern property line. Mr. Bryant said the church agreed to remediate a drainage problem that the homeowners had identified.

Chairman DiGiulian called for speakers.

Tom Grant, 5104 Portsmouth Road, came forward to speak in opposition to the application. Mr. Grant thanked Ms. Schilling for touring the property with the neighbors and allowing them an opportunity to present their concerns. He submitted photographs and a statement reflecting the concerns of the neighbors into the record citing drainage problems, off site parking, and removal of dead trees. He also requested that the church build a brick barrier as opposed to a wood barrier. Mr. Grant asked the Board to reconsider the dry pond because he believed the pond would pollute the air.

Mr. Bryant addressed the speaker's concerns in his rebuttal. He said the church had previously addressed and agreed to rectify the concerns stated by the speaker.

Chairman DiGiulian closed the public hearing.

Mr. McPherson said the application met the requirements for a special permit amendment and he moved to grant SPA 87-A-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 11, 1997.

Mr. Pammel noted that Condition #8 addressed the barrier and Condition #7 addressed the transitional screening. He said the applicant presented to the Board their willingness to abide by the conditions and to do what was required to have a compatible situation with their neighbors.

Mr. Ribble said that the conditions were there and it was up to the church to live up to them.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 87-A-006 by THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, under Section 8-914 and Section 8-301 of the Zoning Ordinance to amend SP 87-A-006 for church and related facilities to permit building addition, freestanding spire, increase in parking spaces, reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 17.0 feet from side lot line, on property located at 4911 Ox Road, Tax Map Reference 68-1((1))12, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.52 acres.
4. The amendment is a well thought out plan, addressing the concerns of the neighbors, not only for drainage, but also for parking.
5. The application increases the number of parking spaces which allows the applicant to relieve problems with off site parking.
6. There is no real change of the essential function of the application with regard to the number of seats in the church.
7. The construction that is proposed is on the north side, towards the shopping center.
8. The application meets the requirements for a special permit amendment.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sects. 8-301 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1.\* This approval 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, 4911 Ox Road, 4.53 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 D.A. Bryant P.C., dated January 9, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5.\* The seating capacity of the main worship area shall not exceed 287 persons.
6. The maximum parking provided shall be 182 spaces. All parking associated with the church and related activities shall be on-site as shown on the special permit plat.
7. Transitional Screening 1 shall be provided along the rear (eastern) lot line, as modified in accordance with that shown on the approved Plat, subject to the review and approval of the Department of Environmental Management (DEM). Existing vegetation shall be used where possible and shall be supplemented where necessary, as determined by the Urban Forestry Branch, DEM, to screen the parking lot and open space activity area between the parking lot and rear lot line from adjacent residential properties. Landscaping shall be maintained in healthy growing condition, and diseased or dead plants shall be replaced with equivalent plantings, subject to the review and approval of the Urban Forestry Branch, DEM, within 30 calendar days, weather permitting.
8. A six foot high solid wood fence shall be provided along the eastern property line, east of the transitional screening shown on the plat. One opening in the Barrier fence shall be provided to allow access to the pedestrian walkway at the terminus of Glenville Street. The fence shall be maintained in good condition at all times.
9. The parking of church owned vehicles shall be limited to a maximum of five (5) vehicles on the site at any one time.
10. The addition shall be constructed in general accordance with the schematic elevation dated December 31, 1996, as revised through January 2, 1997 (Attachment A). Landscaping and foundation plantings shall be provided along the western side of the addition in order to soften the appearance of the addition from Ox Road, subject to the review and approval of the Urban Forestry Branch, DEM.
11. Drainage conditions which cause stormwater runoff to flow onto adjacent residential properties, specifically Tax Map Numbers 68-1 ((10)) (11) 1, 3 and 4, shall be corrected at the time of site plan review subject to the review and approval of the Director, DEM.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1997. This date shall be deemed to be the final approval date of this special permit.

Page 432, February 11, 1997, (Tape 1), Scheduled case of:

9:30 A.M. JAMES WEBB, JR., Appeal A 96-L-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that appellant has deposited soil within a drainage swale obstructing the run-off from adjacent properties in violation of Zoning Ordinance provisions. Located at 7343 Hooes Rd. on approx. 0.52 ac. of land zoned R-1. Lee District. Tax Map 90-3 ((1)) 23. (MOVED FROM 10/1/96 AND 12/17/96)

William Shoup, Deputy Zoning Administrator, indicated that the appellant had requested a deferral due to illness. Mr. Shoup said the property owners to the rear of the subject property were present to speak to the deferral request.

John Alphin, 7106 Sterling Grove Drive, came forward to explain the flooding problem in his backyard. He presented a photograph of ducks in his backyard due to the amount of water. He said the water was deep enough to be a threat to young children. Mr. Alphin said the subject application had been deferred several times and he would like to get the matter resolved as soon as possible.

Mr. Kelley moved to dismiss Appeal A 96-L-032. He said he was sympathetic to the appellants medical problems but this had gone on for thirteen months. Mr. Kelley said when there is adversity, people still have to pay taxes and take care of their other obligations. He said he believed the appellant had sufficient time to hire counsel or do whatever was necessary to prepare himself and that a further delay was not justified. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Page 432 February 11, 1997, (Tape 1), Scheduled case of:

9:30 A.M. HYUNSOO YAI AND UISUN YAI, Appeal A 96-M-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that appellants' proposed dental laboratory is not considered an accessory use to an office and does not satisfy the criteria to be considered an accessory service use and therefore, is not permitted. Located at 4200 Martin Ave. on approx. 12,800 sq. ft. of land zoned C-3, HC and SC. Mason District. Tax Map 71-1 ((4)) T.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 3, 1997. He said at issue was the appellants' proposal to establish a dental lab on the subject property. Mr. Shoup said the use would involve an office component and a laboratory for the production of dental crowns and bridge work. He stated that in the C-3 District an office use is permitted but that the definition of office precludes the operation of laboratory facilities or the manufacturing or production of any materials, goods, or products. Mr. Shoup said the lab would conflict with the definition of office, and for that reason the lab could not be considered to be an accessory component of the office use. He said staff's judgement was that the office is generated by the laboratory activity. Mr. Shoup said staff researched to determine if the office could be considered an accessory service use which, under the Zoning Ordinance, is permitted in a C-3 District. He said the dental laboratories could be considered an accessory service use as a business service and supply service establishment, if it met all the applicable criteria. However, as an accessory service use, the use must contribute primarily to the comfort, and the convenience of the occupant or business enterprise to which it serves and must be oriented to cater primarily to the employees of the principal use. Mr. Shoup said that in the C-3 District, an accessory service use must be located in the same building and it was staff's opinion that the lab does not serve the office use, it does not provide supplies to the office use, but instead it produces an end product and that activity prompts the need for the office. He said staff did not believe it satisfied the criteria to be a permitted accessory service use on the property; therefore, the laboratory could not be established on the C-3 zoned property.

Mr. Pammel noted a letter from the appellants' attorney which discussed the property also being used for the sale of medical equipment and asked if that type of activity was a permitted activity for the subject building.

Mr. Shoup replied that the sale and display of medical equipment could be permitted as part of an office use and it was specifically provided for in the office definition; however, that was oriented to the display and sale of equipment that was not produced on site.

Patrick Via, attorney for the appellants, said that the appellants proposed two separate uses, office use and lab use. He said their office use was related to the sale and display of medical equipment and supplies. Mr. Via said the accessory service use, the lab, produced and manufactured the majority of the dental crown and bridge work that was sold by the office use. Mr. Via said the issue was whether a laboratory use could be accessory to the principal use of an office in the C-3 District. He said the Zoning Administrator stated in the interpretation dated October 17, that a dental lab under 5,000 square feet, was considered a business service and supply establishment. Mr. Via said that Sect. 10-202.2A of the Zoning Ordinance specifically allows a business service and supply establishment as an accessory use to an office in a C-3 zoning district. He said the next question was whether or not the lab use was accessory to the office use. Mr. Via said that the staff report indicated that the lab use caused the need for the office use, but he believed that was not the case. He said the lab use was the principal use and the office use was the accessory use. Mr. Via said the proposed accessory service use did satisfy all the criteria of the Zoning Ordinance, and allows a laboratory use accessory to an office use and requested the BZA to reverse the Zoning Administrator's determination. Mr. Via noted a letter and phone call received by the appellant in support of the appellant's position.

Mr. Kelley asked if the appellant was part of a group of dentists. Mr. Via said he believed that the appellants' end goal was to foster a clientele and provide whatever equipment they might need, but at present he served whatever dentists approached him.

Chairman DiGiulian called for speakers and there were none to speak to the application.

Mr. Shoup said that the accessory use criteria and the accessory service use criteria was being confused. He said it was clear, based on the language of the office definition, that this could not be considered an accessory use to the office even though it might be subordinate in area. Mr. Shoup did not believe it was subordinate in purpose, and because there is specific language in the office definition that this lab would conflict with, it could not be considered an accessory use to the office.

Mr. Dively said that the use was clearly subordinate and asked why it would not be considered an accessory use. Mr. Shoup agreed that it was subordinate and reiterated that it had to be subordinate in purpose, area, and extent, to meet the accessory use definition. Mr. Dively asked how that was not so.

Mr. Shoup replied that it was apparently subordinate in area, but was not subordinate in purpose. He said this was a case of "the tail wagging the dog". Mr. Shoup said there is a laboratory use which requires an office component to market whatever was being produced in the lab and that was the reason he believed the lab was causing the need for the office use. He said that was the reason he believed it was not subordinate in purpose. Mr. Shoup added that the language in the definition of office, stated that you could not have a laboratory as part of an office and products could not be manufactured as part of an office use. He said with regard to an accessory service use, a dental lab could be considered an accessory service use, as a business service and supply service establishment. However, meeting the criteria of an accessory service use would require primarily serving the occupants of the building in which they are located and the principal users of the business or supply service establishment.

Mr. Via said the office use is separate from the lab use and that the Ordinance specifically allowed lab use accessory to an office use.

Chairman DiGiulian closed the public hearing.

Mr. Dively said this case was a very thin line and in this case he was going to follow the old rule of thumb, which was to rule in favor of the land owners' use. He said he did not find the Zoning Administrator's position unreasonable, but it was awfully narrow and restrictive. Mr. Dively said the lab use was clearly subordinate to the office and "which end wags the other end" depended on where you were standing to look at it. Mr. Dively moved to overrule the Zoning Administrator with respect to Appeal A 96-M-050 on the grounds that this was an office with a use that was accessory.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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The Board recessed at 10:33 a.m. and reconvened at 10:43 a.m.

Page 434, February 11, 1997, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM J. REEDER, ET. AL., Appeal A 96-B-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination by the Director of DEM to approve an easement/dedication plat related to the proposed development of a retail store. Located at 5648 New Guinea Rd. on approx. 10.55 ac. of land zoned C-6. Braddock District. Tax Map 77-2 ((1)) 13C.

Don Demetrius, Assistant Branch Chief, Department of Environmental Management, presented staff's position as set forth in the memorandum dated January 30, 1997. He said the purpose of the record plat was for the creation and vacation of various easements and for dedication of public right of way along the frontage on the property. Mr. Demetrius said the appellants argued that the record plat was an integral part of the site plan and was a necessary condition for site plan approval, but that argument was rejected by the Fairfax County Circuit Court in a case filed by the appellants in November 27, 1996. He said staff believed the Director was correct in approving the subject record plat because it met all the relevant requirements of Chapter 101 of the Code of Fairfax County, otherwise known as the Subdivision Ordinance. Mr. Demetrius said the Subdivision Ordinance contained the provisions governing the review and approval of record plats. He said the Zoning Ordinance states that a party must be aggrieved in order to appeal an administrative decision before the BZA and that none of the allegations indicate that the appellants had been truly aggrieved by the Director's decision to approve the subject record plat. Mr. Demetrius said staff recommended that the appeal of the approval of the record plat be denied.

Mr. Pammel asked if the site plan requirement was a requirement of the Zoning Ordinance. John Winfield, DEM, replied that site plans were regulated by Article 17 of the Zoning Ordinance. Mr. Pammel asked if record plats were an integral part of a site plan. Mr. Winfield replied they were not. Mr. Pammel said that was unusual because from his perspective it was an integral part of the site plan and he believed they had a difference of opinion.

Chairman DiGiulian called for speakers.

Mr. Young, representing the owner of Lot 14, came forward to support the appellants' position stating that there were enough errors on the plat to constitute the grounds for an appeal.

William Reeder thanked the Board for the November 26, 1996 decision to hear the appeal. He said the appeal was based on inaccuracies on the plat. He noted that the aggrieved parties resided in the surrounding neighborhood of Colony Park and Woodfield Green. He discussed concerns with two storm drainage easements on the site. Mr. Reeder said that the approved easement plat violated the existing storm drainage and flood plain easement, and approving other stormwater easements would interfere with the natural flow of storm water. Mr. Reeder expressed concerns with the right-of-way on Old Guinea Road, stating that there was no information showing how the road, its alignment and center point would relate to their properties. He requested that the Board rescind the Director's approval of the easement plat and direct that it be returned for correction and invalidate the site plan approval that depended on the easement plat approval. Mr. Reeder also requested an independent investigation to determine how the County could have permitted discrepancies in the Site Plan approval process.

Chairman DiGiulian asked Mr. Reeder to briefly tell the Board how the community was damaged. Mr. Reeder said the damages would be that there was a tremendous level of land use beyond what would have been possible if they had to satisfy the constraints of the easement. He said there would be an increase in traffic and that the Whitfield Green neighborhood might lose property due to changes.

Steve Schrobo, 10221 Grovewood Way, President of Bartons Grove Homeowners Association, came forward to support the appellants' position. He expressed concerns about DEM approving a plat with inaccuracies. He thanked the Board for allowing the community an opportunity to express their concerns.

Frank Jenkins, Engineer from VIKI Inc., the company that prepared the plat at issue, responded to the speakers' concerns. He said the only discrepancy on the easement plat was an incorrect deed book reference to the existing 22.0 foot storm drain easement. He said they were in no way vacating this easement that it was merely

a typographical error on the plat. Mr. Jenkins presented the Board with an overall deed composite which showed some of the boundary markers.

Frank McDermott, attorney, presented a copy of the record plat displaying the dedication of right of way and vacating pre existing easements along the area of the storm drainage easement. He addressed the appellants' concern of the storm water easement as it related to the Colony Park neighborhood.

Mr. Winfield noted a correction in the staff report referencing a typo in the deed book number.

Mr. Reeder said there were other errors that were not acknowledged. He expressed concern about no floodplain study being done.

Chairman DiGiulian asked if there was wording in the easement that required a floodplain study. Mr. Reeder replied that he was not aware of any wording to that effect.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said there had been some minor technical errors and that he didn't believe those errors altered the outcome of the project. He said the process of vacating easements that are assigned to the Board of Supervisors concerned him. Mr. Pammel requested that the County Attorney's Office provide the Board with an opinion regarding the process of vacations of easements. Mr. Pammel wanted to know if the power could be delegated to DEM or any other agency as an administrative function.

Pat Taves, County Attorney's Office, said that he was not aware in the appeal that any issue had been raised with regard to any public hearing that is required.

Mr. Pammel said he was raising the issue because an easement was being vacated. He said an easement, which was conveyed to the Board of Supervisors with certain specific conditions attached to it, was being vacated and his concern was that the Board accepted that through the process of recordation. Mr. Pammel wanted to know what the process was to abrogate that and could it be done without a public hearing, or if it could be done administratively.

Mr. Taves said they would be glad to research that if appropriate and he deferred to Mr. Winfield.

Mr. Winfield said the State Code provides for two mechanisms to vacate easements, one is via public hearing process through the Board of Supervisors and the other is authorized by the Director of DEM to administratively act on behalf of the Board to vacate easements and rights-of-ways.

Mr. Pammel said the errors identified were not significant. He said the basic problem was if the storm drainage, as designed, would work. He said the appellants stated that their primary concern was that it may not work and if it did not work, they would be subjected to major problems within their community. Mr. Pammel suggested that the system should work. He said DEM had determined that the design was adequate through a relocated storm drainage easement and an underground system. He said DEM determined that this will meet the engineering needs for the development of the site. Mr. Pammel moved to uphold the Director of DEM's determination.

Mr. Kelley seconded the motion. He said, in his view, this should not be construed in any way, shape or form, that the Board supported DEM's position that the BZA did not have jurisdiction in this matter. The motion carried by a vote 6-0. Mr. Hammack was absent from the meeting.

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Approval of November 26, 1996 Minutes

Mr. Ribble moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 436, February 11, 1997, (Tape 2), Action Item:

Out of Turn Hearing Request  
Mehdi Mofakhami, VC 97-P-013

Mr. McPherson moved to deny the Out of Turn Hearing Request for VC 97-P-013. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 436, February 11, 1997, (Tape 2), Action Item:

Approval of February 4, 1997 Resolutions


Mr. Pammel moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

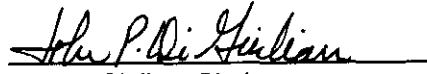
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As there was no other business to come before the Board, the meeting was adjourned at 11:31 a.m.

Minutes by: Regina Thorn

Approved on: April 22, 1997

  
Betsy S. Hufft, 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 February 18, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:09 p.m. He then asked if there were any Board Matters to bring before the Board.

Mr. Kelley called the Board's attention to a previously heard special permit application for Fairfax National Golf Course, formerly the Cedar Crest Golf Course, of which, as he understood it, the Health Department had interpreted the BZA's development conditions to require the golf course to construct a permanent septic system to replace the portable toilets. Mr. Kelley heard that the golf course was losing business, such as large outings and picnics, to other Counties because of the Health Department's Determination and he requested that staff review the situation and report its findings to the BZA within a reasonable time.

Jane Kelsey, Chief, Special Permit and Variance Branch, advised that she would contact the Health Department and prepare a memorandum apprising the Board of their determination and official decision.

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Page 437, February 18, 1997 (Tape 1), Scheduled Case:

8:00 P.M. GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, SPA 91-C-070-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for outdoor recreation use to permit building additions, site modifications, increase in hours of operation change in development conditions and special events. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((8)) A, 1A, 2, 3, 4 and 5; 18-4 ((1)) 23 and 26. (OUT OF TURN HEARING GRANTED. MOVED FROM 9/24/96. DEF. FROM 10/8/96 FOR ADDITIONAL INFORMATION PRIOR TO HOLDING PUBLIC HEARING)

At this time, Mr. Hammack, noting the large number of speakers present, suggested that the Board limit the time allotted for presenting oral testimony. He then moved that individuals speaking on their own behalf be allowed two (2) minutes and those representing organizations be permitted three (3) minutes for presenting their testimony.

Several Board members (unidentified) seconded the motion which carried unanimously by a vote of 5-0 with Mr. Pammel not present for the vote; Mr. Ribble absent from the meeting.

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John M. Thoburn, 1630 Hunter Mill Road, Vienna, Virginia replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report. She noted the property's size, location, its access and easement, the zoning and the contiguous properties' zoning, and the current development: a golf driving range, two putting areas, a 1500 square-foot clubhouse and associated gravel parking areas. Since the October 8th Out-of-Turn hearing, whose decision was deferred for inclusion of additional information, Ms. Stagg informed the Board that the applicants had amended their Special Permit Plat, dated January 14, 1997. The request, as amended, included 10 tee lights, 10 bunker lights, an increase in hours of operation, building additions, additional parking, and site modifications which included berms. (Please reference the comparison of the original and current requests which are contained in Attachments 9-12 of the Staff Report Addendum, dated February 11, 1997.)

Ms. Stagg stated that staff believed that all applicable standards had not been satisfied with the application as submitted and that the proposal did not meet all the General Special Permit Standards contained in Sect. 8-006, specifically Standards 1, 2, and 3. She briefly detailed staff's issues concerning the increased hours of operation

and installation of lights pointing out that the level of intensity generated from the use was not in harmony with the Comprehensive Plan's recommendations for this low-density residential neighborhood and could adversely impact the character of the area. She called the Board's attention to the imposition of the Revised Proposed Development Conditions in Attachment 1, which specifically prohibited an expansion of hours of operation and lighting. To clarify, Ms. Stagg explained that staff recommended approval, in-part, of the applicants' requests, subject to the revised proposed development conditions located in Attachment 1 of the Staff report Addendum which included reaffirmation of the requested barrier and transitional screening waivers and modifications. She further noted that, at the applicants' request, staff would add the words "special event" to the last sentence of Condition #30 to read: "There shall be no special events held on the site, nor shall there be any special event tents located on the site.", and that this change would clarify staff's intent to allow tents, on a temporary basis, as tee coverings as defined in Condition #28. Ms. Stagg further noted that on pages 7 and 8 of the staff report addendum, it was reported that information necessary for the evaluation of the impact of increased hours of operation on the turf chemical requirements was not provided by the applicant; however, the applicant had provided information pertaining to the application of chemicals on the property and this information did not affect the wording of the revised proposed development condition.

Jane Kelsey, Chief, Special Permit and Variance Branch, responded to Mr. Kelley's question concerning staff's current recommendation for lighting as compared to its 1992 recommendation, referring to the chart contained in the Staff Report Addendum.

John M. Thoburn submitted a petition with over 7,000 signatures in favor of his proposal for lighting at the driving range, a copy of which is contained in the record. He professed that all environmental impacts were mitigated with the exclusion of the bunker lighting and 30-foot high light standards. He played a video to visually depict the site's amenities, topography, berming and buffering and the types of adjoining and contiguous forms of lighting that surround the site. Mr. Thoburn believed it important to point out that his site was on the edge of a planning sector. He maintained that there would be no adverse skyglow impact from his site's lighting and that the requested hours of operation were reasonable. Mr. Thoburn responded to Mr. Dively's question regarding direct lighting noting that the size of the site sets the lights a good distance from the residential neighborhoods and that using state-of-the art techniques eliminates or mitigates glare.

Chairman DiGiulian called for speakers in support of the application.

David Minyard, 605 Truman Circle, S.W., Vienna, Virginia voiced his support for lighting the golf range explaining that his own home was in close proximity to different lighted facilities and none had an adverse impact. He urged the BZA's support on this issue for the golf park.

Steve Meyer, 10201 East Hunter Valley Road, Vienna, Virginia voiced support for the lights. He pointed out that the proposed Oak Marr Driving Range, which would be lighted, had far more residential development in closer proximity than the Hunter Mill Golf Center and he questioned why Oak Marr was permitted to have lights while Hunter Mill Golf Center was not. He also pointed out that Thoburn's Golf Park was well maintained and frequently replaced its equipment.

Mark DiGalley, 4617 Columbia Road, Annandale, Virginia, affirmed that he was an avid golfer and noted the convenience of the Thoburn's facility and that there was a dire need for that type of quality, convenient recreation.

Jim Sturgill, 1989 Lakeport Way, Reston, Virginia, affirmed that the Thoburn facility offered an outstanding recreational opportunity for himself and his family.

Doug White, 735 Old Hunt Way, Herndon, Virginia, said that the addition of lights would afford himself and his family more time to enjoy the Golf Park's amenities. He believed that the addition of lights would not adversely affect the residential communities.

Page 439, February 18, 1997 (Tape 1), GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, SPA 91-C-070-2, continued from Page 438

Morris Workman, 2337 Freetown Court, Reston, Virginia, said that the facility was maintained in an A-1 condition, was in an A-1 location, and it was convenient for him to use.

Jeff Hoyt, 13144 Maltese Lane, Fairfax, Virginia, said that he and his family supported all activities such as the Golf Park because it promoted wholesome family fun time together.

Chairman DiGiulian called for speakers opposed to the special permit amendment.

Jeannette Twomey, 1504 Brookmead Place, Vienna, Virginia, referenced the Board's decision in 1992 which disallowed lighting at the Golf Park pointing out that nothing had changed. She asked that the Board deny the application. She responded to Mr. Kelley's questions concerning the lights from existing contiguous facilities.

Ronald W. Stanton, 10309 Browns Mill Road, Vienna, Virginia, referencing Mr. Thoburn's Statement of Justification, emphatically noted that "a serious financial hardship" was not justification for such a use's increase in intensity. He reiterated Ms. Towmey's argument that nothing had changed since 1992 and that the Board should stand by their initial decision of no increased lighting. A copy of his testimony is contained in the record.

Bruce Bennett, 1459 Hunter View Farms, Vienna, Virginia, compared the data and similarities of a noted expert on sports lighting, Mr. J. Delvin Armstrong, with the Thoburn proposal. Mr. Bennett pointed out that Mr. Armstrong emphatically stated that it was an impossibility to have no off-site lighting for such a facility, that there would be substantial glare off-site from a golf driving range, yet it was Mr. Thoburn's contention sky-glow and off-site light was not an issue and that his system eliminated glare associated with athletic fields.

Al Wilson, 1538 Crowell Road, Vienna, Virginia, identified himself as an electrical engineer. He explained the criteria for golf course lighting emphasizing the importance of the vertical aimed angles of each light. He pointed out that Mr. Thoburn's proposed lights would have 6,850,000 lumens which was the equivalent of 984 lights from approximately 21.12 houses per acre with each house having four 150-watt par lamps; he maintained that there would surely be a huge effect on the surrounding property.

Frank Knock, 1505 Brookmeade Place, Vienna, Virginia, President of the Richland Hunt Community Association, the closest residential development to the golf park. He pointed out that those speakers in support of the proposal did not live in the area and that all the community associations in the area were opposed.

John Mansfield, 1503 Brookmeade Place, Vienna, Virginia, submitted his written statement. As the representative for the Hunter Mill Defense League, he listed their questions and concerns over four of staff's development conditions: No. 7 regarding parking spaces; No. 18 the footprint of the clubhouse and gazebo; No. 29 concerning the parking lot's canopy; and No. 30 pertaining to "special events". Please refer to his written testimony which is contained in the record.

Phil Ianna, an astronomer, commented on the applicant's lighting report affirming that there would be significant sky glow from the golf park.

Jim Guy, 10507 Hunting Crest Lane, Vienna, Virginia, attested that, as an amateur astronomer, the golf park would affect his quality of life because there will be significant skyglow which impeded his night sky viewing. He stated that he was as passionate about his star gazing as a golfer is about his golf game. He submitted written testimony and a chart depicting the amount of stars visible to the naked eye in different areas. A copy of his submissions are contained in the record.

Dr. Jean Ward, 10286 Johns Hollow Road, Vienna, Virginia, said that she had carefully investigated the area before purchasing her million dollar home and believed that Mr. Thoburn should not continue to benefit from his special permit commercial activities after more and more homes were built making the area clearly residential. She voiced concern over decreasing property values due to the Thoburn's commercial enterprise and the fear for safety of her children who ride their bicycles on their cul-de-sac because of the strangers nearby.

Nancy Overman, 1616 Crowell Road, Vienna, Virginia, said they had purchased their home to live and raise their children in a rural environment absent of the skyglow from city-type lighting. She commented that the constant click-click-click of golf balls being hit was an annoyance she has had to accept.

Bernard Maguire, (address unknown), representing the Hunter Mill Estates HOA, voiced their unanimous opposition to the requested additional operations and lights of the Golf Park. He worried about the visibility of the 30 light standards. He questioned the BZA's business procedures because it seemed apparent that the entire area had been ignored in staff's studies.

Donna Schuster, 1620 Crowell Road, Vienna, Virginia, urged the BZA to reject the Thoburn's proposal. She stated that the allowance of increased hours and lights would have a detrimental effect on their neighborhood. She pointed out that there had been significant residential development in the area and to comply with the Comprehensive Plan, the BZA should uphold the original limitations placed on the special permit.

Elliott Edder, 1616 Crowell Road, Vienna, Virginia, explained that he lived across from the Golf Park and he handed Mr. Thoburn several egg cartons he had filled with golf balls which were retrieved from his yard. He worried that so much of the quality time, star-gazing, eating out on the porch in the evening, sharing each other's company in the waning hours of eveningtide in each's room, would be affected by the addition of lighting as their upstairs windows peered over the berms. Mr. Edder submitted several light studies from professionals he termed "qualified" which refuted the Golf Park's study and which are contained in the record.

Frances C. Davis, 1632 Crowell Road, Vienna, Virginia, advocated that the activities proposed were an increase in intensity and was not in harmony with the Comprehensive Plan. She complained of storm water runoff since the Golf Park's development as well as the continual illumination of her home from the current Golf Park street lights. Mrs. Davis pointed out the front entrance to the Golf Park was maintained quite well but the side along Crowell Road was overgrown and unkept.

Rea Patton, 1628 Crowell Road, Vienna, Virginia, said that she and her husband had recently moved from New York to this rustic area of Fairfax County and had been assured that there would be no further development of the Golf Park.

Michael Patton, 1628 Crowell Road, Vienna, Virginia, voiced his concern over the quality of life shared by he and his family and neighbors and which he felt was being threatened and the assurance that there won't be noise pollution from the use. He also pondered over what recourse was afforded if the lighting did not meet the standards professed by Mr. Thoburn.

Helen Lippa, 11502 Brookmeade Place, Vienna, Virginia, believed that the comparison posed by Mr. Thoburn of his current lighting proposal to that of Lake Fairfax's and the toll road were spacious. She pointed out that the hours requested by Mr. Thoburn were daily while the ballpark's were only a few days a week.

Gail Wholey, 10504 Hunting Crest Lane, Vienna, stated that the Thoburn proposal was extremely intrusive because it accommodated evening hours. She pointed out that that was when the residents were home and would be affected by the Golf Park's increased hours of use.

Dan Twomey, 1504 Brookmeade Place, Vienna, Virginia, referenced Mr. Thoburn's original 1992 presentation pointing out the explicit representation that the project would have a country club-like setting and that No. 17 development condition specified that the club house shall be compatible with the character of the residential neighborhood architecture but the current club house was a double-wide trailer. Mr. Twomey reminded the Board of their responsibility that the use be harmonious with its surrounding development.

Brian McCrane, 10518 Hunting Crest Lane, Vienna, Virginia, stated that Mr. Thoburn's suggestion of financial hardship was not an issue as it was apparent that the current operation of the Golf Park could not be a money loser. He believed that the credibility of the Comprehensive Plan was in jeopardy if a special use permit were granted on those grounds.

Don Skidmore, 10900 Equestrian Court, Reston, Virginia, representing the Equestrian Park's HOA, affirmed that light pollution was a major citizen concern in Fairfax County. He noted that there were inaccuracies in Mr. Thoburn's lighting study. He pointed out that the bunker lights would emit terrible sky-glow. He suggested that helicopter pilots might suffer temporary blindness from the bunker lights as they pass over on course to land at Dulles Airport. Mr. Skidmore cited that the Master Plan was specific in its description of the area as low density and that it was to act as a buffer between Reston and Tysons Corner. He posed that if the BZA approved the Golf Park proposal, it would have the effect of a rezoning and a change in the Master Plan.

Jan Dirth, 11704 Raleigh Hill Road, Vienna, Virginia, identified herself as a resident of the Hunter Mill Estates, explaining that the current use of the Golf Park did not have an effect on her neighborhood but if the extended hours and the addition of lights were allowed, there would be a significant intrusion. She said she presently could see the white tents over the tees from her home and was sure she would see the lights. She voiced her concern over a commercial enterprise operating in their neighborhood and the night-glow created by the approval of the request. Ms. Dirth believed that the use would have a negative effect on their property values and their lives. She urged the denial of the Golf Park's request.

Hester Bakewell, 1533 Crowell Road, Vienna, Virginia, informed the Board that already she was subjected to the smack-smack-smack of the golf balls daily which was distracting and bothersome. She lamented that her neighborhood had been quiet before the advent of the Golf Park. She worried that increased hours and the inclusion of special events would create more people, more traffic and more noise. Ms. Bakewell urged the Board to reject Mr. Thoburn's proposal.

Carol Dowd, 1529 Crowell Road, Vienna, Virginia, informed the Board that she has consistently paid all of her real estate taxes in a timely fashion. She stated that the applicant owed a huge amount of back taxes on the subject property and that the Board should deny his special permit request. Ms. Dowd referenced recent legislation amending the Virginia Code which required that prior to the initiation of an application for a special use permit, the Board of Zoning Appeals may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the County have been paid.

Cherylanne Hughes, 1707 Raleigh Hill Road, Vienna, Virginia, explained that her family had moved to Vienna to relocate away from the commercial development of Herndon. She stated that the lighting of the Golf Park would surely adversely impact her house as her deck faced the golf park which was in easy view.

Thomas Dowd, 1525 Crowell Road, Vienna, Virginia, addressed his comments to the uniqueness of the area for the darkness of the night sky and visibility of the stars. He asked that the Board deny the Thoburn request and allow his young sons to continue enjoying the night sky.

Rueben Cook, 10106 Tamarack Drive, Vienna, Virginia, representing the Tamarack Community Association, commented that there had already been significant testimony addressing the issues of light intensity and sky glow and that they had only one question: "Why? Why is this commercial activity allowed in a residential area?" He gave a brief history of Mr. Thoburn's commercial activities emphasizing that they have consistently met with unanimous citizen opposition. Mr. Cook pointed out that in April 1992, the BZA approved a reduced version of the Golf Park facility and that this was the first commercial facility on the south side of Hunter Mill Road from Oakton to Great Falls. He likened it to "the camel's nose under the tent" because it was the beginning of the Golf Park's commercial intrusion into their rural, peaceful, residential neighborhoods. Mr. Cook posed the question to the BZA, "why should they override the extensive analysis of the staff and the objections, consistent and unanimous, of the surrounding communities in favor of the business interests of one man?" He respectfully requested the BZA's denial of the application.

Camille Klein, 1657 Beulah Road, Vienna, Virginia, called the Board's attention to the potential visual distraction impacting drivers that the proposed lights may cause. She requested that Virginia Department of Transportation (VDOT) submit its own evaluation determining whether or not that was an issue before approving the application.

Helen Rhom, 1501 Victoria Farms Lane, Vienna, Virginia, pointed out that the applicant had professed economic hardship to validate his special permit application but there is no Code provision for such a hardship nor had the applicant produced any financial information to substantiate the claim.

Jody G. Bennett, 1459 Hunter View Farms, Vienna, Virginia, reminded the Board that the issue they were deciding on that night would not effect them directly but would greatly affect the citizens who were present and who were vehemently opposed to the application. She quoted her daughter's observation that the application appeared to be considering the addition of lights but it was actually a matter of community and would have a definite adverse effect on the community.

There being no further speakers, Chairman DiGiulian called upon Mr. Thoburn for rebuttal.

John M. Thoburn reiterated that since the onset of his Golf Park application there had been citizen opposition with outrageous claims of plummeting property values, terrible traffic, horrific noise, pollution, sky-wash and what-not but that these calamities never became a reality yet he had incurred tremendous legal expenses from the litigation involved with the opposition but he had prevailed all the way to the Supreme Court. He maintained that he had consistently strove to meet all kinds of demands and restrictions imposed upon his golf park and that he firmly believed that the addition of lights would not ruin the area and that all Zoning Ordinance standards would be met. He commented on the lights at Lake Fairfax pointing out that they had none of the containment features that his state-of-the art lights would have and emphasized that all those people who testified that they had moved to the area for its seclusion and darkness had never found Lake Fairfax a problem. He pointed out that his Golf Park was right next to the widest transportation artery in the County, the Dulles Toll Road, not nestled in a remote spot deep in Great Falls or Fairfax Station. He requested the Board carefully review the fact that, as staff had requested, the light standards would be no higher than 30 feet which satisfied the requirement of mitigating the environmental impacts. Mr. Thoburn stated that his plan was a good one and that he welcomed any and all monitoring of his site and operations; he believed that this use was the right thing to do.

Mr. Thoburn responded to Mr. McPherson's question regarding the distance of a tee from one citizen's home.

There being no further questions or comments, Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant, in part, SPA 91-C-070-2, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated February 11, 1997, with several modifications.

Mr. Pammel commented that he believed that Mr. Thoburn had done all that was necessary to mitigate any impact of the golf park's activities on its residential neighbors; that the area was not a rural area but an area in transition; and that he had witnessed numerous changes to the area and he believed that the Golf Park would not have a negative effect.

Mr. McPherson stated that he had thoroughly reviewed the site and he found that the application was not in harmony with the Comprehensive Plan nor the Zoning regulations; that it did adversely impact its surroundings especially the established residents on Crowell Road; that he had no confidence in the untested sophistication of the proposed lighting system; and that this application set a disturbing precedent for commercialism in the area.

Mr. Hammack concurred with much of Mr. McPherson's comments stating that the issue before them that night was lights, the hours of operation and the impact upon the residential community. He believed that the Golf Park's application had not adequately addressed those concerns to assure no adverse impact on the communities. Mr. Hammack stated that economic hardship was not within the purview of the Board for consideration.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 91-C-070-2 by GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, under Section 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for outdoor recreation use to permit building additions, site modifications, increase in hours of operation, and change in development conditions, on property located at 1627 Hunter Mill Road, Tax Map Reference 18-4((8))A, 1A, 2, 3, 4, 5; 18-4(1)23 & 26, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 18, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-E.
- 3. The area of the lot is 46.57 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1627 Hunter Mill Road, and is not transferable to other land.\*
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by D. A. Bryant, P.C., dated May 15, 1996, revised through January 14, 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 Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
- 5. Unless already contributed, a pro-rata contribution toward the installation of a traffic signal at the intersection of Sunset Hills Road and Hunter Mill Road as determined by DEM shall be provided if determined to be warranted by VDOT and DEM at the time of site plan review.\*
- 6. A maximum of One-hundred-thirty-one (131) parking spaces shall be provided. All parking shall be located on-site in designated parking areas as shown on the special permit plat.
- 7. Driving range lights shall be limited to ten (10), thirty (30) foot high lights. All lights used to illuminate the driving range shall be extinguished no later than the time the driving range is closed to the public. 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. The brand and type of lighting used on the site shall be equivalent to or superior to those proposed in Attachment 4 of the Staff Report Addendum dated February 11, 1997. In no event shall the driving range lights be on later than the closing times referred to in condition #8.

8. The hours of operation for the driving range, putting area and clubhouse shall not exceed 8:00 a.m. until 9:30 p.m., March 1 through November 30; and 8:00 a.m. until 7:30 p.m. December 1 through the end of February. 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.
9. All landscaping approved with Site Plan SP 8646-SP-01 which implemented SPA 91-C-070-1 shall be installed. Any trees which have died, or are dying, or which were not planted according to Site Plan SP 8646-SP-01 shall be planted or replaced within six (6) months of Special Permit approval in accordance with these conditions, or prior to the issuance of the Non-residential Use Permit for SPA 91-C-070-2, whichever occurs first. Along the eastern lot line, the vegetation shown on Site Plan SP 8646-SP-01 shall be supplemented to the equivalent of Transitional Screening 2. Species of trees used to fulfill this requirement shall be as determined by the Urban Forestry Branch of DEM at the time of site plan review.

Along the western lot line, between the parking area and Hunter Mill Road, the existing berm shown on Site Plan SP 8646-SP-01 shall remain. The western lot line shall be maintained with the number of species of plantings equivalent to that required in accordance with Transitional Screening 2 as determined appropriate by the Urban Forestry Branch, DEM, at the time of site plan review.\*

In the area of the site where the special permit property abuts the 2 acre residential lot located at the intersection of Crowell Road and Hunter Mill Road, unless already done to the satisfaction of DEM, the existing vegetation shall be supplemented to a level equivalent to the requirement for Transitional Screening 2 as determined feasible by the Urban Forestry Branch, DEM, at the time of site plan review.\*

Notwithstanding the legend on Page 2 of the Special Permit Plat, for the purposes of implementing this condition, trees labeled on the Special Permit Plat or referred to as large deciduous trees shall have a caliper of at least 3 ½ inches at planting, trees labeled or referred to as large evergreen trees shall have a minimum planted height of eight (8) feet, trees labeled and trees referred to as medium evergreen trees shall have a minimum planted height of four (4) feet as may be acceptable to the Urban Forestry Branch, DEM. All species of trees shall be subject to approval by the Urban Forestry Branch, DEM.\*

In keeping with sound horticultural practices, as may be determined necessary by DEM, the installation of landscaping may be delayed until the appropriate planting season. However such delay in planting required evergreen trees shall not exceed four (4) months from the issuance of a Non-Residential Use Permit. Any delayed plantings shall be bonded prior to the issuance of the Non-Residential Use Permit.\*

10. The barrier requirement shall be waived.\*
11. The vegetation as depicted on the tree preservation/tree replacement plan approved by DEM in conjunction with Site Plan SP 8646-SP-01 which implemented SPA 91-C-070-1 shall be maintained.
12. The three (3) structural detention ponds shown on the special permit plat shall be maintained as BMPs as determined by DEM.\*
13. 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 reviewed and approved by the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, the State Water Quality Control Board, the Environmental and Heritage Resources Branch, OCP and DEM prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept, shall be made available to county staff on demand, and shall be reviewed annually by the Environmental and Heritage Resources Branch, OCP. To provide added protection for the Difficult Run Watershed, the structural detention ponds required by Development Condition Number 12 shall be maintained to provide a length of detention and type of filtration necessary to remove pollutants which may be generated by turfgrass management.

- 14. The existing and proposed parking surfaces shall be maintained and landscaped in accordance to PFM standards as determined by DEM.
- 15. 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.\*
- 16. The combined total square footage for the two clubhouse structures shall not exceed 5000 square feet within the area shown on the special permit plat for the clubhouses. The two (2) gazebos shall not exceed 1,500 square feet each. In addition, the architecture of the clubhouse and gazebos, including building materials, shall be compatible with the character of the neighborhood's residential architecture.
- 17. Pursuant to the agreement outlined in the letter from the owner of the property known on Tax Map 18-4((1))22, dated February 12, 1992, unless already recorded, a covenant shall be placed 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. This covenant shall stipulate 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. This covenant shall run to Fairfax County and shall be recorded in the Land Records of Fairfax County prior to the issuance of a Non-Residential Use Permit in a form approved by the County Attorney. Nothing in this covenant shall preclude the future inclusion of the subject 2.0 acres into SP 91-C-070. The covenant shall become null and void and the land released thereof at the time of any such inclusion with SP 91-C-070.\*
- 18. The proposed use shall continue to be served by public water located in a 24-inch water main in Hunter Mill Road and not by private well.\*
- 19. There shall be no use of loudspeakers on the property.\*
- 20. Notwithstanding any notes on the approved plat, the accessory activities and operations in the clubhouse facility shall be limited to the following: child care center as qualified by Condition 22, 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. There shall be no food preparation on the site. Food sales shall be limited to vending machines and snack bar concessions.\*
- 21. There shall be no arcade games, video games, or juke boxes operating or present on the property.\*
- 22. Any child care center operating as an accessory use on the site shall only be used by patrons of the driving range.
- 23. 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'.\*

- 24. Berms proposed on the Special Permit Plat as "Proposed Extension of Undulating Earth Berm," shall be limited to a maximum of an elevation of three-hundred-and-sixty-two (362) feet above sea-level. Immediately upon the applicant operating the lights described in Development Condition No. 7, the applicant shall submit and diligently pursue all necessary governmental approvals for the construction of the portions of the Berms along the easterly portion of the subject property, extending 600 feet south from the northern boundary of the subject property and such section of additional berm shall be constructed on or before August 1, 1998. (See motion of intent contained in the minutes of February 25, 1997)
- 25. 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.
- 26. There shall be no special events held on the site.
- 27. Nothing in these conditions shall be construed to prevent the participation in a regional storm water detention facility if approved by DEM.

These development conditions incorporate and supersede all previous development conditions. Previously approved conditions, including minor modifications to those conditions, are designated by an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of the use shall be defined as the beginning of construction of the berms, clubhouse, or construction of lighting, whichever comes first. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-2 with Mr. Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997. This date shall be deemed to be the final approval date of this special permit.

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Approval of February 11, 1997 Resolutions

Mr. Dively moved to approve the February 11, 1997 resolutions which was seconded by Mr. McPherson and carried by a vote of 5-0-1 with Mr. Hammack abstaining; Mr. Ribble absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, brought the Board's attention to the Action Agenda Item 4, wherein staff had responded to the Board's requests as specified in the attached memorandums dated February 6, 1997, regarding Billiard Parlors and P and February 11, 1997 respectively.

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Page 447, February 18, 1997 (Tape 1 ), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:40 p.m.

Minutes by: Paula A. McFarland

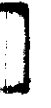
Approved on: May 20, 1997



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 25, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m.

(Note: After Agenda Item 6, Approval of February 18, 1997 Resolution, was the first item of business addressed by the Board at the conception of its February 25, 1997 meeting. This After Agenda Item was taken out of the normal sequence of business and heard before the public hearings.)

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Page 449, February 25, 1997 (Tape 1) After Agenda Item 6:

Approval of February 18, 1997 Resolution

Before the Board moved on the approval of the February 18, 1997 Resolution, Mr. Kelley proposed language to clarify several of the development conditions for the GOLFPARK INC., THOBURN LIMITED PARTNERSHIP, JOHN M. & RENEE W. THOBURN, SPA 91-C-070-2.

Mr. Kelley noted that during his February 18, 1997 motion, the Board of Zoning Appeals had suggested additional language to be added to Condition 7 which had read: "In no event shall lights be on after 9:30 p.m." He explained that the intent was that the lights be turned off at the end of the business day but to further define it he proposed the language to the effect that in no event shall the lights be on later than the time set forth in Condition 8. (Please refer to the resolution for the exact language.)

Further addressing the GolfPark conditions, Mr. Kelley submitted the following language for Condition 24 regarding berms. "The berms proposed on the Special Permit Plat as 'Proposed Extension of Undulating Earth Berm,' shall be limited to a maximum elevation of three-hundred-sixty-two (362) feet above sea-level. Immediately upon the applicant operating the lights described in Development Condition 7, the applicant shall submit and diligently pursue all necessary governmental approvals for the construction of the portions of the Berms along the easterly portion of the property, extending 600 feet south from the northern boundary of the subject property, and such section of additional berm shall be constructed on or before August 1, 1998." He proposed the following defining sentence: **"THE PURPOSE OF THIS MOTION IS TO CLARIFY THAT IT IS THE INTENT OF THE BZA THAT THE BERMS SHALL BE BUILT ALONG THE EASTERLY PORTION OF THE PROPERTY AS QUICKLY AS PRACTICAL AND THAT THESE BERMS SHALL BE REASONABLY HIGH ENOUGH TO SCREEN THE SECOND-STORY WINDOWS OF THE RESIDENTIAL DWELLING UNITS TO BE BUILT IN SECTION II OF VICTORIA FARMS ON THE LOTS IDENTIFIED ON TAX MAP 18-4((9))(2) 1, 23, 24."**

Jane Kelsey, Chief, Special Permit and Variance Branch, verified that August 1, 1998 was the mandated time for the completion of the berm section on the eastern portion of the site.

Mr. Pammel seconded the motion which carried by a vote of 5-1 with Mr. McPherson opposed; Mr. Ribble was not present for the vote.

Mr. Pammel then requested that staff "perform an inspection of GolfPark to assure adherence to all the conditions stipulated in the resolution; that this monitoring be performed six-months from the date of the approval (around mid-August 1997) and again in one year (February 1998); and that staff's findings be returned to the BZA in writing.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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As there were no further Board Matters to bring before the Board, Chairman DiGiulian called the first scheduled case.

Page 450, February 25, 1997 (Tape 1 ), Scheduled case of:

9:00 A.M. FAHAD ASSAID, VC 96-Y-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from rear lot line. Located at 13128 Peach Leaf Pl. on approx. 12,051 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-3 ((10)) 47.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. R. Eugene Beaver, of 6826 Hill Park Drive, Lorton, VA replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a variance to allow construction of a sun room addition to be located 7.5 feet from the rear lot line, which would require a variance of 17.5 feet. Ms. Langdon brought the Board's attention to the PDH-2 zoning of the lot.

Eugene Beaver noted the exceptional shallowness of the lot affirming that strict application of the Zoning Ordinance would result in undue hardship for the applicant because it would restrict the use of the subject property. He added that the requested variance would not adversely affect the neighbors and that the character of the zoning district would not change. Mr. Beavers pointed out that the owners of the property wanted to enjoy the outdoors but required protection from the elements.

Chairman DiGiulian called for speakers from the audience either in support or opposed to the variance request. Upon receiving no response, he closed the public hearing.

Mr. Hammack moved to grant VC 96-Y-146 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 18, 1997.

Mr. Hammack made a motion to approve VC 96-Y-146 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-2 and WSPOD.
3. The area of the lot is 12,051 square feet.
4. The lot is extremely shallow and, therefore, restricts where the addition can be placed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the sun room addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 18, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The sun room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THE MONTESSORI SCHOOL OF ALEXANDRIA, INC. & HOPE UNITED CHURCH OF CHRIST, SP 96-L-047 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and a private school of general education with an enrollment of less than 100 students daily. Located at 6130 Old Telegraph Rd. on approx. 4.94 ac. of land zoned R-3. Lee District. Tax Map 82-4 ((1)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John L. McBride, Esquire, Hazel & Thomas, P.C., 9324 West Street, Third Floor, Manassas, VA replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicants were requesting a special permit for a church with related facilities and a private school of general education with a maximum daily enrollment of 45 students. Ms. Langdon pointed out that the applicant proposed to fence the play area and widen the entrance driveway to meet Virginia Department of Transportation (VDOT) standards and that there were no other construction or changes proposed for the site. She stated that staff recommended approval of the application.

John L. McBride, Esquire, explained that the church was not utilized during the week and that its uses were compatible with and had no adverse impact on the surrounding neighborhoods. He called the Board's attention to the staff development condition with which the applicant disagreed pointing out that the implementation of Condition #12, the dedication of right-of-way, removed too much vegetation in Resource Protection Areas, encroached too severely onto church property, and that this "standard requirement for an ancillary easement", was unnecessary. Mr. McBride professed that there was sufficient right-of-way for future road improvement to Telegraph Road maintaining that to require the church to grant 26 feet of right-of-way was not applicable in this situation. He called the Board's attention to the two letters of support which are contained in the record.

Chairman DiGiulian called for speakers in support of the application.

M. Michael Morse, pastor of the Hope United Church of Christ, informed the Board that there was only limited use of the church's facilities planned for the day and those activities scheduled for evening and night hours would provide security benefits as they would discourage vandalism which had been a problem for several years. He affirmed his support of the application's approval.

Giles R. Norrington, President of the Congregation at Hope United Church of Christ, stated three facts: the proposed use was a good use of the property; it is unanimously supported by his congregation; and the church's property, being a haven for wildlife and proficient with flora, is both a limited and lovely resource to be utilized, treasured and maintained.

At this time, Chairman DiGiulian noted the one letter of opposition from Robert Cook and Ruth I. Morris, of 6110 Old Telegraph Road, Alexandria, VA which is contained in the record.

In response to Mr. Hammack's question regarding Development Condition 12, VDOT's requirement for road dedication, Ms. Langdon explained that both VDOT and the Office of Transportation (OT) had requested the road dedication because Telegraph Road was substandard, when compared to today's standards, and they wanted the dedication for future improvements.

In rebuttal, Mr. McBride noted that the previous special permit application was not conditioned upon right-of-way for Old Telegraph Road; that he believed that there was sufficient right-of-way of which VDOT was in control and that this dedication was not needed.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SP 96-L-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 18, 1997 with the deletion of Condition 12.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS



Page 453, February 25, 1997 (Tape 1), THE MONTESSORI SCHOOL OF ALEXANDRIA, INC. & HOPE UNITED CHURCH OF CHRIST, SP 96-L-047, continued from Page 452

In Special Permit Application SP 96-L-047 by THE MONTESSORI SCHOOL OF ALEXANDRIA, INC. & HOPE UNITED CHURCH OF CHRIST, under Section 3-303 of the Zoning Ordinance to permit a church and related facilities and a private school of general education with an enrollment of less than 100 students daily, on property located at 6130 Old Telegraph Road, Tax Map Reference 82-4((1))3, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 4.94 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6130 Old Telegraph Road and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce & Associates, Ltd., dated July 16, 1996 and revised through January 16, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The seating capacity in the main worship area shall be a maximum of 121 seats. The school of general education shall be limited to a total maximum daily enrollment of forty-five (45) children.
6. The hours of operation for the school of general education shall be limited to 8:00 a.m. to 4:00 p.m., Monday through Friday.
7. Thirty-nine (39) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.
8. Existing vegetation along all lot lines shall be preserved and maintained as indicated on the special permit plat and shall satisfy the requirements of Transitional Screening 1. No clearing shall be allowed except dead, dying or hazardous trees as determined necessary by the Urban Forestry Branch, DEM.

- 9. The barrier requirement is waived along all lot lines.
- 10. Parking lot landscaping shall be provided as depicted on the approved special permit plat.
- 11. A four (4) foot high chain link fence shall be provided around the outdoor play area, as depicted on the special permit plat.
- 12. The driveway entrance shall be widened as depicted on the approved special permit plat.
- 13. Signs shall be permitted in accordance with the provisions of 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 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. McPherson seconded the motion which carried unanimously 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 5, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. KIM C. & FRANCES C. SHELTON, SP 96-D-052 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to permit four dogs on a lot containing 10,044 sq. ft. Located at 6518 Chesterfield Ave. on approx. 10,044 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 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. Kim C. Shelton, of 6518 Chesterfield Avenue, McLean, VA replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. After describing the subject property, she stated that the applicants were requesting a special permit for a Group 9 use to allow modification to the limitations on the keeping of animals to permit four dogs to remain on the property which is less than 12,500 square feet. Ms. Powell noted that Zoning Inspectors were present to answer any questions regarding zoning violations.

Kim C. Shelton explained how they had come to acquire four dogs which were small and did not weigh over 25 pounds. He noted that each dog had been neutered or spayed as they had no intention to breed. He professed that their home was quite adequate to care for the dogs with a large, six-foot high, wooden stockade fenced back yard. Mr. Shelton explained the strict exercise schedule for the dogs on and pointed out that they removed the waste routinely, once a week, and that they have had no complaints from their neighbors. Addressing an anonymous letter which complained of excessive barking, Mr. Shelton affirmed that they were never cited for a violation and they were doing everything possible to monitor the dogs and noted the dogs were supervised when let out. Mr. Shelton requested Condition 4 be modified to require the removal of waste twice weekly, not daily.

Chairman DiGiulian asked Mr. Shelton to respond to two anonymous letters opposed to the special permit request.

Mr. Shelton stated that he had no knowledge of the two letters, which he scanned briefly, and called the Board's attention to the letters of support for their request. He commented that his neighborhood had other dogs which occasionally barked.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 96-D-052 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 18, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-D-052 by KIM C. & FRANCES C. SHELTON, under Section 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to permit four dogs on a lot containing 10,044 square feet, on property located at 6518 Chesterfield Avenue, Tax Map Reference 40-2((13))14, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,044 square feet.
4. The applicants have made a good faith effort in addressing and resolving any and all issues relating to the monitoring and control of their four dogs.
5. The applicants' request is reasonable under this Special Permit 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 Sections 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the property on Tax Map 40-2((13)) 14 shown on the plat submitted with this application prepared by Andrew P. Dunn, dated August 27, 1993, revised by Kim C. Shelton, received November 18, 1996, and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicants' existing four (4) Scottish Terriers. If any of these specific animals dies or is sold or given away, the dog(s) shall not be replaced except that two dogs may be kept

on the property in accordance with the Zoning Ordinance.

4. The yard used to exercise the dogs shall be cleaned of animal debris twice weekly and the debris shall be disposed of in a method approved by the Health Department.
5. The dogs shall not remain in the yard unsupervised.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be valid until this has been accomplished.

Mr. Dively seconded the motion which carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 456, February 25, 1997 (Tape 1), Scheduled Case:

9:00 A.M. DINESH K. SHARMA, VC 97-P-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from side lot line and 10.0 ft. from other side lot line. Located at 2220 Arden St. on approx. 22,085 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 73. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dinesh K. Sharma, 2220 Arden Street, Dunn Loring, VA replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a variance of 7.4 feet and 10.0 feet to permit the construction of a two-story addition to his house.

Dinesh K. Sharma pointed out that his lot was extremely narrow which restricted where any addition could be placed. He requested the Board's approval of his variance request in order to accommodate the needs of his growing family. In response to Chairman DiGiulian's question, Mr. Sharma clarified that the proposed addition would not encroach any further to either side lot line. He concurred with Mr. McPherson's determination that, as the plat indicated, he did intend to remove all existing sheds from the property.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. Ribble moved to grant VC 97-P-001 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 18, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-P-001 by DINESH K. SHARMA, under Section 18-401 of the Zoning Ordinance to permit construction of an addition 12.6 feet from side lot one and 10.0 feet from the other side lot line, on property located at 2220 Arden Street, Tax Map Reference 39-4((1))73, 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 22,085 square feet.
- 4. The lot is exceptionally narrow.
- 5. The addition will not be any closer to the side lot lines than the existing dwelling.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by S. Ania Shapiro, received January 8, 1997, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997. This date shall be deemed to be the final approval date of this variance.

Page 458, February 25, 1997 (Tape 1), Action Item:

9:00 A.M. LITTLE LIONS CHILDREN'S CENTER, INC., SP 96-L-049 Appl. under Sect(s). 4-503 of the Zoning Ordinance to permit a child care center with an enrollment of less than 100 students daily. Located at 5834-D North Kings Hwy. on approx. 1.32 ac. of land zoned C-5. Lee District. Tax Map 83-3((1))pt. 87.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy Steele, Esquire, with the firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, VA replied that it was. She noted that there was a minor modification to the affidavit with Ms. Ronnie Roberts listed as an agent for the firm of A. J. Dvoskin, not the Little Lions Children's Center.

Julie Schilling, Staff Coordinator, presented the staff report. She listed the day care center's proposal stating that it was staff's opinion that they conflicted with the Policy Plan's guidelines for child care facilities. Ms. Schilling noted that the shopping center did not contain adequate buffers from the adjacent residential buildings. She stated that the revised plat, which was detailed in the addendum and distributed to the Board had resolved staff's parking issue. Ms. Schilling pointed out that the addendum's revised development conditions added a new condition which limited the number of children within the play area but that, in staff's view, the central issue of the play area remained unresolved and that staff continued to recommend denial. Ms. Schilling concurred with Mr. McPherson that enrollment would not exceed 76 children.

Tracy Steele, Esquire, explained the careful preparation undergone by the Davises in formulating and executing their childcare center. She pointed out that these types of facilities are badly needed in the County, that the shopping center could greatly benefit from this use, that the center would be an excellent tenant, and that the convenience of the metro was beneficial for patrons of both the shopping center and the child care center. She listed the other shopping center tenants noting that their hours of operation were complimentary with the child care facility as they wouldn't conflict nor create an intensity issue. Ms. Steele listed the applicant's safety proposals for addressing the Comprehensive Plan's locational guidelines for child care facilities. She affirmed that the residential neighborhoods surrounding the center had no objection to the use. Ms. Steele noted the applicant's objection to two of staff's development conditions, Conditions 7 and 8 and called attention to the applicant's Proposed Development Condition 7, distributed to the BZA that morning, submitting that modifications to the parking should be permitted, subject to DEM's review and approval. The applicant requested the deletion of Condition 8, she added, as the center's owner had provided landscaping with the prior special exception and that those parking lot plantings provided the necessary buffering. Ms. Steele requested the Board's favorable consideration of both requests. She responded to the Board's questions concerning the surface material, the play area layout, deliveries and the provision of a handicapped ramp.

In response to Mr. Hammack's question, the applicant, Michael Davis, explained the soft surface of wood bark material which would be laid on the blacktop for the children's playground area.

Chairman DiGiulian called for speakers either in support or opposed to the application and receiving no response, he closed the public hearing.

Mr. Kelley moved to deny SP 96-L-049 for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 96-L-049 by LITTLE LIONS CHILDREN'S CENTER, INC., under Section 4-503 of the Zoning Ordinance to permit a child care center with an enrollment of less than 100 students daily, on property located at 5834-D North Kings Highway, Tax Map Reference 83-3((1)) pt. 87. 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the contract lessee of the land.
2. The present zoning is C-5.
3. The area of the lot is 1.32 acres.
4. The shopping center, and where it is located, is an inappropriate place to have 76 children.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 5-2 with Messieurs Hammack and McPherson voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 1997. The Board waived the one-year time limitation for the filing of a new application.

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9:30 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal 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)

William Shoup, Deputy Zoning Administrator, informed the Board that the appellants have requested a deferral of their appeal as they have entered into a contract to sell the property. He noted that there was a need to examine the feasibility of redevelopment of the site. Staff was of the opinion that, in this case, redevelopment provided the best long-term solution to the problems at issue in the appeal, therefore, the Zoning Administration staff supported the request for deferral. Mr. Shoup suggested that the case be deferred to the evening of May 20, 1997.

Chairman DiGiulian asked if there were speakers present who wished to address the issue of deferral but received no response.

Mr. Ribble moved to accept the deferral request and rescheduled the hearing for the evening of May 20, 1997.

Mr. McPherson seconded the motion.

Mr. Pammel commented that this was an issue of an ongoing violation against the Zoning Ordinance which caused him concern. He stated that the Board should take action in a more timely manner on those situations where there are violations of the Ordinance.

Mr. Hammack concurred with Mr. Pammel's statement noting a letter he had received from the Chesterfield Mews Community Association which did not oppose the deferral but did request that, at least some of the Nursery's zoning violations be addressed.

The motion to defer carried by a unanimous vote of 7-0.

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Page 460, February 25, 1997 (Tape 1), Scheduled Case:

9:30 A.M. J.W. FORTUNE, INC. T/A FORBIDDEN CITY RESTAURANT, Appeal A 96-D-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Issuance of a Non-Residential Use Permit (Non-RUP) for Sutton Place which allows the establishment of a small eating area within the store as an accessory use without additional site plan approval and the provision of additional parking. Located at 6655 Old Dominion Dr. on approx. 3.22 ac. of land zoned C-6, HC and SC. Dranesville District. Tax Map 30-2 ((1)) 59.

William Shoup, Deputy Zoning Administrator, explained that this was an appeal of the issuance of a Non-Residential Use Permit (Non-RUP) for the Sutton Place Gourmet to operate as a retail sales establishment with an accessory eating area within the store without additional site plan approval nor the provision of additional parking for the eating area. He stated that it was staff's determination that the seating area in question should be considered as an accessory use. He maintained that the proposed use satisfied the criteria for an accessory use in that it was clearly subordinate to the primary use; the seating area was to provide comfort and convenience to the patrons of the shop.

In response to Mr. Dively's question, Mr. Shoup further explained the difference between an accessory service use versus an accessory use. He noted that the latter was permitted in any zoning district but must be in connection with, incidental to, and on the same lot with a principal use that is permitted within such district. Mr. Shoup qualified the definition explaining that this seating area was a very small component of the overall use.

Henry St. J. Fitzgerald, Esquire, 2200 Wilson Boulevard, Suite 800, Arlington, VA, the appellant's attorney, representing J. W. Fortune, Inc., concurred with Mr. Dively's determination that the verbiage was exceedingly similar in the Ordinance's definition of accessory use and accessory service use. He pointed out that, in his determination, accessory service uses are intended to be services for those persons who are within the building. He noted that accessory service uses are those which are permitted in residential areas, condominiums, high-rises, and industrial places, and do include food-type arrangements, eating establishments, fast-food places and



the such. Mr. Fitzgerald maintained that accessory uses were services such as child care facilities or a support-type facility and he professing that no where did an accessory use apply to retail establishments. He quoted Article 17 of the Zoning Ordinance, affirming that the addition of an eating establishment within the Sutton Place Gourmet store constituted a change of the use such that a site plan amendment and additional parking was required for the subject property under the Site Plan and Parking Ordinances. He stated that accessory uses were not provided for in C-6 districts and that there was no Code provision that would permit staff to allow the addition of an eating establishment with seats, without a site plan amendment and the requirement for additional parking and a revised parking tabulation.

In response to Mr. Dively's query, Mr. Fitzgerald explained his interpretation of the law when a site plan may be required for an accessory use.

Chairman DiGiulian called for speakers.

Randy Minchew, with the firm of Hazel and Thomas located in Falls Church, VA said that he was speaking for Sutton Place Gourmet and wished to address several points raised in the appeal. He pointed out that the store had approached the County requesting less than 2 percent of its store to be designated for a customer seating area, perhaps only eight chairs to be placed beside the coffee bar for any patron who wished to consume a beverage on the premises and several chairs by the exit door for anyone who wished to consume a sandwich or similar item. He reiterated that this was simply a convenience extended towards its customers. Mr. Minchew endorsed Mr. Shoup's determination that what Sutton Place Gourmet was requesting was clearly a subordinate use and he called the Board's attention to Article 20 of the Zoning Ordinance which defined an accessory use and which Mr. Shoup, the Deputy Zoning Administrator, referenced in his position statement.

William H. Sawicki, Director of Construction, Sutton Place Gourmet, explained that much research and years of experience had established that this McLean store, their prototype, was of the highest standards, was a retail store, not a fast-food operation, and sought to make shopping for its patrons comfortable and convenient.

Sean Hunt, Director of Retail Operations and the General Manager of the McLean Sutton Place Gourmet store, explained the normal shopping procedures of the majority of its patrons pointing out that there were no special services offered at the seating area, that it was strictly a convenience for their patrons, and the seating area is not advertised.

James Peoples, residing at 6648 Hawthorne Street, McLean, VA, and the President of Bryn Mar Civic Association, presented his neighborhood's view on what was transpiring. He noted that there was no place for additional parking in the shopping center and questioned how the Sutton Place Gourmet can request 30 seats for eat-in patrons and not provide any additional parking. He stated that his civic association believed the store's request was inappropriate because the provision of in-house seating was an attempt to encourage and generate food sales from the business' catering and food preparation operation, sandwiches made-to-order, etc., for on-site food consumption and was not a simple accessory to the general food sales of the supermarket. Mr. Peoples conveyed that they wanted the shopping center to be successful and that Sutton Place Gourmet was a valuable and viable tenant whom they wanted to see succeed and due to that fact, the Bryn Mar Civic Association suggested a compromise whereby the BZA limited the proposed accessory use to only the eight seats to be utilized for the coffee bar and upon completion of the redevelopment, they would support an approval of up to 22 additional seating spaces, if there was adequate parking available.

Mr. Shoup, in rebuttal, reiterated the separate and distinct definition of an accessory service use suggesting that Mr. Fitzgerald was taking the definition out of context. He maintained that, in staff's opinion, the Sutton Place Gourmet store was not a fast-food establishment adding that there were a number of other sites, besides retail sites, where staff had made the determination of accessory uses on-site. Mr. Shoup pointed out that, with respect to the parking issue under the Zoning Ordinance stipulations, this shopping center was parked at the "shopping center rate" which was a compilation of its tenants' uses not each individual use requiring its own individual parking designation and, therefore, even if Sutton Place Gourmet were determined to be a fast-food establishment, it would not necessitate an additional parking requirement.

Mr. Shoup responded to Mr. Hammack's questions regarding the store's site plan submission and he further defined a retail use category.

Mr. Fitzgerald, in his rebuttal statement, clarified that the issue was not one of use, that the preparation and serving of food was not the problem, but that the Code required an establishment to park each use. He maintained that retail and fast food were uses, that "accessory" uses were uses and thus required the provision of parking spaces.

Discussion followed between Messieurs Fitzgerald, Hammack and Kelley regarding the Code's application of parking for various uses.

There were no further questions or comments from the Board and Chairman DiGiulian called for action on this appeal.

Mr. Pammel moved to defer the decision on Appeal A 96-D-051 for one week to allow the Board time to review Mr. Fitzgerald's Appellants' Memorandum On Appeal which was distributed that morning.

Mr. Kelley seconded the motion to defer the decision which failed by a vote of 3-4 with Messieurs Hammack, Kelley and Pammel in favor; Messieurs DiGiulian, Dively, McPherson and Ribble opposed;

Mr. Dively commented that the Board had heard very compelling arguments from both sides, each with strong distinctions regarding accessory use versus accessory service use. He noted that Mr. Fitzgerald's interpretation of paragraph 17 regarding parking was a powerful argument but he believed the burden of persuasion stood on the Zoning Administrator's side. He pointed out that the Code's definition of an accessory use and an accessory service use was rather indistinct but, in his opinion, this was an accessory use because it was not something separate and distinct from the main use. He quoted Subsection 1's definition, which stated ". . . an accessory use can be a use customarily found in association with . . . ." and it was his opinion that in nature and intensity this was an accessory use. Mr. Dively stated his concurrence with Mr. Shoup's comment that if a new site plan or parking review was required every time an accessory use was determined, that that application could lead to an absurd conclusion. In addressing Mr. Peoples' compromise suggestion, Mr. Dively noted that the Board of Zoning Appeals did not have the option to compromise on an appeal and for those reasons and the reasons cited in staff's February 18, 1997 memorandum, he would move to uphold the Zoning Administrator's determination.

Mr. Dively moved to uphold the Zoning Administrator's determination on Appeal A 96-D-051, J. W. Fortune t/a Forbidden City Restaurant.

Mr. Kelley seconded the motion.

Mr. Pammel commented that he supported the intent of what was proposed but that he could not support the motion because it was his opinion that the use was not an accessory use.

The motion carried by a vote of 5-1-1 with Mr. Pammel opposed; Mr. Hammack abstaining. The Board's decision became final on March 5, 1997.

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During the Board of Zoning Appeals meeting of February 25, 1997, Mr. Dively noted the difficulty experienced when having to interpret whether a use is considered an accessory use versus an accessory service use. Because he believed that the language in the Zoning Ordinance concerning these uses was rather ambiguous and it could be better defined, he requested that staff review the Zoning Ordinance's Section 10 regarding "Accessory Uses; Accessory Service Uses" and compose a more exact definition.

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Page 463, February 25, 1997 (Tape 2), After Agenda Item:

Revised Plats for Jerry and Karen Stone, SP 95-S-054 & VC 95-S-094  
7826 Mulberry Bottom Lane, Springfield; 089-4(96)132

William C. Thomas, Esquire, with the law firm of Fagelson, Schonberger, Payne & Deichmeister, representing the Stones, reported to the Board of Zoning Appeals that on February 23rd the School Board informed him that they would come to its determination regarding the Stone's encroachment onto its property in less than 60 days. Mr. Thomas respectfully requested that the BZA allow an additional 60-day extension in order to conclude this matter.

Susan Langdon, Senior Staff Coordinator, representing staff, suggested the morning of April 8, 1997 for the submission of the Stone's revised plats.

Hearing no objection, the Chair so ordered.

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Page 463, February 25, 1997 (Tape 2), After Agenda Items 2, 3, 4, 5:

Additional Time Requests

- (2) John and Valerie Clark, VC 94-P-055; The new expiration date of January 20, 1999;
- (3) Chamin Puri, SPA 87-S-012; The new expiration date of August 6, 1998;
- (4) Mount Vernon Church of Christ, SPA 84-L-047; The new expiration date of July 27, 1999;
- (5) Antioch Korean Baptist Church, SP 80-M-048; New expiration date of February 20, 1999.

Mr. Kelley moved that the dates recommended by staff for items 2, 3, 4, and 5 be accepted. Mr. Ribble seconded the motion which carried unanimously by a vote of 7-0.

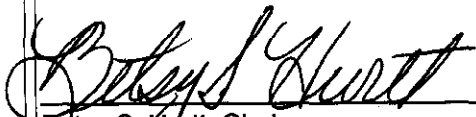
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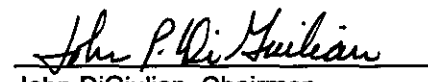
As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

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Minutes by: Paula A. McFarland

Approved on: April 15, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 4, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 466, March 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & JULIA TURNER, VC 96-P-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.5 ft. from street line of a corner lot, allow 6.0 ft. high fence to remain in front yard and accessory structure to be 21.4 ft. from front lot line of a lot containing less than 36,000 sq. ft. Located at 2895 Hibbard St. on approx. 15,664 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 12.

Susan Langdon, Senior Staff Coordinator, advised the Board that the applicant was not present. Mr. Kelley made a motion to move the case to the end of the agenda. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 465, March 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ASHRAS MAHMOUD MASOUD, SP 96-M-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6 ft. 10 in. from side lot line. Located at 5604 Magnolia Ln. on approx. 11,059 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((17)) 88.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Ashras Masoud, 5604 Magnolia Lane, Alexandria, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an addition consisting of a garage to remain 6.1 feet from the side lot line resulting in a modification of 5.2 feet.

Mr. Masoud presented his request as outlined in the statement of justification submitted with the application. He said he had purchased the house with the existing carport and did not think it would require a special permit to enclose it because he had only added a garage door and four windows. Mr. Masoud said approximately 3 or 4 months after the garage was completed an inspector from Zoning Enforcement issued a violation and subsequently, he filed for a special permit.

In response to a question from Mr. Hammack, Mr. Masoud said he did not call the Fairfax County Zoning office to inquire if he would need a building permit to enclose the carport because he had talked to friends who were contractors and they advised he did not need one.

Chairman DiGiulian questioned the applicant on whether the walls to the garage were already constructed when he bought the house. Mr. Masoud replied affirmatively. He said the walls, foundation, and roofing were already constructed; therefore, he only added four windows and a door.

Mr. Hammack asked the applicant if he had a copy of a plat that would corroborate his testimony to show that the carport had walls when he bought the house. Mr. Masoud responded that he did not have the plat from when he purchased the house with him.

Jane Kelsey, Chief, Special Permit and Variance Branch, provided some old plats of the property that showed the house was constructed in 1975 and noted that prior to 1978 a shed could be placed in the back of a carport as long as the walls of the carport were not enclosed.

Mr. Hammack questioned the 1993 plat that the applicant submitted. He said since Mr. Masoud bought the house in 1991 the walls could have been constructed after he purchased it. Mr. Masoud said he did not have the plat from 1991 with him but could provide a copy.

Mr. Hammack questioned staff on what prompted the inspection by Zoning Enforcement. Ms. Langdon responded that it was a complaint issued with regards to the finished garage. Chairman DiGiulian questioned how it could have been considered a carport if it had solid walls. Ms. Langdon explained, according to her conversation with a neighbor, that the previous owner had constructed short 2 foot high walls made of brick which are permitted under the Zoning Ordinance.

Using a current photograph of the garage, Mr. McPherson had the applicant show exactly what he filled in when he enclosed the carport.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Hammack made a motion to deny SP 96-M-053 for the reasons set forth in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-M-053 by ASHRAS MAHMOUD MASOUD, under Section 8-914 and 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6 feet 10 inches from side lot line, on property located at 5604 Magnolia Lane, Tax Map Reference 61-4 ((17)) 88, 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,059 square feet.
4. The applicant has not satisfied the standards for a special permit.
5. The Board did not believe the construction was performed through no fault of the applicant. He did not seek to get a building permit and it appears that he simply constructed the addition on his own initiative or filled in what would have otherwise been a legally existing carport.
6. The addition encroaches on the existing side lot line.
7. The addition is not in harmony with the surrounding neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sects. 8-903 and 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 4-2-1, with Chairman DiGiulian and Mr. McPherson voting nay and Mr. Dively abstaining.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 12, 1997.

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Page 467, March 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. THE EPISCOPAL CHURCH OF THE HOLY CROSS, SPA 84-P-004-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-P-004 for a church and related facilities to permit trailers on site. Located at 2455 Gallows Rd. on approx. 3.56 ac. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 33A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Douglas Gehley, 1969 Horseshoe Drive, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a special permit amendment to expand an existing church and related facilities by installing two 12' x 60' temporary trailers on the east side of the church. The 42" high fence, currently enclosing the Sunday School play area, would be extended east to accommodate the trailers. Ms. Powell noted that the applicant disagreed with Proposed Development Condition number 12 which required the applicant to relocate the dumpster onto the eastern end of the church parking lot. Currently, the dumpster is not located on the church property and the Zoning Ordinance requires that all uses associated with a property be located on that property. Staff recommended approval of the special permit amendment subject to the Proposed Development Conditions contained in Appendix 1 of the staff report.

Mr. Gehley presented the applicant's request as outlined in the statement of justification submitted with the application. He said due to the number of growing families in their congregation they need the trailers in order to conduct Sunday School services on the site. Mr. Gehley said these trailers would be temporary and taken away once a permanent addition is finished. He noted that the church currently has an aggressive building program going on to get the necessary funding for the addition. Mr. Gehley responded to the issue of Proposed Development Condition number 12 by saying that they can take the dumpster away and use movable containers in its place if necessary.

Mr. Hammack questioned Mr. Gehley on how realistic their building program was. Mr. Gehley said it was set up to have a permanent structure under construction in 3 years. Mr. Hammack expressed concern over the visibility of the trailers.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Pammel moved to grant SPA 84-P-004-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 25, 1997 with Development Condition number 12 amended to state, "The dumpster shall be removed and replaced by disposable containers that can be moved to and from the street."

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 84-P-004-2 by THE EPISCOPAL CHURCH OF THE HOLY CROSS, under Section 3-303 of the Zoning Ordinance to amend SP 84-P-004 for a church and related facilities to permit trailers on site, on property located at 2455 Gallows Road, Tax Map Reference 39-4 ((1)) 33A, 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 4, 1997; 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 3.56 acres.
4. The applicant has presented testimony that they do comply with the criteria established 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. 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2455 Gallows Road (3.56 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 Abernathy Gehley Architects dated December 5, 1996 (received), and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Transitional screening shall be required along all lot lines with the following modifications:
  - Existing vegetation shall be maintained and shall satisfy the screening requirement to the north and the east on the rear of the property, and in the area between the church building and Lot 33;
  - Along the northern lot line, in the area extending from the rear of the church building to the sidewalk on Gallows Road, supplemental plantings equivalent to Transitional Screening 1 shall be provided and maintained;
  - Along the front boundaries, supplemental plantings of the evergreen variety shall be provided and maintained to soften the impact of the church development, including the trailers, from adjacent properties.
6. The barrier requirement is waived except that the 42-inch high fence surrounding the outdoor play area shall be expanded east to enclose the proposed trailers.



Page 469, March 4, 1997, (Tape 1), THE EPISCOPAL CHURCH OF THE HOLY CROSS,  
SPA 84-P-004-2, continued from Page 468

7. The trailers shall be a maximum of 12' x 60' and shall remain on site no longer than five (5) years from the date of the issuance of the Non-Residential Use Permit. The trailers shall be skirted and shall meet all applicable codes.
8. Any signs on the property shall be located in accordance with Article 12, Signs.
9. The maximum seating capacity of the church sanctuary shall be limited to 140.
10. There shall be 55 parking spaces provided as shown on the special permit plat. All parking shall be on site.
11. 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 (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.
12. The dumpster shall be removed and replaced by disposable containers that can be moved to and from the street.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 469, March 4, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & JULIA TURNER, VC 96-P-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.5 ft. from street line of a corner lot, allow 6.0 ft. high fence to remain in front yard and accessory structure to be 21.4 ft. from front lot line of a lot containing less than 36,000 sq. ft. Located at 2895 Hibbard St. on approx. 15,664 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, William Turner, 2895 Hibbard Street, Oakton, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of three variances; a variance of 9.5 feet to allow an addition to be located 25.5 feet from the street line of a corner lot; a variance to allow an existing shed to remain in the front yard of a lot containing less than 36,000 square feet; and, a variance to allow a 6 foot high fence to remain in the front yard. Section 10-102 prohibits a fence over 4 feet in height in a front yard; therefore, a variance of 2 feet was requested for the fence.

Mr. Turner presented his request as outlined in the statement of justification submitted with the application. He said the addition will go no closer to the lot line than the existing house but due to the change in zoning since the construction of the house the addition will require a variance. Mr. Turner explained that the shed was built prior to his purchase of the property and was located on the portion of his yard that faces Pine Street which is considered his front yard; however, he noted that Pine Street is a small gravel road that the applicant is expecting to be vacated shortly. With regards to the fence, Mr. Turner said he placed it along the back of the property and rounded the corner so that 8 feet of it borders Pine Street but is not visible from the main road, Hibbard Street.

In response to a question from Mr. McPherson, Mr. Turner said the height of his proposed addition will be 14.6 feet and will not exceed the height of the original house; therefore, it will not be visible from the street.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. McPherson moved to grant VC 96-P-148 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 25, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-148 by WILLIAM AND JULIA TURNER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 25.5 feet from street line of a corner lot, allow 6.0 foot high fence to remain in front yard and accessory structure to remain in front yard of a lot containing less than 36, 000 square feet, on property located at 2895 Hibbard Street, Tax Map Reference 47-2 ((4)) 12, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,664 square feet.
4. The applicant suffers from the problems of a corner lot where there is no true side street.
5. The addition will go no closer to the lot line than the existing dwelling.
6. The wood fence is a reasonable request.
7. The findings noted in the staff report were made a part of the granting as well as the testimony presented by the applicant.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition, accessory structure and fence shown on the plat prepared by Phillip A. Blevins, dated October 3, 1996, and revised through December 3, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 12, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 472, March 4, 1997, (Tape 1), Scheduled case of:

9:30 A.M. KIM C. AND FRANCES C. SHELTON, Appeal A 96-D-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are keeping four (4) dogs on a lot containing 10,044 sq. ft. in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 6518 Chesterfield Ave. on approx. 10,044 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 14. (DEF. FROM 9/10/96. DEF. FROM 12/3/96 TO ALLOW S.P. TO BE HEARD)

Chairman DiGiulian referred to a letter sent in by the appellants requesting that their appeal be withdrawn. Mr. McPherson so moved. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 472, March 4, 1997, (Tape 1), Scheduled case of:

9:30 A.M. JOEL PATTEN, Appeal A 96-B-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected two (2) portable signs in violation of Par. 2, Sect. 12-104 of the Zoning Ordinance. Located at 9561 Braddock Rd. on approx. 10.11 ac. of land zoned C-6. Braddock District. Tax Map 69-3 ((1)) 18A. (DEF. FROM 1/14/97 FOR NOTICES)

Mr. Kelley moved to dismiss the appeal because it was the second time the appellant had not prepared and sent out legal notices. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 472, March 4, 1997, (Tape 1), Scheduled case of:

9:30 A.M. LILLIAN V. WHITE, Appeal A 96-P-052 Appl. under sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating an office use on the property zoned R-4 in violation of Par. 5 Sect. 2-302 of the Zoning Ordinance. Located at 2852 Woodlawn Ave. on approx. 18,636 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((2)) 59.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 24, 1997. At issue in the appeal is the business activity being conducted on the residential property by the appellant. Mr. Shoup elaborated by saying that the appellant is operating a telephone answering business from her home and has up to 15 employees. The business is operated in three shifts, 24-hours a day. He said the basement area of the home is devoted exclusively to the business and includes four workstations, telecommunications equipment, and security alarm monitoring equipment. It was staff's position that this activity constitutes an office use which is not permitted in the R-4 District. Mr. Shoup noted that the appellant does not dispute the existence of the business; instead, she feels that the business should be allowed to continue because she has had a business license since 1986 and feels the use qualifies for a special exception. Mr. Shoup said even though the appellant may possess a business license it does not convey any zoning rights to use the property for the business activity. He also noted that based on the circumstances, the appellant does not meet the criteria for consideration of a special exception for an office use.

Peter Drennan, the appellant's agent, presented the arguments forming the basis for the appeal. He introduced the appellant, Lillian White, along with a longtime friend and customer, Mitchell Synder. Mr. Drennan said the appellant has run a telephone answering service in Fairfax County for over a quarter of a century and gave a brief history of the appellant's business. He stated that the appellant relocated her business from commercial space to the subject property in 1986 and that the appellant applied for and was given a business license and Certificate of Occupancy; however, he noted that the Certificate of Occupancy could not be located by either the appellant or the County. Mr. Drennan stated that the appellant's property is 1.86 acres, the largest privately owned lot in the neighborhood, and is abutted by park land on one side. He said there is no accumulation of vehicles, noise, noxious odors, or safety violations due to the operation of the business. He added that relocating the business was not a viable solution because it would create a financial and physical hardship on the appellant. In sum, Mr. Drennan suggested that a textual amendment to the Zoning Ordinance be considered because of the appellant's personal situation.

Mr. Dively questioned Mr. Drennan if he understood that this was not the nature of an appeal. Mr. Drennan said he did understand and it was his position that Mrs. White's business should be considered for a special use exception for professionals given the nature of its clientele. He requested a continuation of the hearing to allow the appellant time to apply for one.

In response to a question from Mr. Dively, Mr. Shoup said there are provisions for office use in residential districts; however, the criteria is very strict. For instance, the Board of Supervisors (BOS) can only approve special exceptions for office uses in areas that are community business centers or in other areas that are specifically designated in the Comprehensive Plan for office use. Since this was not the case with the appellant's property, staff did not believe it met the criteria for special exception consideration.

Mr. Ribble referred to a letter in opposition sent in by Robert Beeton and asked Mr. Drennan to respond. After taking a moment to read the letter he questioned the authenticity.

Mitchell Snyder spoke in support of the appellant's position. He said he is a friend and former client of the appellant and gave a brief history of how they became friends. Mr. Snyder felt the business was an important part of the community and should be allowed to continue.

Mr. Shoup said staff checked the records and an Occupancy Permit was not issued for this use on the appellant's property. With regards to the other issues raised by the appellant, Mr. Shoup felt they were not material to the issue of whether or not staff applied this law correctly. In sum, he said there was no mechanism available to allow this operation to continue and the appellant had not presented any testimony to indicate that the Zoning Administrator's decision was wrong.

In rebuttal, Mr. Drennan referenced the letter of opposition and said Ms. White did not believe he was an adjacent property owner; therefore, the Board should not take the letter into consideration.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to uphold the Zoning Administrator because he felt this was a full blown business that does not belong in the R-4 District and while the appellant had some arguments, this far exceeded the limitation for a home occupation use.

Mr. Dively seconded the motion and added that the appellant had engaged his sympathies for her and her business but sympathies were not the basis on which he could make this decision. The decision is governed by the ordinances and the statute and he felt they have not been given any reason under the law or ordinance to rule otherwise. The motion carried by a vote of 7-0.

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Page 473, March 4, 1997, (Tape 1), Scheduled case of:

Approval of Minutes  
for November 19 and November 20, 1996 Meetings

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 473, March 4, 1997, (Tape 1), Scheduled case of:

Acceptance of Appeal Request  
for Michael R. Sanders/American Oil and Lube

Mr. Pammel said the memorandum from William Shoup, Deputy Zoning Administrator, stated clearly that the time frame for appealing the original action had long since passed and the only issue before the Board was the subsequent notice letter that said the violation was continuing.

Michael Sanders, owner of American Oil and Lube, said that he did not understand the Notice of Violation letter because he had gone through the zoning process and received approval from the County and the Burke Conservancy for his business and the building mounted signs a couple of years earlier.

Mr. Dively questioned Mr. Sanders as to which letter of violation he was appealing. Mr. Sanders replied that he was appealing both the November and January letters. He said he had partly complied by removing some directional signs he had placed on Burke Center Parkway; however, with regards to the main issue of the violation, the building mounted signs, he said he was not aware that he needed a sign permit. Mr. Sanders reiterated that he already went through the County zoning process and felt he was now being told he had somehow violated that process. He said staff was not clear about how to start the appeal process which caused his delay in filing.

Mr. Hammack questioned Mr. Shoup if they were to defer decision on accepting the appeal could Mr. Sanders apply for a sign permit and go through the appropriate process to legitimize his signs. Mr. Shoup replied that the sign area on the building exceeds what is allowed by the Zoning Ordinance. In response to further questioning from Mr. Hammack, Mr. Shoup said Mr. Sanders could apply for a special exception and go before the Board of Supervisors (BOS) for approval of the additional sign area.

Chairman DiGiulian asked Mr. Sanders if the signs were shown on the building plans. Mr. Sanders replied affirmatively. He said staff from the building permit section of the zoning office directed him to the Burke Conservancy for approval of architectural colors and design of the building. Mr. Sanders said he was never told that he needed a sign permit and felt it would be a hardship to be expected to go through the special exception process again.

In response to a question from Chairman DiGiulian, Mr. Sanders said Thomas Awning from Maryland installed the signs on the building.

In response to a question from Mr. Dively, Mr. Shoup said they would be willing to allow Mr. Sanders time to obtain a permit; however, he noted that the sign is existing and is much too large for what is allowed in that zoning district.

Mr. Dively made a motion to defer decision on acceptance of this appeal for 90 days to allow Mr. Sanders time to get the appropriate permit or make the proper application to try to get this situation resolved. Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack told Mr. Sanders that the burden was on him to find the best way to resolve this situation because, from his point of view, Mr. Sanders failed to appeal the first Notice of Violation and the Zoning Ordinance clearly states that an appeal must be filed within 30 days.

Mr. Sanders asked if the BZA had the authority to approve the signs. Mr. Hammack responded that based on what Mr. Shoup had advised, the BZA did not have that authority. He reiterated to Mr. Sanders that he had to decide what would be right for his business.

The motion carried by a vote of 7-0.

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Page 474, March 4, 1997 (Tape 1), Scheduled case of:

Approval of the Resolution  
from the February 18, 1997 Meeting

After a lengthy discussion, Mr. Kelley moved to approve the Golf Park, Inc., Thoburn Limited Partnership, John M. & Renee W. Thoburn, SPA 91-C-070-2 Resolution with the last sentence in Development Condition

Page 473, March 4, 1997 (Tape 1), APPROVAL OF RESOLUTION FROM FEBRUARY 18, 1997 MEETING, continued from Page 474

Number 7 amended to state, "In no event shall the driving range lights be on later than closing times referred to in Condition number 8." Mr. Divley seconded the motion which carried by a vote of 7-0.

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Page 475, March 4, 1997, (Tape 1 & 2), Scheduled case of:

Request for Reconsideration  
from Little Lion's Children's Center, Inc., SP 96-L-049

Mr. Kelley moved that the request for reconsideration be denied. Mr. Hammack seconded the motion.

Chairman DiGiulian asked the applicant's attorney, Tracy Steele, if she would like to address the Board. Ms. Steele said they requested a rehearing because the applicant was willing to further reduce the number of children and they wanted to do a more in depth traffic count on the site.

Mr. Hammack said his concerns were not about the number of children, but rather with the location and configuration of the play area and its lack of natural surface. He said he felt that was the weak part of the application. Ms. Steele said the applicant is in the process of talking with the owner of the shopping center about tearing up the asphalt to make an earth play area. She felt the traffic count would alleviate his concern over the location of the day care center.

Mr. Kelley said he agreed with Mr. Hammack's comments and he did not think the application could be amended enough to get his approval. The motion carried by a vote of 7-0.

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Page 475, March 4, 1997, (Tape 2), Scheduled case of:

Approval of Resolutions  
from the February 25, 1997 Meeting

Mr. Kelley moved to approve the Resolutions and the motion carried by a vote of 7-0.

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Page 475, March 4, 1997, (Tape 2), Scheduled case of:

Approval of Revised Plat and Resolution  
for Gabriel E. Nassar, Jr., VC 96-M-023


Mr. McPherson moved to approve the revised plat and resolution. Mr. Ribble seconded the motion which carried by a vote of 7-0.

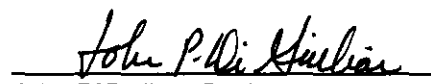
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As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Teresa M. Wang

Approved on: May 6, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 11, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 477, March 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. KOO HYUNG KIM, Appeal 96-M-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a junk/storage yard is being maintained on property zoned R-2 in violation of Par. 5 Sect. 2-302 of the Zoning Ordinance. Located at 5273 Canard St. on approx. 14,140 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) pt. 1.

James Kincheloe, attorney for the appellant, came forward and requested that the appeal be withdrawn. He added that staff was in agreement with the request, since the appellant had indicated that the violation would be cleared.

Mr. Dively made a motion to grant the request based on the testimony. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 477, March 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, Appeal 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, said there were two issues involved in the appeal. One being the enclosure of the original carport located on the subject property, and the second being the operation of a business office from the dwelling. He stated that the house was constructed in the early 1970s with the carport attached to the western side of the house 9 feet from the side lot line. Mr. Shoup said the yard requirement then was the same as it is now, a minimum of 8 feet with a total minimum for both sides of 24 feet. He called the Board's attention to the final house location plat, which was submitted after the original construction showing a 9 foot setback on one side with a 13.2 foot setback on the opposite side of the structure. Mr. Shoup said while the minimum 8 foot setback is satisfied, the requirement for the total side yard requirement is not; however, there were provisions at that time allowing carports to extend up to 5 feet into a minimum required side yard the same as under the current Ordinance. Under that provision, the original construction satisfied zoning requirements; however, the carport has now been enclosed without a building permit thus the enclosure loses the right to extend and the structure does not meet the requirement that the two side yards total 24 feet.

With respect to the second issue, Mr. Shoup said there are various directory listings which reflect the appellant's address, the telephone numbers for the business come back to the property, and at one time there was signage noting the office but the sign has now been removed. He said the appellant has indicated that the office has been relocated, but has provided staff with only a post office address. He said it is staff's belief that the office is still being conducted from the property without the approval of a home occupation permit.

Mr. Burke said the carport was enclosed when he purchased the property in 1983 and one neighbor, who has since moved to another state, told him that the carport was on the subject property when he purchased his property in the early 1970s. He said the complaint was not filed by a neighbor but by a Tax

Office County employee after the appellant had defeated the County in court for the third time on a disputed personal property tax statement. Mr. Burke said he does receive telephone calls at his home and that he also reviews papers at home but most of his clients meet him at the court house. He said he has been diagnosed with leukemia and he no longer has clients come to his home due to his weak immune system. Mr. Burke said there is no adverse impact on the neighborhood from the enclosure of the carport and the neighbors have voiced no objections to the structure.

A discussion took place between the Board members and the speaker as to whether a special permit or variance application would be the proper way to proceed. Mr. Burke said if the Board determined that was the best resolution, he would do so.

The Chairman asked staff for a response. Mr. Shoup said as far as the business was concerned, staff had no evidence to indicate that clients were coming to the property; therefore, it appeared to be a low key operation. He added that the appellant could obtain a home occupation permit, which is an administrative approval and does not involve a fee. With respect to the enclosure of the carport, Mr. Shoup said the appellant could pursue a special permit for an error in building location or a variance.

Mr. Burke pointed out that the Sideburn Run Recreation Association is willing to convey an extra foot of land to him in order to make up the difference in the side yard requirement, if necessary. The Board said it appeared it would require at least 2 feet.

Mr. Kelley asked if he had understood correctly that the carport was enclosed when he purchased the property. Mr. Burke said that was correct.

Peter D. Winer, 5331 Black Oak, the appellant's next door neighbor, came forward and said there has been no adverse impact on the neighbors from either of the uses and that he believed tax payers' money could be better spent.

Mr. McPherson asked the speaker if he could confirm if there were any clients coming to the property and Mr. Winer said he had never seen anyone coming to the property.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to defer Appeal 96-B-043 indefinitely to allow the appellant an opportunity to file either a variance or special permit for error in building location and to obtain a home occupation permit. Mr. Ribble seconded the motion.

Following a discussion among the Board members, Mr. Pammel amended his motion to allow the appellant six months to file the appropriate paper work. The seconder accepted the amendment and the motion carried by a vote of 7-0.

The Chairman asked staff to discuss the procedures with the appellant. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed to do so.

Mr. Kelley asked if staff had advised the appellant of the other options prior to his filing the appeal. Mr. Shoup said the other options were cited in the Notice of Violation.

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Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant had filed a new application since they had revised the approved plat substantially which required an amendment to the existing special permit. She said the applicant had filed the additional time request in order to alleviate the expiration of the current special permit while they were proceeding with the special permit amendment.

Page 479, March 11, 1997, (Tape 1), M.T.O. Shahmagsoudi, SP 94-D-049, continued from Page 478)

Mr. Hammack made a motion to grant the applicant's request making the new expiration date June 14, 1999. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 479, March 11, 1997, (Tape 1), Information Item:

Approval of December 10, 1996, January 7, January 14,  
and January 21, 1997 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 479, March 11, 1997, (Tape 1), Information Item:

Approval of March 4, 1997 Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the maker of the motion, Mr. Pammel, to review Development Conditions 5, 6, and 10 in the Resolution for The Episcopal Church of the Holy Cross, SPA 84-P-004-2, and accept the changes suggested by staff. Mr. Pammel accepted the revisions which were incorporated into the Resolution for SPA 84-P-004-2 and made a motion to approve all the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the cases which had previously been scheduled for the night meeting of March 18th had either been withdrawn or the applicants had requested a deferral, therefore there were no cases scheduled for that date.

One of the cases was the All Dulles Area Muslim Society, SP 96-D-038, and Mr. McPherson asked the new date for this public hearing. Ms. Kelsey said the case is now tentatively scheduled for sometime in June but this may change since the majority of the building will be built in Loudoun County and the Loudoun County Board of Supervisors has scheduled their public hearing for June. Mr. Hammack asked what issues were outstanding. Ms. Kelsey said staff had concerns with the impact on the adjacent residential property and the street system since staff believes most of the traffic will flow through Fairfax County on Sugarland Road. Mr. Pammel noted that the application was extremely controversial in Loudoun County primarily because of the size and the scope of the activity which the community believes is much too intense.

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As there was no other business to come before the Board, the meeting was adjourned at 9:23 a.m.

Minutes by: Betsy S. Hurtt

Approved on: April 1, 1997



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 25, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:01 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 48, March 25, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM (BILL) SANDERS AND JENNIE L. SANDERS, VC 97-S-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 16.6 ft. from rear lot line and 6.0 ft. high fence to remain. Located at 9220 Denali Way on approx. 5.00 ac. of land zoned R-1. Springfield District. Tax Map 106-1 ((4)) 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. Sean McLarty, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation. The applicant requested a variance of 8.4 feet to the minimum rear yard requirement and a variance of 2.0 feet to the minimum height requirement for a fence.

Mr. McLarty, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said there were extreme topographical conditions on the lot and that the only place for the addition was on the existing deck.

Mr. Hammack asked if the fence was considered to be on the front of the lot. Staff replied that part of the fence was on the front of the property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 97-S-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

Mr. Hammack moved to waive the 8-day waiting period as requested by the applicant. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-S-003 by WILLIAM (BILL) SANDERS AND JENNIE L. SANDERS, under Section 18-401 of the Zoning Ordinance to permit addition 16.6 feet from rear lot line and 6.0 foot high fence to remain, on property located at 9220 Denali Way, Tax Map Reference 106-1((4))12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.

3. The area of the lot is 5.00 acres.
4. The applicant met the required standards for a variance.
5. The house is sited well to the rear of the property to address the septic field requirements.
6. The back yard is extremely shallow.
7. The fence is not detrimental to the adjacent property owners.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition and fence shown on the plat prepared by R. Sydney Bradbury, dated October 21, 1996, revised December 26, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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 7-0. Mr. Hammack 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 March 25, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CAROLYN R. FRICKEL, VC 97-D-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit carport 2.1 ft. from side lot line. Located at 1626 Dempsey St. on approx. 11,354 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((34)) 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. Carolyn Frickel, 1626 Dempsey Street, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation. The applicant requested a variance of 4.7 feet to the minimum side yard requirement.

Ms. Frickel presented the variance request as outlined in the statement of justification submitted with the application.

Mr. Pammel asked if the applicant would accept a carport with a lesser width. Ms. Frickel replied that her architect purposely added more width just in case the Board lessened it. She said that she would be agreeable to a lesser width.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant in part VC 97-D-005 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-005 by CAROLYN R. FRICKEL, under Section 18-401 of the Zoning Ordinance to permit carport 2.1 feet from side lot line, **(THE BOARD GRANTED 4.3 FEET)** on property located at 1626 Dempsey Street, Tax Map Reference 30-4((34))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 March 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-3.

3. The area of the lot is 11,354 square feet.
4. The applicant met the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART** with the following limitations:

1. This variance is approved for the location of the carport shown on the plat prepared by Kenneth W. White, dated April 25, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried 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 29, 1997, the date that the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROGER LEE GRAY, VC 97-M-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line. Located at 4712 Backlick Rd. on approx. 18,400 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 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. Roger Gray, 4712 Backlick Road, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation. The applicant requested a variance of 13.2 feet to the minimum side yard requirements.

Mr. Gray presented the variance request as outlined in the statement of justification submitted with the application. Mr. Gray said the addition would not encroach on the neighbor's property.

Mr. McPherson asked if the applicant shared the asphalt driveway with the neighbors and he asked if it would be extended. Mr. Gray replied he did share the driveway and that the parking area would be smaller by adding the garage.

Mr. Hammack asked if the applicant would replace the gravel. Mr. Gray replied that he would remove the gravel.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 97-M-007 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

Mr. McPherson said the applicant should submit a new plat within 30 days reflecting the removal of the gravel driveway to the rear and the side of the proposed garage.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-M-007 by ROGER LEE GRAY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.8 feet from side lot line, on property located at 4712 Backlick Road, Tax Map Reference 71-1((8))5, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 18,400 square feet.
4. The property is very narrow.

5. The lot was designed prior to the adoption of the 1978 Zoning Ordinance.
6. The applicant met the required standards for a variance, provided a new plat is submitted which reflects the elimination of the gravel areas.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Larry N. Scartz, dated August 23, 1991, revised March 27, 1997, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

Page 487, March 25, 1997, (Tape 1), ROGER LEE GRAY, VC 97-M-007, continued from Page 486

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997, the date that the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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Page 487, March 25, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping less than 10.0 ft. from front lot lines. Located at 6211 Leesburg Pi. on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Bellaschi, McGuire, Woods, Battle & Boothe, replied that it was.

Chairman DiGiulian noted the deferral request. Heidi Powell, Staff Coordinator, said the deferral was requested by the current tenant on the property. She said the applicant had not requested a deferral.

Robert Deichmeister, with the firm Fagelson, Schonberger, Payne & Deichmeister, P.C., came forward to speak for Bryant Fagelson and William Thomas. He said the tenant on the property, Caldor, obtained the attorneys to evaluate whether they would oppose the application. Mr. Deichmeister said that both attorneys were out of town and that Caldor had not received proper notice of the hearing. He said the attorneys needed time to review the material so that they could properly represent their client. Mr. Deichmeister requested a deferral to April 8, 1997.

Mr. Ribble asked when the client had hired the attorneys. Mr. Deichmeister replied that the client had contacted the attorneys recently.

Chairman DiGiulian asked if the action of the Board would affect the tenant. Mr. Deichmeister said he was at a disadvantage because Mr. Fagelson and Mr. Thomas were the attorneys with expertise in this matter and that he could not answer that question.

In response to Mr. Kelley's question, staff replied that the property was posted at least 15 days before the public hearing.

Mr. Bellaschi said that they gave the tenant proper legal notification and that they were not obligated to contact the tenant's attorneys. He said the variance does not affect the applicant's relationship with the tenant.

Mr. Dively asked if a continuance of two weeks would prejudice the applicant. Mr. Bellaschi said their position was that they played by the rules and would like to proceed with the application. He said he did not think a deferral was appropriate.

Mr. Kelley moved to grant a two-week deferral. He said the Board had customarily allowed people on both sides of an issue to obtain adequate legal representation.

Mr. Pammel seconded the motion and said that the request was reasonable. Mr. Pammel said that conflicts arise and in this case, both individuals had scheduled their vacations simultaneously, which happened to coincide with spring break. The motion carried by a vote of 7-0. The application was scheduled for April 8, 1997, at 9:00 a.m.

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Page 488, March 25, 1997, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN P. MEHR, VC 97-L-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of building 25.0 ft. from front lot line. Located at 7110 and 7116 Richmond Hwy.; 3200 and 3116 Holly Hill Rd. on approx. 2.79 ac. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 42, 43, 44, 46 and 47.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marie Travesky, the applicant's agent, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation. The applicant requested a variance of 15.0 feet to the minimum front yard requirements. The lot was rezoned to the C-8 District on December 2, 1996 when the Board of Supervisors approved RZ 96-L-008. The Board of Supervisors also approved SE 96-L-014 to permit a mini-warehousing establishment and an increase in Floor Area Ratio (FAR) to construct five two-story mini-warehouse buildings and three single story mini-warehouse buildings. The proffers accepted with the rezoning stated that in the event that the variance was not granted, the applicant shall reduce the width of building number one to meet the Zoning Ordinance front yard setback requirements.

Mr. Ribble asked what was on the site. Ms. Schilling replied that the site was essentially undeveloped, that there were abandoned structures that were going to be demolished.

Mr. Travesky presented the variance request as outlined in the statement of justification submitted with the application. She submitted photographs of the subject property to the Board. Ms. Travesky said the property was unsightly and dangerous. She said the site was difficult because of slopes and stormwater problems. Ms. Travesky said the type of establishment the applicant was proposing was a very expensive development. She stated that the Board of Supervisors and the Planning Commission saw fit to increase the FAR in order to allow the applicant to make the project profitable. Ms. Travesky said the Southeast Fairfax Development Corporation, the Groveton Civic Association, and the Lead Land Use Committee had approved the development. She said if the applicant was forced to reduce the width of this one building, the applicant would lose enough square footage that the property development would become fairly marginal. Ms. Travesky said the request for a variance was caused by a great deal of dedication of the roads.

Chairman DiGiulian called for speakers.

Cecil Carol, Pastor of the church west of the property, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 97-L-002 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-L-002 by STEVEN P. MEHR, under Section 18-401 of the Zoning Ordinance to permit construction of building 25.0 feet from front line, on property located at 7110 and 7116 Richmond Highway; 3200 and 3116 Holly Hill Road, Tax Map Reference 92-4((1)) 42, 43, 44, 46, 47, 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The present zoning is C-8 and HC.
3. The area of the lot is 2.79 acres.
4. The applicant met the required standards for a variance.
5. There is an extraordinary situation on the property.
6. There were road dedications that restricted the property.
7. The subject property has been derelict, and developing it is what good planning is all about. The church in the vicinity supports the application, along with the Southeast Development Corporation. "The County seems to support the application and I'm not sure that the County would not recommend this variance if they were given the opportunity."

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of warehouse building #1 shown on the plat prepared by Kelso and Easter dated December 29, 1995 as revised through February 10, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried 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 2, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MCDONALD'S CORPORATION, VC 96-M-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines. Located at 7600 Little River Tnpk. on approx. 26,806 sq. ft. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((2)) 3. (IN ASSOCIATION W/SE 96-M-038). (DEF. FROM 1/14/97. MOVED FROM 2/4/97 FOR REHEARING FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Tracey Steele, Walsh, Colucci, Emrich & Lubeley, PC, 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The Board of Zoning Appeals granted the subject application on February 4, 1997, but due to the notices not being in order, the application had to be reheard. The applicant requested a variance to allow 10 parking spaces to remain 4 feet from the front lot line adjacent to Woodland Drive and Little River Turnpike. The Zoning Ordinance requires parking spaces to be placed a minimum of 10 feet from the front lot line; therefore, a variance of 6 feet was requested. This site was also the subject of a Special Exception to allow a drive through window and building additions to the existing McDonalds, which was approved by the Board of Supervisors on January 27, 1997.

Ms. Steele said the Board of Zoning Appeals had granted the application previously and that the notices were in order.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 96-M-102 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 96-M-102 by MCDONALD'S CORPORATION, under Section 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 feet from front lot lines, on property located at 7600 Little River Turnpike, Tax Map Reference 71-1((2))3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-6, HC and SC.

3. The area of the lot is 26,806 square feet.
4. The applicant met the required standards for a variance and the Board has approved this variance once 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of parking spaces along the eastern and southern portions of the parking lot shown on the plat prepared by Huntley Nyce & Associates, Ltd., dated May 27, 1996, as revised through October 31, 1996, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1997. This date shall be deemed to be the final approval date of this variance.

Page 492 March 25, 1997, (Tape 1), Scheduled case of:

9:30 A.M. WARREN AND LAURA PRESTON, SP 97-Y-002 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 12.1 ft. from side lot line. Located at 15135 Stillfield Pl. on approx. 13,856 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 496.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Laura Preston, 15135 Stillfield Place, Centreville, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation. The applicant requested a special permit to allow a modification of 7.9 feet to the minimum side yard setback.

Ms. Preston presented the special permit request as outlined in the statement of justification submitted with the application. She said that other neighbors had obtained permits for modifications. Ms. Preston said the special permit request would be harmonious with the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant SP 97-Y-002 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-Y-002 by WARREN AND LAURA PRESTON, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit construction of addition 12.1 feet from side lot line, on property located at 15135 Stillfield Place, Tax Map Reference 53-4((8))496, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,856 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard results in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
8. The lot is narrow.
9. There is ample precedence in the neighborhood due to other side yard variances or special permits being granted in the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance 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.



Page 493, March 25, 1997, (Tape 1), WARREN AND LAURA PRESTON, SP 97-Y-002, continued from Page 492

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**.

1. This special permit is approved for the location of a screened porch addition shown on the plat prepared by Apex Surveys, dated May 17, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The screened porch 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. 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 April 2, 1997.

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Page 493, March 25, 1997, (Tape 1), Scheduled case of:

9:30 A.M. EVE R. MILLS AND DAVID E. MILLS, SP 97-M-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 deck to remain approx. 9.4 ft. from side lot line. Located at 3732 Spicewood Dr. on approx. 24,839 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((2)) (2) 3B4.

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 Mills, 3732 Spicewood Drive, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation. The applicant requested a special permit to allow a modification of 5.6 feet to the minimum side yard requirement.

Mr. Mills presented the special permit request as outlined in the statement of justification submitted with the application. He said they were attempting to comply with the Zoning Ordinance regulations when the error was discovered.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SP 97-M-001 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-M-001 by EVE R. MILLS AND DAVID E. MILLS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain approximately 9.4 feet from side lot line, on property located at 3732 Spicewood Drive,

Tax Map Reference 59-3((2))(2)3B4, 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 25, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck shown on the plat prepared by Walter L. Phillips, dated September 4, 1996, as revised through October 30, 1996, 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 April 2, 1997. This date shall be deemed to be the final approval date of this special permit.

Page 495, March 25, 1997, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS S. GRIEG (LYLES ROAD), Appeal 96-L-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is allowing the outside storage of items in an amount which exceeds 100 sq. ft. in area and which is not properly screened, in violation of Par. 24 of Sect. 10-102. Located at 6537 Lyles Rd. on approx. 28,863 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 90-1 ((2)) 98. (DEF. FROM 9/24/96 FOR DECISION ONLY)

Chairman DiGiulian noted the withdrawal request. Mr. Pammel moved to allow the withdrawal of Appeal A 96-L-029. 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 495, March 25, 1997, (Tape 1), Scheduled case of:

9:30 A.M. NABIL MANSOUR, Appeal 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31. (DEF. FROM 6/11/96. MOVED FROM 9/17/96. DEF. FROM 11/7/96 FOR NOTICES. DEF. FROM 1/28/97 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated March 18, 1997. He said the issue was the appellant's use of the property for the storage of wrecked, inoperable, and impounded motor vehicles. Mr. Shoup said that type of activity under the Zoning Ordinance constituted a motor vehicle storage and impoundment yard. He said the use is a permitted use in the I-5 District; however, it is subject to site plan or minor site plan approval. Mr. Shoup stated that there were a series of temporary site plan waivers issued for vehicle storage on the property beginning in March of 1978. He said the site plan waiver process was the predecessor to the current minor site plan process. Mr. Shoup said the last site plan waiver that was approved was issued in October of 1987 for a two year period which had expired in October of 1989. He said there had been no other approvals under the site plan provisions since that time. Mr. Shoup said Non-Residential Use Permits (Non-RUPs) were issued to the appellants in 1993 and 1994; however, under Section 18-114 of the Zoning Ordinance, the issuance of permits is precluded if the permit is not in full compliance with the Zoning Ordinance. He said that provision provides that the issuance of such a permit is null and void and of no effect. Since there was no valid site plan approval, Non-RUPs should not have been issued in 1993 and 1994 and under Sect. 18-114 they were null and void. Mr. Shoup said that the continued operation without site plan approval and valid Non-RUP approval was a violation of Zoning Ordinance provisions. He said this position was set forth in a letter from the Zoning Administrator, dated February 5, 1996 and this was an appeal of that determination.

Mr. Pammel asked if the 60-day rule was applicable in this instance. Mr. Shoup replied he did not believe it applied in this instance.

Jack Connor, agent for the appellant, presented the arguments forming the basis for the appeal. He noted that the notices for this application were in order. Mr. Connor said the subject property had the current use as it exists, since 1978. He said there was a series of site plan waivers granted over the years and the adjoining property had also obtained additional site plan waivers. However, the one issued in 1982 for the adjoining property had no expiration date. Mr. Connor suggested that because of the circumstances the appellant's waiver should not have an expiration date. He said Lot 31 was owned by the appellant and Lot 32 was leased by the appellant. Mr. Connor said it was the same property with 2 different tax map numbers. Mr. Connor said the appellant obtained a Non-RUP before he purchased the property. Mr. Connor said the appellant submitted a minor site plan application which was rejected by the Department of Environmental Management (DEM). The appellant was informed by DEM that they could not approve the minor site plan application and returned the application to the appellant. He said under the current Ordinance it was impossible for the subject site to obtain site plan approval without paying far in excess to the value of the property. He said DEM refused to write a letter objecting to the acceptance the site plan waivers.

Mr. Pammel asked Mr. Connor to distinguish the difference between Lot 31 and Lot 32. Mr. Connor replied that the only difference was that Lot 31 was higher topographically.

Page 496, March 25, 1997, (Tape 1), NABIL MANSOUR, Appeal 96-L-013, continued from Page 495

Mr. Kelley asked if it was customary for DEM to refuse to submit a written response. Mr. Shoup responded that he did not know the details about DEM's refusal to write a letter, he said he knew that DEM returned the submittal. Mr. Shoup said he thought it was done as a courtesy by DEM to save the appellant some money. He said since DEM knew that they were not going to be able to approve the waivers they returned the application out of courtesy.

Chairman DiGiulian said he recalled that the Ordinance required that a letter be prepared explaining why the site plan was denied.

Mr. Kelley said he would like to have a representative from DEM present to answer questions.

Chairman DiGiulian called for speakers.

Nelson Pemberton, previous lessee of the subject property came forward to support the appellant's position. Mr. Pemberton said there were site plan waivers for the property when he had leased it. He said the lot had been used for a towing and storage lot since 1978.

Karen Harwood, Senior Assistant County Attorney, said the case was not about whether DEM properly approved or rejected the minor site plan request, but that the issue was a Zoning Ordinance violation. She said the issue was whether the Ordinance required a site plan or a minor site plan for the property and if the appellant had one.

Mr. McPherson and Ms. Harwood discussed Attachment 12 of the staff report.

Mr. Kelley moved to continue the public hearing until such time as an appropriate representative from DEM could be present to answer questions. Hearing no objection the Chairman so ordered. The public hearing was continued to April 22, 1997, at 9:30 a.m.

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Page 496, March 25, 1997, (Tape 1), Action Item:

Request for Additional Time  
Apostolic Church of Washington, SP 91-Y-036

Mr. Pammel moved to approve the Request for Additional Time for SP 91-Y-036. Mr. McPherson seconded the motion which carried by a vote of 7-0. The new expiration date is February 27, 1999.

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Page 496, March 25, 1997, (Tape 1), Action Item:

Approval of Revised Plats  
Dory and Jenny Saad, VC 96-D-115

Mr. Pammel moved to defer the approval of the revised plats for VC 96-D-115 to the April 1, 1997, After Agenda. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 496, March 25, 1997, (Tape 1), Action Item:

Request for Additional Time  
Marguerite Wolf Oliver, VC 94-D-077

Mr. Pammel moved to approve the Request for Additional Time for VC 94-D-077. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is September 21, 1998.

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Page 497, March 25, 1997, (Tape 1), Action Item:

Request for Additional Time  
Church of The Ascension, VC 94-Y-068

Mr. Pammel moved to approve the Request for Additional Time for VC 94-Y-068. Mr. McPherson seconded the motion which carried by a vote of 7-0. The new expiration date is May 10, 2000.

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Page 497, March 25, 1997, (Tape 1), Action Item:

Approval of February 4, 1997 Minutes

Mr. Pammel moved to approve the February 4, 1997, Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 497, March 25, 1997, (Tape 1), Action Item:

Request for Intent to Defer  
Aegis Ironwood Partners, SP 94-V-024

Mr. Pammel moved to grant the Intent to Defer for SP 94-V-024. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote. The Board indicated that they intended to defer the application to June 24, 1997.

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Page 497, March 25, 1997, (Tape 1), Action Item:

Out of Turn Hearing Request  
Belle Haven Country Club, SPA 82-V-093-4

Mr. McPherson moved to grant the Out of Turn Hearing for SPA 82-V-093-4. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote. The application was scheduled for May 13, 1997 at 9:00 a.m.

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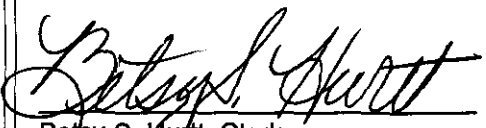
Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the Information Item that pertained to a memo from James P. Zook, Director, Office of Comprehensive Planning.

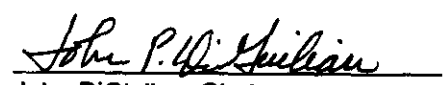
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As there was no other business to come before the Board, the meeting was adjourned at 10:26 a.m.

Minutes by: Regina Thorn

Approved on: May 6, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 1, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 499, April 1, 1997 (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE R. PFEIFLE, VC 97-Y-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. and deck to remain 11.5 ft. from rear lot line. Located at 13631 Old Chatwood Pl. on approx. 6,949 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 68.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence R. Pfeifle, 13631 Old Chatwood Place, Chantilly, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She stated that the applicant sought two variances, one to permit the existing deck to remain 11.5 feet from the rear lot line and the other to allow the deck to be enclosed 12.6 feet from the rear lot line. She clarified that a variance of 1.5 feet for the existing deck and a variance of 12.4 feet for the enclosure of the deck was being requested.

Lawrence Pfeifle explained that his builder had assured him that when his deck was under construction, that the steps did not matter and only after the deck was finished was he informed that he was in violation of the Ordinance's 13-foot setback rule. He explained that the pie-shaped wedge of his property as well as an easement which runs through the rear of his lot makes his property significantly more shallow than his neighbors. He stated that he sought to enclose his deck as the usefulness of the deck was limited because it was very hot during the day, had a problem with insects, and that he worried about his small son climbing over the railing.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Hammack moved to grant VC 97-Y-009 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 25, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-Y-009 by LAWRENCE R. PFEIFLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.6 feet and deck to remain 11.5 feet from rear lot line, on property located at 13631 Old Chatwood Place, Tax Map Reference 34-4((10))68, 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 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-5 and WS.
3. The area of the lot is 6,949 square feet.

- 4. The lot is small with the house set deep from the front property line.
- 5. Neither requested variance would have any adverse effect on the adjacent property owners.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of an addition (enclosed deck) and an open deck shown on the plat prepared by Harold A. Logan and Associates, dated August 27, 1996, as revised through October 25, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction of the enclosed deck, and final inspections shall be approved.
- 3. The enclosed deck addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried unanimously by a vote of 6-0 with Mr. Ribble not present for the vote.



\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 501, April 1, 1997 (Tape 1), Scheduled case of:

9:00 A.M. BOBBIE J. GANTT, SP 97-P-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit addition 14.9 ft. from side lot line. Located at 11833 Waples Mill Rd. on approx. 22,000 sq. ft. of land zoned R-1. Providence District. Tax Map 46-1 ((7)) 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. Bobbie J. Gantt, 11833 Waples Mill Road, Oakton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She explained that the applicant was requested a special permit for an error in the building location to permit a partially constructed garage addition to remain 14.9 feet from the side lot line and to enclose the carport. She noted that if it is the intention of the Board to grant the special permit, it must be determined that the request meets the provisions of Sect. 8-914 for approval of reduction to the minimum yard requirements based on error in building location contained in Appendix 4 of this report.

Bobbie J. Gantt explained that the carport was existing when she purchased the house in 1989 but did not realize it required a building permit to enclose it. When she applied at the County for an electrical permit, she was informed that the County's records showed the carport as currently under construction so she was trying to bring everything up to Code.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Pammel moved to grant SP 97-P-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 25, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 97-P-003 by BOBBIE J. GANTT, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition 14.9 feet from side lot line, on property located at 11833 Waples Mill Road, Tax Map Reference 46-1((7))9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the garage addition shown on the plat prepared by Charles R. Johnson, dated January 17, 1991, revised through January 6, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. McPherson seconded the motion which carried by a unanimous vote of 6-0; Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 502, April 1, 1997 (Tape 1 ), Scheduled case of:

9:00 A.M. HARVEY SMITH, VC 97-D-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line and accessory structure to be 8.4 ft. from side lot line and in the front yard of a lot containing less than 36,000 sq. ft. Located at 6249 North Kensington St. on approx. 10,897 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (9) 33. (MOVED FROM 3/25/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harvey Smith, 6249 North Kensington Street, McLean, Virginia, replied that it was. He introduced his architect, Steven Allen Smith, no relationship, who was available to answer questions.

Julie Schilling, Staff Coordinator, presented the staff report. She stated that the property had a 20-foot wide access easement which contained a driveway to the dwelling located to the south of Mr. Smith's dwelling, and

that he was requesting two variances, the enclosure of the existing carport which necessitated a 4.6-foot variance and a variance to allow the construction of a new detached carport in the front yard of the lot regardless of the distance from the front lot line.

Steven Allen Smith, Architect, 1825 Pimmit Drive, Falls Church, Virginia, representing Harvey Smith, addressed three issues, hardship, the requested variance to enclose the carport, and the construction of the new carport. He explained that all the lots in this older development were small and Harvey Smith's house had an access easement through his rear lot which made his lot very, very small. He stated that the enclosure of the existing carport would not change the footprint and that the construction of a new carport to the front of the house would follow the existing roofline, it would be no higher and it would be no closer than it currently was to the property line. In response to Mr. McPherson's question, he explained the lot's topography.

Mr. Harvey Smith, when he approached his neighbors about his variance request, had been requested by his next-door neighbor, Mr. Henry Grynberg, that there be no windows in the western wall of the new carport which faced his property and that he was assured that there would not.

Henry Grynberg, 6251 North Kensington Street, McLean, Virginia, voiced his concern over his privacy in that the proposed addition would be extremely close and facing his bedroom picture window. He worried that the carport might negatively impact the resale value of his property because it would lie 8.4 feet from his property line.

In rebuttal, Harvey Smith affirmed that he would not build windows along the wall facing Mr. Grynberg's property. He clarified that the existing roofline was 8.4 feet from the property line and would not be increased; that he had no intention of building anything any closer to Mr. Grynberg's property.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 97-D-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 25, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-D-006 by HARVEY SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.4 feet from side lot line and accessory structure to be 8.4 feet from side lot line and in the front yard of a lot containing less than 36,000 square feet, on property located at 6249 North Kensington Street, Tax Map Reference 41-1((13))(9)33, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,897 square feet.
4. The lot is very narrow with extreme sloping ground conditions.
5. The access easement which runs through the lot reduces it functionally.
6. The request is nominal; they seek only to have full use of an existing structure on the property.
7. The carport enclosure does not change the existing footprint of the lot nor the property's use or its nature.

- 8. Particular care must be taken in cases like this when determining what is reasonable and fair as all this subdivision's lots are small because the Franklin Park Subdivision is an older development.
- 9. The facts contained in the staff report and the representations of the applicant presented at the public hearing.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of an addition and an accessory structure shown on the plat prepared by Stephen Allen Smith, Architect, dated November 22, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition and accessory structure shall be architecturally compatible with the existing dwelling.
- 4. No windows shall be placed in the enclosure of the existing carport on the northwest side of the property.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

Page 505, April 1, 1997 (Tape 1), HARVEY SMITH, VC 97-D-006, continued from Page 504

The request must specify 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 unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 505, April 1, 1997 (Tape 1), Scheduled case of:

9:00 A.M. MEHDI-MOFAKHAMI, VC 97-P-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line. Located at 10815 Bryant Pl. on approx. 40,067 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((3)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mehdi-Mofakhami, 10815 Bryant Place, Oakton, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting an 8-foot variance to allow a living and dining room addition to be constructed.

Mehdi-Mofakhami introduced his daughter as an architect and contributing designer of the proposed addition to give the presentation.

Shahdi Mofakhami, the applicant's daughter, residing at 10815 Bryant Place, Oakton, Virginia, stated that some of their neighbors had voiced concern over the proposed addition changing the "openness" of the neighborhood but because their existing dining and living rooms were built on the side of the house, all they wanted to do was to add onto the two rooms and make them larger. In response to Mr. Ribble's questions, she stated that it was not feasible to construct the additions onto the rear of the house.

In response to questions posed by the Board, Mr. Mehdi-Mofakhami further explained his home's layout. He maintained that there was no other part of the house on which to place the additions and, responding to Mr. Dively's question, stated the reasons why it was not feasible nor aesthetic to place the additions onto the rear of the house. He explained the three stages of the construction.

Chairman DiGiulian called for speakers in opposition of the application.

Harriet Donaldson, 10821 Bryant Place, Oakton, Virginia, introduced her son, John Donaldson, who would speak for her.

John Donaldson, 3108 Rodman Street, N.W., Washington, D.C., noted that the applicant was requesting a substantial variance and the addition, where proposed, would bring it close to his mother's lot line. As Mr. Mehdi-Mofakhami had considered building the addition forward and had shown plans to Harriett Donaldson, John Donaldson explained, that would be the least intrusive.

Heidi Powell concurred that no variance was needed if the applicant wanted to build forward, onto the front of the house.

Mr. Donaldson submitted that they would withdraw any objection to the variance if the applicant committed to three stipulations: that the variance remain within the blueprint plans; that there be a slight change in the roofline; and that the lot be landscaped promptly after the construction.

In rebuttal, Mr. Mehdi-Mofakhami affirmed that he wanted to be a good neighbor and that he had committed to the three stipulations of the Donaldsons. In response to Mr. Hammack's question, he explained that a foyer was included with the living room dimensions.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 97-P-013 stating that the variance requested was substantial and that he believed there were other options for locating the additions which would not require a variance or only a minimal one.

Mr. Hammack concurred with the motion for denial stating that it appeared that the applicant wanted the location of the addition where it was most convenient for him and that convenience was not justification for hardship.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-P-013 by MEHDI-MOFAKHAMI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.0 feet from side lot line, on property located at 10815 Bryant Place, Tax Map Reference 47-1((3))30, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 40,067 square feet.
4. The addition would be substantial.
5. There are other options for the placement of the additions which do not require a variance or only a minimal one.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Dively seconded the motion which carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997.

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9:00 A.M. WENDELL L. IRBY AND MARY L. IRBY, VC 97-P-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of two (2) outlots into one (1) lot with proposed lot having a lot width of 14.7 ft. Located on the S. side of Oakton Ridge Ct., approx. 500 ft. W. of its intersection with Marbury Rd. on approx. 2.04 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 1B; 47-2 ((31)) C.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas D. Rust, 14523 Lee Road, Chantilly, Virginia, representing the applicants, replied that it was. Wendell Irby, 10407 Hunt Race Way, Vienna, Virginia, also affirmed his affidavit.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant sought to permit the subdivision of two outlots into one lot with the resulting lot having a width of 14.7 feet which requires a variance of 150.0 feet. She stated that staff found that the application satisfied the Zoning Ordinance provision 18.404 and met the nine variance standards. Ms. Powell stated that approval of the application should be subject to the conformance with the conditions set forth in Appendix I of the staff report and the March 25, 1997 Proposed Development Conditions.

In response to Mr. Kelley's question, Jane Kelsey, Chief, Special Permit and Variance Branch, explained staff's determination that the subject parcels could not be developed without a variance and therefore, the hardship provision was met. She called the Board's attention to the background information detailing the history of the subject property which was contained in the record. In response to Mr. Hammack's question, Ms. Kelsey explained the differences between the previous application, which was submitted in 1986 by a different land owner involving different parcels, and the current one which was before the Board that morning. She repeated that this consolidation request was for different lots. Ms. Kelsey advised the Board that the current owners, the Irbys, had purchased the property without knowledge that a plat for consolidation of the lots was unattainable. She explained that the purpose of creating Outlot C was to provide access/easement to an adjoining subdivision.

Thomas Rust concurred with Ms. Kelsey's explanation reiterating the outlots creation, configuration, and the Irby's acquisition of the parcels. He noted that there would be nominal disturbance of the land with the proposed construction of the Irby's house, which was planned to be placed in the center of the lot. Mr. Rust reminded the Board that the majority of the neighbors supported the application. He maintained that the property was not build able if the variance was not granted. He pointed out that, initially, Outlot A had a note stipulating that there could be no building permit issued because of the Ordinance requirement that it have frontage and that defect was cured with the purchase of Outlot C. He reminded the Board that the property was acquired in good faith, that the applicants paid market value and had discussed the issue with County

staff, and that the Irbys believed that consolidation could occur which would cure the defect. Mr. Rust responded to questions from Mr. Hammack concerning alternative uses for the land if it were deemed that a residential dwelling could not be approved.

Jane Kelsey, Chief, Special Permit and Variance Branch, further explained to Mr. Hammack the Ordinance's requirements for keeping horses on property.

In response to Mr. Dively's query, Mr. Irby explained the procedure he undertook in purchasing the property. He emphasized that County staff had informed him that a variance might be required but that the development was feasible. He explained to Mr. McPherson the steps and inquiries he took to determine that the lot was suitable for construction.

Discussion followed between the Board members and Ms. Kelsey regarding the division of the lots from the previous application in 1986 and the present application.

As there was no response for speakers in support, Chairman DiGiulian called for speakers in opposition.

Ryan Phillips, 10550 Marbury Road, Oakton, Virginia, voiced his concern over environmental damage to the headwaters of Difficult Run tributary if the lots were developed. He stated that there was a question of good faith if the parcels' deeds had been adequately reviewed. Mr. Phillips pointed out that the lot was exceptionally narrow, had an unusual shape and size and these were reasons for denial.

Karen Macintosh, 10503 Oakton Ridge Court, Oakton, Virginia, explained that her front yard was part of Outlot C, which was located at the bottom of the slope, and she worried about the water runoff which had been a serious problem since her house was new and which would be exacerbated if the parcels were developed. She also pointed out that the Irby's driveway would remove part of her frontage causing decreased property value.

In rebuttal, Mr. Rust noted that if the variance was granted, all environmental issues would be addressed because the application must comply with the Department of Environmental Management's standards for siltation, erosion and drainage control. He disagreed with Mr. Phillips' claim that the applicant had not demonstrated a hardship requirement. Mr. Rust recognized Ms. Macintosh's drainage problems and explained their proposed drainage system which would improve the situation.

There being no further questions or comments by the Board, Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 97-P-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 25, 1997.

Mr. Dively commented that the good faith issue was subjective but because the applicant had purchased the property for \$190,000 when it was assessed at \$60,000 demonstrated that the Irbys had relied on the County staff's advise and, therefore, he would support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-P-004 by WENDELL L. IRBY AND MARY L. IRBY, under Section 18-401 of the Zoning Ordinance to permit the subdivision of two (2) outlots into one (1) lot with proposed lot having a lot width of 14.7 feet, on property located on the south side of Oakton Ridge Court, the Outlot C, which to date has not been assigned a street number, Tax Map Reference 47-2((31))-C; 47-2((1))1-B, 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 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.04 acres.
4. The applicant's Statement of Justification, contained in the staff report, is an excellent justification for the request.
5. This is the first time I can remember when staff has justified this type of application.
6. The applicant has satisfied the required "good faith" issues.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of two outlots, A and C, into one lot as shown on the plat prepared by Patton Harris Rust and Associates, P.C., dated November 1996.
2. The driveway to the proposed dwelling unit shall be constructed in accordance with the Public Facilities Manual.
3. At the time of subdivision review, the applicant shall submit to the Department of Environmental Management (DEM) a plat indicating the limits of clearing and grading and a tree preservation plan.

- 4. Prior to clearing and grading, the existing barn shall be removed from the site.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 510, April 1, 1997 (Tape 1), Action Item:

9:00 A.M. WILLIAM O. BUTLER, III, VC 97-B-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport .81 ft. from side lot line such that side yards total 7.31 ft. Located at 9524 Barnstable Ct. on approx. 10,070 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 78-1 ((4)) 461.

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 O. Butler, III, residing at 9524 Barnstable Court, Burke, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She noted that, although the subdivision was developed under the PDH-3 regulations, the R-3 Cluster Subdivision regulations applied which require a minimum side yard of 5.0 feet for a carport and a total minimum side yards of 17.0 feet and therefore a variance of 4.19 feet was requested to the side yard requirement and a variance of 9.69 feet was requested to the total side yards requirement.

William O. Butler, III, pointed out that his lot was narrow and shallow, it sits on a cul-de-sac, and the orientation of the residence and the slope of the topography restricted where the proposed carport could be extended. He stated that many of his neighbors have extended their driveways and the character of the neighborhood's zoning district had not changed. Mr. Butler professed that he would suffer undo hardship due to vandalism to his two cars which must currently be parked on the street if not allowed to extend his driveway. In response to Mr. Dively's question, Mr. Butler maintained that if the driveway's extension was brought in by two feet, two of his three automobiles could not be parked under the carport.

Chairman DiGiulian called for speakers but received no response, he therefore closed the public hearing.

Mr. Dively moved to deny VC 97-B-012 noting that Mr. Butler's request was, in general, reasonable but that this variance request was too close to the property line. He added that past decisions by the Board of Zoning Appeals would not equitably allow this variance approval which was so close to the property line when, in other cases, they had been denied for that very reason. Mr. Dively offered, if requested by the applicant, to waive the 12-month time period for refiling. The applicant did so and the Board granted the request.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-B-012 by WILLIAM O. BUTLER, III, under Section 18-401 of the Zoning Ordinance to permit construction of carport .81 feet from side lot line such that side yards total 7.31 feet, on

Page 511, April 1, 1997 (Tape 1), WILLIAM O. BUTLER, III, VC 97-B-012, continued from Page 510

property located at 9524 Barnstable Court, Tax Map Reference 78-1((4))461, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 10,070 square feet.
4. The requested variance is too close to the property line.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried unanimously 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 9, 1997. The Board waived the twelve-month resubmission period.

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9:30 A.M. MT. PLEASANT BAPTIST CHURCH, SPA 95-H-062 Appl. under Sect(s). 3-104 of the Zoning Ordinance to amend SP 95-H-062 for a church and related facilities to permit an increase in Gross Floor Area. Located at 2516 Squirrel Hill Rd. on approx. 3.65 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 28.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark J. Cross, Cross, Clayton & Associates, 7150-A Main Street, Clifton, Virginia, replied that it was. James Graham, the Pastor of Mt. Pleasant Baptist Church was present and stated that he was available to answer questions.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought approval of a special permit amendment for a church and related facilities to allow an increase in gross floor area from 20,260 square feet to 23,862 which resulted in an increase of FAR from 0.13 to 0.15. She stated that in March 1996 the BZA had approved a special permit on the subject property to allow a 490 seat church with 126 parking spaces with an approved FAR of 0.13 but due to engineering changes, the special permit's FAR needed to be modified slightly to 0.15 but that no other change or addition was requested. Ms. Langdon stated that staff recommended approval. She concurred with Mr. McPherson's observation that the only change was to Development Condition #14's initial paragraph.

Mark J. Cross concurred with Ms. Langdon's presentation. He affirmed that there were a few architectural changes in the second schematics submission with a minor change in the FAR as noted in the staff report.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. McPherson moved to grant SPA 95-H-062 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 25, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 95-H-062 by MT. PLEASANT BAPTIST CHURCH, under Section 3-104 of the Zoning Ordinance to amend SP 95-H-062 for a church and related facilities to permit an increase in Gross Floor Area, on property located at 2516 Squirrel Hill Road on approximately 3.65 acres of land zoned R-1, Tax Map Reference 15-4((1))28, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.65 acres.
4. This is a nominal amendment to a prior application.
5. The FAR is a nominal increase from .13 to .15.
6. The facts contained in the staff report and the representations of the applicant at the public hearing.

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. 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2516 Squirrel Hill Road, and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by James Hricko, Architect, dated received November 27, 1996, and approved with this application, as qualified by these development conditions.\*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The maximum seating capacity in the main area of worship shall be 490.\*
6. There shall be a maximum of one hundred and twenty five (125) parking spaces provided as shown on the special permit plat. All parking for this use shall be on site.\*
7. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch, Department of Environmental Management, (DEM).\*
8. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of existing mature trees along all property lines. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved 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 Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public Facilities Manual (PFM).\*
9. Transitional Screening 1 shall be modified along all property lines as shown on the special plat in order to allow the existing vegetation to remain and satisfy this requirement, provided additional plantings are provided to the equivalent of Transitional Screening 1 along the northern lot line. Along the front (eastern) lot line, the existing gravel parking lot shall be removed and that area revegetated and plantings installed to prevent parking along Squirrel Hill Road. These plantings and the existing vegetation shall satisfy Transitional Screening 1. The purpose of this screening shall be to soften the visual impact of the proposed church sanctuary from the adjacent residences. Exact type, location, size and number of any additional plantings shall be reviewed and approved by the County Urban Forestry Branch.\*  
  
The barrier requirement shall be waived along all lot lines.\*
10. Landscaping and building foundation plantings shall be provided around the proposed structure in order to enhance the visual appearance of the building. An evergreen hedge shall be provided along the border of the parking lot along the southern property line in order to prevent the glare of automobile headlights from impacting adjacent residences. The landscaping, foundation plantings

and evergreen hedge shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval at the time of site plan review.\*

11. 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.\*
12. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.\*
13. Storm water Best Management Practices (BMPs) shall be provided as determined by the Department of Environmental Management (DEM) at the time of site plan review.\*
14. The applicant may seek vacation/abandonment of the existing prescriptive right-of-way and if such is abandoned, may create a private ingress/egress easement of forty-four (44.0) feet in width from McNair Farms Drive to the entrance of the church property and transitioning to twenty-four (24.0) feet and remaining 24.0 feet in width thereafter to the termination of Squirrel Hill Road at Lot 32. Access from McNair Farms Road to the church entrance shall be constructed and maintained in accordance with the Public Facilities Manual (PFM) standards, either by the church or others, not by Fairfax County or the Virginia Department of Transportation.

If the abandonment of the right-of-way is not pursued by the applicant and/or approved, the applicant shall provide right-of-way dedication and construction as approved in conjunction with Development Condition 14 approved with SP 95-H-062 as follows;

Right-of-way to 25 feet of the centerline of Squirrel Hill Road from the site entrance to the northern property line shall be dedicated to the Board of Supervisors in fee simple at the time of site plan approval or upon demand, whichever occurs first. A fifteen (15) foot cross section from the centerline to the face of curb from the site entrance north to McNair Farms Drive shall be dedicated for public street purposes as approved by the Director, DEM.

Construction of a twelve (12) foot cross section from the centerline to a ditch section of the east side of Squirrel Hill Road shall be provided from the site's entrance north to future McNair Farms Drive extended, as determined by VDOT.

South of the entrance, dedication to 25 feet from centerline of Squirrel Hill Road shall be provided upon request by the County or VDOT for any imminent roadway project to improve the road. If construction is not completed by the applicant along the entire frontage of the site, ancillary easements to 15 feet of the proposed property line shall be provided at the time of dedication of the right-of-way.

15. The applicant shall provide a 5.0 foot wide sidewalk from McNair Farms Drive extended to the entrance of the church property.\*
16. The site entrance shall be located generally as shown of the special permit plat. The entrance shall be located in order to minimize the removal of and disturbance to the existing stone wall on site. The stone wall shall be preserved to the maximum extent feasible.\*
17. Signs shall be permitted provided they are erected in accordance with Article 12 of the Zoning Ordinance.\*
18. Any trash dumpster located on the property shall be screened by a board-on-board fence, or with plantings which shall completely screen the view of the dumpsters, subject to the approval of DEM.\*

- 19. The historic single family dwelling on the property shall remain and may be used for offices or classrooms. If the dwelling is used for residential use, it shall only be used as the residence of the pastor or a member of the church staff who functions as caretaker for the property.\*
- 20. The structures located along the northern property line shall be removed as shown on the special permit plat.\*

It is noted that these development conditions incorporate and supersede all previous development conditions. The previous conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless 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 unanimously 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 9, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. AEGIS IRONWOOD PARTNERS, L.L.C., SP 94-V-024 Appl. under Sect(s). 3-103 and 5-603 of the Zoning Ordinance to permit a golf driving range, miniature golf courses, baseball hitting range, skating rinks, tennis courts and commercial recreation park. Located on the S. side of Cinder Bed Rd., approx. 500 ft. W. of Backlick Rd. on approx. 57.26 ac. of land zoned R-1 and I-6. Mt. Vernon District. Tax Map 108-1(12)) pt. 7. (PREVIOUSLY DEFERRED INDEFINITELY). (MOVED FROM 3/4/97).

Mr. Pammel moved to defer the public hearing on SP 94-V-024 to 9:00 a.m. on June 24, 1997. Mr. Hammack seconded the motion which carried by a unanimous vote of 7-0.

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Approval of January 28, 1997 & March 11, 1997 Minutes

Mr. Hammack so moved which was seconded by Mr. Pammel and carried unanimously by a 7-0 vote.

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Page 516, April 1, 1997 (Tape 2 ), Action Item:

Additional Time request for Stump Dump, SP 94-D-058

Mr. Pammel so moved for the additional time with the new expiration date of March 8, 1998 which was seconded by Mr. Ribble and carried unanimously by a 7-0 vote.

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Page 516, April 1, 1997 (Tape 2 ), Action Item:

Approval of Revised Plat for Dory and Jenny Saad, VC 96-D-115

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that no action was needed on this case as it was determined that the plat was insufficient and required resubmission evidencing that the stairs were removed. She noted that the applicants have been advised accordingly.

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Page 516, April 1, 1997 (Tape 2 ), Action Item:

Approval of March 25, 1997 Resolutions

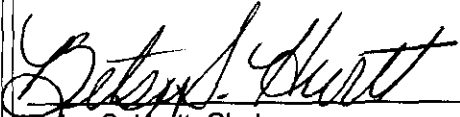
Mr. Kelley so moved to approve the March 25, 1997 Resolutions which carried unanimously by a 7-0 vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Paula A. McFarland

Approved on: May 20, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 8, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and the Chairman called for the first scheduled case.

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Page 511, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. PAUL F. MORRISON AND JOHAN H. ASKOWITZ, VC 97-V-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.75 ft. from side lot line. Located at 7945 Bolling Dr. on approx. 6,250 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2((12)) 163.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Shahman Foradi, 10680 Main Street, Fairfax, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 5.25 feet for a dwelling to be located 9.75 feet from the side lot line.

Mr. Foradi presented the applicant's request as outlined in the statement of justification submitted with the application. He said the Wellington subdivision is zoned R-2 and has many lots with a width of 50 feet which are still considered buildable lots. Mr. Foradi said the applicant's property has two public easements on the lot. In particular, a sanitary sewer line that requires a 15 foot setback from the center line which causes the dwelling to be pushed over to one side. He noted that on Bolling Drive Lots 148 and 149 are single lots with an area of approximately 6,000 to 7,000 square feet and a lot width of 50 feet with houses built on them. With regards to stormwater drainage issues, Mr. Foradi said on the property there are two inlets for stormwater drainage which have been inspected by his engineer who reported that they are in working order.

Joseph Chantos, 7943 Bolling Drive, Alexandria, Virginia, spoke in opposition to the variance. He felt the proposed dwelling would encroach upon his property, prevent him from adding on to his dwelling, and adversely affect the drainage on his property by causing standing water. Mr. Chantos said the applicants propose to build a tall, long, and narrow building that would be out of character with the neighborhood. In sum, he felt the applicants' property was still valuable and marketable without the variance and that the applicant had not presented testimony showing undue hardship.

Chairman DiGiulian questioned Mr. Chantos on how the granting of the variance would affect his ability to add-on to his dwelling and what other viable uses there were for the applicants' lot. Mr. Chantos explained that he intends to build an addition on the same side of his house that faces the applicants' lot and it would no longer be a desirable option for him if the variance request was granted. He felt the property could be used as a side yard, garden, or built with a garage or workshop for a neighboring lot and expressed interest in purchasing the lot. He reiterated that the applicant had not demonstrated that a hardship exists without the granting of the variance. He submitted his comments and an attached Virginia State Supreme Court case ruling to the Board.

In response to a question from Mr. Ribble, Mr. Chantos said he has lived at the residence for four years.

In rebuttal, Mr. Foradi said the applicants' property has been on the market for several years and Mr. Chantos has not made an offer until now. He felt that Mr. Chantos was trying to preserve the applicants' lot as unbuildable in order to maintain the open space next to his property. Mr. Foradi said a smaller house could be built on the applicant's property if the variance was denied but it would not be practicable nor marketable. In sum, Mr. Foradi said they were trying to put something on this property that would bring value to the subdivision but not infringe on Mr. Chantos' rights as well.

Chairman DiGiulian closed the public hearing.

Page 518, April 8, 1997, (Tape 1), PAUL F. MORRISON AND JOHAN H. ASKOWITZ, VC 97-V-014, continued from Page 517

Mr. Ribble moved to grant VC 97-V-014 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 1, 1997.

Mr. Kelley added that he felt the applicant's lot would be unbuildable without the variance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-V-014 by PAUL F. MORRISON AND JOHAN H. ASKOWITZ, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 9.75 feet from side lot line, on property located at 7945 Bolling Drive, Tax Map Reference 102-2 ((12)) 163, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 6,250 square feet.
4. The applicant meets the nine required standards for a variance.
5. The applicant stated that the dwelling has to be 15 feet from the sanitary sewer trunk line which causes the need for a variance.
6. The variance request is minimal.
7. The applicant presented testimony that other single lots have been built on 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.

Page 519, April 8, 1997, (Tape 1), PAUL F. MORRISON AND JOHAN H. ASKOWITZ, VC 97-V-014, continued from Page 518

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the dwelling shown on the plat prepared by Kenneth W. White, dated July 26, 1995, revised November 14, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 16, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 519, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping less than 10.0 ft. from front lot lines. Located at 6211 Leesburg Pi. on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A.(DEF. FROM 3/25/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Bellaschi, with the law firm of McGuire, Woods, Battle, and Boothe, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested three variances; a variance of 45.6 feet to allow the existing building to remain 21.7 feet from one street line, Leesburg Pike; a variance of 15.3 feet to allow an existing building to remain 57.8 feet from the other street line, Juniper Lane; and, a variance of 7.6 feet and 8.9 feet to allow the existing parking spaces to remain 2.4 feet and 1.1 feet from a street line.

Mr. Pammel questioned staff on whether this structure was originally built in conformance with all of the provisions of the Zoning Ordinance. Ms. Powell replied affirmatively.

Mr. Bellaschi presented the applicant's request as outlined in the statement of justification submitted with the application. He noted that in 1964 the structure was originally built within the required regulations and since

then it has become an allowable nonconforming use. Mr. Bellaschi said the proposed addition is a by-right use and will not aggravate the current setbacks which involve the existing building and parking spaces. He noted that the applicant only wants to protect their interest and be in a position to continue economic viability if their current tenant, Caldor, can not pull out of bankruptcy. Mr. Bellaschi said the Board's action today would have no effect on the lease with Caldor.

Bernie Fagelson, 1412 Key Drive, Alexandria, Virginia, spoke in opposition to the variance request. He said he was representing Caldor, who is the lessee and occupant of the premises under a long term lease. Mr. Fagelson said the Caldor Corporation was not a party to this proceeding because they were never officially notified of the hearing. Mr. Fagelson felt the intent of this application was to remove the tenant from the premises rather than remove the violations of the Zoning Ordinance. In sum, Mr. Fagelson felt that the applicant has not demonstrated undue hardship and it was not necessary to tidy up the nonconforming use.

Mr. Dively asked Mr. Bellaschi if the Board was under a bankruptcy statute bar. Mr. Bellaschi said he had went over the bankruptcy code and consulted with his law firm's bankruptcy lawyers and they could not find anything that would prevent the Board from hearing this case. Mr. Dively expressed concern over the bankruptcy statute of the stay being extraordinarily broad. Mr. Bellaschi said the stay prevents Juniper Lane Associates from terminating the lease and reiterated that there was nothing in the bankruptcy code that would prevent the applicant from adding onto the property rights of the site. He said their request would not adversely affect the interests of the lessee.

Ms. Kelsey advised the Board that she had consulted with the County Attorney's Office because Caldor was not on the affidavit as a tenant. The County Attorney's Office said they were not aware that Caldor was a tenant and they felt that the affidavit needed to be revised to add Caldor.

Mr. Bellaschi addressed the issue by stating that he had an associate who had worked with the County Attorney's Office regarding who should be listed on the affidavit and had believed that the issue was resolved.

Ms. Kelsey suggested to the Board that they continue this hearing to the end of the agenda so Mr. Bellaschi and Mr. Fagelson could discuss the issue of the affidavit with the County Attorney's Office.

Mr. Pammel made a motion to continue this case to the end of the agenda. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 520, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM AND LINDA KLINE, VC 97-P-010 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit an accessory structure 5.0 ft. from side lot line. Located at 8521 Crestview Dr. on approx. 1.00 ac. of land zoned R-1. Providence District. Tax Map 59-1 ((2)) 52.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, William Kline, 8521 Crestview Drive, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 15.0 feet for an accessory structure consisting of a garage to be located 5.0 feet from a side lot line.

Mr. Kline presented his request as outlined in the statement of justification submitted with the application. He said the proposed garage would replace a structure that was destroyed as a result of a storm last year. The structure was over 50 years old and originally constructed 1.7 feet from the property line. Mr. Kline said the variance is needed due to the narrowness of the lot and the placement of the house.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. McPherson moved to grant VC 97-P-010 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 1, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-P-010 by WILLIAM AND LINDA KLINE, under Section 18-401 of the Zoning Ordinance to permit an accessory structure 5.0 feet from side lot line, on property located at 8521 Crestview Drive, Tax Map Reference 59-1 ((2)) 52, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.0 acre.
4. The findings noted in the staff report are made part of the resolution granting the application as well as the testimony presented by the applicant.
5. The proposed accessory structure is merely a replacement and will be further from the lot line than the original structure.
6. The next door neighbor does not object.
7. The lot is narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the accessory structure (garage) shown on the plat prepared by Edward W. Dove, Land Surveyor, dated January 27, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 16, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 522, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. M.T.O. SHAHMAGHSOUDI, SPA 94-D-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-D-049 for a church and related facilities to permit relocation of the barrier wall, reduction of the transitional screening and redesign of church facilities. Located at 11326 Leesburg Pi. on approx. 5.00 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, May Salehi, 9608 Minstead Court, Burke, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to SP 94-D-049 for a place of worship in order to permit relocation of the barrier wall, reduction in transitional screening, and redesign of the church facilities including an increase in building height and an increase in gross floor area. The original special permit granted approval of the temple and a separate parish house with a total gross floor area of 18,000 square feet and a total height of 40 feet. The gross floor area devoted to the temple would increase from 18,000 square feet to 21,200 square feet, and the proposed height would be increased from 40 feet to 50 feet. The applicant also requested the relocation of a solid barrier with a height of 4 feet from the previously approved location 25 feet from the property line to 5 feet from the property line, as well as a reduction of transitional screening from 25 feet to 20 feet in two areas where transitional screening is located adjacent to proposed septic fields. In staff's evaluation, all land use, environmental, and transportation issues were addressed with the proposed revised development conditions submitted to the Board. The development conditions recommend a barrier of 6 feet rather than 4, and the revised conditions add the specification that the barrier remain only 4 feet high in the front yard. In addition, the distance from the lot line could be increased to 10 feet if the Urban Forestry

Branch of the Department of Environmental Management determines that the extra width is necessary to accommodate the proposed landscaping. Finally, a condition was recommended that the applicant escrow funds to provide for the removal of the service drive to Route 7 so that the entrance can be removed when the service drive is extended to the intersection of Route 7 and Reston Parkway. Staff recommended approval of SPA 94-D-049, subject to the revised proposed development conditions dated April 7, 1997. Ms. Schilling also added this morning that the applicant had submitted a letter requesting a condition to allow an increase in square footage of up to 2,060 square feet or 5 percent of the total gross square footage proposed. However, Ms. Schilling noted that the recommendation for approval was only for the plat before the Board and did not include the request for an additional 5 percent since staff had not had the opportunity to review the request.

Mr. Pammel questioned if the applicant's proposed development condition would carry the FAR up to .15. Ms. Schilling responded negatively and explained that the requested FAR on the plat is .10 and a 5 percent increase would move it up to .11.

Ms. Salehi presented the applicant's request as outlined in the statement of justification submitted with the application. She said she has changed the building height and footprint but it would still be under the FAR as far as the allowable area and height is concerned. Ms. Salehi explained that the 5 percent increase was due to a recent meeting with Plan Review where they requested a second egress on the ground floor and because that area is very small it will need to be excavated. Ms. Salehi expressed concern over proposed Development Condition Number 18 as stated in Appendix 1 of the staff report where it addresses the height of the dome. She requested that it be clarified by adding language which states, "the effective building elevation shall not exceed 50 feet". Ms. Salehi said she has been told that typically the effective building height is measured from the main elevation of the dome and without her added language she is afraid the inspectors may measure to the top of the dome which may put her over the 50 foot requirement.

Ms. Kelsey responded to Ms. Salehi's request by stating that staff was not given the exact height of the dome and because the dome constitutes quite a bit of the bulk of the building, staff felt they needed to have a stipulation as far as the limit on the height. Chairman DiGiulian questioned how you would measure the height of the dome under the Zoning Ordinance. Ms. Kelsey responded that normally half of the total roof height is counted as the building height of the roof but since this type of a dome appears to be different and because it is part of the bulk of the building, the entire height of the dome is counted.

Ms. Salehi responded that she had recently contacted the engineer of the day with the Department of Environmental Management so she could understand how they would measure the building height. It was her understanding that the Zoning Ordinance refers to the effective building height and it was her concern that Development Condition Number 18 would override those provisions.

As a point of clarification, Ms. Schilling noted that staff based its evaluation on the special permit plat; specifically, Number 11 which states that the maximum height of the proposed building is less than 50 feet.

Chairman DiGiulian commented that the Zoning Ordinance would define the building height as measured to the middle of the dome but it appeared to be staff's intent that the top of the dome not exceed 50 feet.

Mr. Pammel questioned a structure that was located in front of the building. He was concerned because it appeared to be the same height of the dome but was located closer to the property line and there was no designation on the plan as to what it was nor any setback requirements shown. Ms. Kelsey responded that according to the Zoning Ordinance it would come under other structures and consequently could go to a height of 60 feet. However, she noted that staff was trying to keep the height of the structures down to limit the impact on adjacent properties because this was such a narrow lot.

Ms. Salehi added that this structure was for architectural design purposes only and it had no other function.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Kelley made a motion to defer this hearing for a week so the Board could get a clear explanation of the heights involved.

Page 524, April 8, 1997, (Tape 1), M.T.O. SHAHMAGHSOUDI, SPA 94-D-049, continued from Page 523)

Mr. McPherson seconded the motion and added that he felt the Board should not take a step to approve or deny something without having a clear understanding of what the height involved would be and exactly what they were voting on.

Chairman DiGiulian agreed and further added that staff should be prepared to explain the intent of the development conditions and the applicant should be prepared to explain what the height of the dome is at the peak. Staff suggested a date of April 29, 1997 at 9:00 a.m. The motion carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 524, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM F. JANSSEN, Appeal 96-P-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the northwestern lot line of the proposed Nutley/Lee Highway subdivision, is a side lot line, and as a result, the proposed dwelling on proposed Lot 1 is subject to an 8 ft. minimum side yard requirement. Located N. of Lee Hwy., E. of its intersection with Nutley St. and W. of the terminus with Beau Ln. on approx. 6.31 ac. of land zoned R-5 and HC. Providence District. Tax Map 48-4 ((3)) (36) 31A, 31B and 9-16. (MOVED FROM 2/4/97)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated March 27, 1997. At issue in the appeal are the lot line and yard designations for proposed Lot 1 of a proposed subdivision called the Nutley/Lee Highway subdivision; specifically, the northwestern lot line which abuts the appellant's property. Mr. Shoup referred to Attachment 2 of the staff report which showed the Generalized Development Plan that was proffered in the rezoning of the property. It was staff's position, based on the various lot lines and yard definitions in the Zoning Ordinance, that the northwestern lot line is a side lot line which requires that an 8 foot minimum side yard be maintained. Mr. Shoup explained that this position is based on the definition that, "a rear lot line is that lot line that is most distant from and most nearly parallel with the front lot line." In this case, the front lot line is the street line; therefore, the rear lot line that is most distant from and most nearly parallel with that line is the northern lot line and a 25 foot minimum rear yard is required. The northwestern lot line, which is at issue, does not satisfy the criteria of the rear lot line definition because it diverges from the front lot line at a 45 degree angle and it is not the most distant lot line.

The appellant, William Janssen, presented the arguments forming the basis for the appeal. Using a chart with photographs depicting the rear of his property, he pointed out the location of a large storm drainage easement with regards to the proposed development of Lot 1. He was opposed to the developer's proposal to put a house 8 feet from his property line and an existing storm drainage easement. Mr. Janssen felt it was the developer's intent to squeeze as many building lots onto this property as possible.

Mr. Dively asked the appellant to explain why he felt the Zoning Administrator's interpretation was wrong. Mr. Janssen referred to the definition of a side yard and said if you are going to define the northwestern lot line as a side lot line then the area adjacent to it must be a side yard. However, he felt it was not in accordance with the definition of a side yard; therefore, it must be a rear yard which would make the northwestern lot line a rear lot line with a 25 foot minimum rear yard requirement.

The following spoke in support of the Zoning Administrator's position. Linda Smith, 2910 Hideaway Road, President of the Briarwoods Civic Association; Pat Monacella, 2908 Hideaway Road; Vincent Monacella, 2908 Hideaway Road. Their main points dealt with the Association's position that this development would be an asset to the community and that they worked with the developer on the proffers, especially the storm drainage issue. Ms. Smith submitted a petition signed by neighborhood residents in support of the development.

In rebuttal, Mr. Janssen said there would be a negative impact on his property if there was an attempt to put a house within 8 feet of his property line and storm drainage easement because it would require substantial grading in order to get the house situated on that property. In addition, given the density of the development, there would be runoff from that property.

Chairman DiGiulian closed the public hearing.



Page 525, April 8, 1997, (Tape 1), WILLIAM F. JANSSEN, Appeal 96-P-048, continued from Page 524

Mr. Dively moved to uphold the Zoning Administrator because he felt their position was correct and consistent with previous decisions. He said these sort of situations have come up before and staff has always applied this definition the same way, regularly and consistently. Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel said he could not support the motion because he thought this was an unusual case and when he sees a lot with three side lot lines he has to question whether that was the right interpretation.

Chairman DiGiulian agreed with Mr. Pammel. He said the last case they had regarding the definition of a rear lot line had a slightly different twist put on it and consequently, a portion of the definition was ignored. He felt some of these are tailored to fit the situation.

The vote was 3-3 with Chairman DiGiulian, Mr. Pammel, and Mr. Kelley voting nay. The Zoning Administrator's determination was upheld since it takes four affirmative votes to overturn a decision made by the Zoning Administrator.

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Page 525, April 8, 1997, (Tape 1), Scheduled case of:

Approval of Resolution and Revised Plats  
from Jerry and Karen Stone, SP 95-S-054 and VC 95-S-094

Mr. Ribble moved to approve the resolution and revised plats submitted from Jerry and Karen Stone. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 525, April 8, 1997, (Tape 1), Scheduled case of:

Approval of Resolution and Revised Plats  
from Roger Lee Gray, VC 97-M-007

Mr. McPherson moved to approve the resolution and revised plat from Roger Gray. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 525, April 8, 1997, (Tape 1), Scheduled case of:

Request for Reconsideration  
of Wendell and Mary Irby, VC 97-P-004

Mr. Pammel moved to deny the request for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 525, April 8, 1997, (Tape 1), Scheduled case of:

Request for Reconsideration  
of William O. Butler, VC 97-B-012

Mr. Dively moved to deny the request for reconsideration. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. Mr. Dively made a second motion to waive the 12-month waiting period for the refile of an application. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Page 526, April 8, 1997, (Tape 1), Scheduled case of:

Approval of April 1, 1997, Resolutions

Mr. Pammel moved to approve the resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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The Board recessed at 10:28 a.m. and reconvened at 10:32 a.m.

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Page 526, April 8, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping less than 10.0 ft. from front lot lines. Located at 6211 Leesburg Pi. on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A.(DEF. FROM 3/25/97)

Chairman DiGiulian called the applicant to the podium. Mr. Bellaschi reiterated that there was nothing in the bankruptcy code to prevent the Board from hearing this variance request. With regards to the affidavit, he said Caldor does need to be added to the affidavit as a sub-lessee; therefore, he requested a deferral until that is resolved.

Mr. Fagelson agreed with the deferral request.

Mr. Ribble moved to defer this case indefinitely to allow the applicant time to get the affidavit in order. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

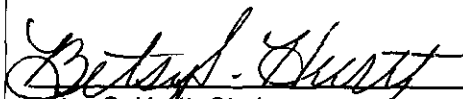
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As there was no other business to come before the Board, the meeting was adjourned at 10:48 a.m.

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Minutes by: Teresa M. Wang

Approved on: July 22, 1997



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 15, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:07 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 527 April 15, 1997, (Tape 1), Scheduled case of:

8:00 P.M. ANDREW LATESSA, VC 97-P-011 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit the subdivision of two lots into three with proposed Lot 1 having a lot width of 100.12 ft., and to permit dwelling to remain 19.2 ft. from front lot line. Located at 7833 and 7901 Shreve Rd. on approx. 1.15 ac. of land zoned R-3. Providence District. Tax Map 9-2 ((1)) 140 and 141.

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 B. Lawson, Jr., with the firm of Lawson & Frank, P.C., Plaza Suite 5, 4141 N. Henderson Road, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. The applicant requested variance approval in order to subdivide two lots into three with Proposed Lot 1 having a lot width of 100.12 feet and to permit an existing dwelling to remain 19.2 feet from the front lot line. The applicant was requesting a 4.88 foot variance for the lot width and a 10.8 foot variance for the existing dwelling to remain. Ms. Schilling noted that the request to allow the dwelling to remain 19.2 feet from the front lot line would not be required if the current lots remain and no new subdivision was proposed. She said staff did not believe the applicant had met Variance Standards 4, 5, and 6 and noted that the lot is developed with a single-family dwelling, therefore a reasonable use of the property currently exists. Although the applicant has stated that undue hardship will result by preventing the subdivision of the property as warranted by its size, staff believed that the proposed subdivision, which cannot occur without utilizing Lot 140 to satisfy Ordinance requirements for density, would result in lot sizes smaller than the range of lot sizes within the vicinity. Ms. Schilling said Lot 140 would remain in its current shape and size and is owned by the Baileys who consented to the application but are not applicants. Staff noted that the applicant has objected to the wording in Proposed Development Condition Numbers 1 and 2 which requires that the subdivision be recorded and calls for dedication of right of way. Ms. Schilling called the Board's attention to a memorandum addressing the issue as to how the applicant could have filed the application without being the landowner and the affidavit has been revised accordingly.

Mr. Lawson said he did not mind the negative staff report but that he was troubled with the emphasis placed by the staff on the Comprehensive Plan and on planning concepts. He said these were found more typically in a rezoning request as opposed to a variance request and if staff was going to make recommendations to the Board of Zoning Appeals it should play by the rules of the game as outlined in the Section 15.1-495 of the State Code. Mr. Lawson said he was not "bashing" staff, but that he did believe that staff should focus more on the State Code rather than the Comprehensive Plan and allow this application to be heard on its merits.

Mr. Lawson said the applicants were long-term residents of Fairfax County and purchased the property with the hope and belief that the land could be subdivided to provide lots for their two sons. He said the subdivision would create two lots with lot sizes of 10,520 and 14,080 square feet. Mr. Lawson again referenced the "test" noted in the State Code and disagreed with staff's finding that the applicants did not act in good faith. He agreed that the variances would not be required if the applicant was not proposing to divide the land and noted that the lot was created and the house was built in 1941, therefore they are grand fathered. Mr. Lawson addressed the hardship standard and used an exhibit showing the different size lots in the neighborhood and compared them to the lots being proposed by the applicant. He said the request was modest and was consistent with other approvals granted by the Board of Zoning Appeals to other landowners with very comparable situations. Mr. Lawson asked that the Board delete Condition Number 2 dealing with proposed improvements if it was the Board's intent to grant the request. He called the Board's attention to nine letters in support from the neighbors and other documents in support of the request.

Mr. Kelley asked the speaker to again address the hardship standard. Mr. Lawson said he believed when a homeowner cannot use their property in the same manner that other property owners can it is a hardship. He

again called the Board's attention to the exhibit and pointed out other similar lots in the area. Mr. Lawson believed the hardship was a combination of all the factors involved in the application.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

Jane Kelsey, Chief, Special Permit and Variance Branch, interjected that staff, during its presentation, had inadvertently stated that the zoning on the subject property is R-3 rather than R-1. The Board accepted the correction.

Don and Pam Hoffman, owners of Lot 139, came forward and said the people who had previously owned the property had proposed the same type of subdivision and had offered them a substantial amount of money for a portion of their land in order to create a shared driveway. Mr. Hoffman said they had reviewed the pros and cons of the offer, but they had decided not to accept the offer as they would like to maintain the rural atmosphere of the area.

In rebuttal, Mr. Lawson said the lot the applicant was proposing was similar to others in the neighborhood and pointed out that a variance was not necessary for the lot that would be created.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 97-P-011 for the reasons noted in the resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-P-011 by ANDREW LATESSA, under Section 18-401 of the Zoning Ordinance to permit the subdivision of two lots into three with proposed Lot 1 having a lot width of 100.12 feet, and to permit dwelling to remain 19.2 feet from front lot line, on property located at 7833 and 7901 Shreve Road, Tax Map Reference 49-2((1))140 and 141, 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 15, 1997; 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 1.15 acres.
4. This is an interesting application, but the applicant did not present evidence to prove that the hardship requirement had been met.
5. The Ordinance has not changed since the time the applicant bought the property in 1995 at which time he was on notice that variances would be required.
6. The granting of the variance would be a convenience.
7. There are two lots purportedly being divided into three, but the inclusion of Lot 140 is an artificial way to circumvent the Ordinance since it is not really being included in the subdivision.
8. In reality, one lot is proposed to be divided into two lots and it would be for the applicant's convenience.
9. The comments contained in the staff report are incorporated into the findings of fact wherein staff stated that the applicant has reasonable use of the property since the lot serves well as a single family dwelling lot and it should remain that way.

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 April 23, 1997.

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Page 529, April 15, 1997, (Tape 1-2), Scheduled case of:

8:00 P.M. SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 12001 Lee Hwy. on approx. 1.64 ac. of land zoned R-1 and WS. Sully District. Tax Map 6-1 ((7)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Donald D. Smith, 5618 Wharton Lane, Centreville, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Heidi Powell and noted that the applicant was requesting approval of a special permit to permit a child care center for 75 children. The applicant has addressed all of staff's concerns with regard to the intensity of development, the adequacy and location of the septic field, and the adequacy of the size of the storm water management

Page 530, April 15, 1997, (Tape 1-2), SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004, continued from Page 529

facility to accommodate the additional impervious surface. Ms. Kelsey said the applicant has agreed to shift the playground over to provide additional screening and has submitted a redesign for the parking spaces. She explained that two parking spaces may have to be removed; therefore, staff amended the development conditions to reflect a requirement of only 15 parking spaces. In closing, Ms. Kelsey said staff recommended approval of the application subject to the implementation of the Development Conditions contained in the staff report.

Chairman DiGiulian asked staff to clarify Condition 20. Ms. Kelsey said staff treats special permits in the same fashion as a special exception, and this is a standard condition that is required when a property under special permit or special exception is within the Fairfax Center Road Fund Area. Chairman DiGiulian said he did not previously recall seeing that condition. Ms. Kelsey said it was possible that an application located in that area has not come before the Board since the fund was established.

Mr. Smith said the applicant has met with staff on several occasions and has revised their application to satisfy staff's concerns, the applicant has obtained approval from the Health Department for the septic field for the number of children requested, and the road dedication has been done per the request of both the County and State for road dedication for Lee Highway and Spruce Avenue. Mr. Smith said the applicant agrees with the Development Conditions contained in the staff report.

The Board discussed Development Condition 19 and 20 with the agent. Mr. Smith said the only time he had seen the wording in that Condition was in a Special Exception or Rezoning application, but the applicant agreed with providing the requested road improvements.

Mr. McPherson asked for a clarification with regard to the hours of operation. Mr. Smith explained that the child care center would like to provide care for the children of single working parents who work during the evening hours. After conferring with the applicant, Mr. Smith said there would be approximately 16 to 20 children between the hours of 6:00 p.m. to 10:00 p.m. Mr. McPherson asked if the applicant currently operates a day care center. Mr. Smith said the applicant is currently operating a day care center on Spruce Avenue and currently cares for children during the evening hours.

A discussion took place between Mr. Hammack and the agent with regard to the ages of the children who would be at the child care center during the evening hours. Mr. Smith said there was no age limitation. He added that after 7:00 p.m. the children would play inside in the established play areas. Mr. Hammack asked how many children were currently enrolled in the existing child care center and Mr. Smith replied 12.

Mr. McPherson and the agent discussed the architectural aspect of the proposed child care center. Mr. Smith said the design of the center would be brick and frame or block and frame.

Chairman DiGiulian called for speakers in support of the request.

Lucy Edwards, owner of Lot 60, came forward and said she has lived in the neighborhood since 1978 and loves the rural atmosphere of the neighborhood. She added that she could not think of a better neighbor to have than a day care center. Ms. Edwards said her child is currently enrolled in the child care center operated by the applicant and the center is very well run and provides a wonderful environment for her child.

Robert Romanyshyn, 4809 Marymeade Drive, Fairfax, Virginia, represented the Marymeade Homeowners Association, and the homeowner at 4703 Marymeade Drive. He said the Association had given conditional approval of the proposed development and although the members would prefer the site remain residential they are realists and realize that the proposed use is very close to residential. Mr. Romanyshyn said the Association would like to see evergreens planted along the southern and western lot lines, which about the Association in order to cut down on the noise from the play area. He said if the Development Conditions are implemented the Association believed the residential character of the neighborhood will be retained.

There were no further speakers in support and Chairman DiGiulian called for speakers in opposition.

Paul Waro, 4826 Spruce Avenue, Fairfax, Virginia, said he had lived in the neighborhood for 10 years and that he was not really opposed to the use but he was concerned with the traffic impact. He said he would like

Page 531, April 15, 1997, (Tape 1-2), SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004, continued from Page 530

to see the entrance from Lee Highway into the site or the service road from Marymeade extended to accommodate the additional traffic. Mr. Waro also expressed concern with the size of the septic field and the impact that it might have on the wells on the adjacent lots.

Marty Koerner, 4725 Spruce Avenue, Fairfax, Virginia, said he has lived in the neighborhood for 11 years and that he moved into the neighborhood for the rural atmosphere. He also expressed concern with the location of the entrance into the site and the impact that it will have on the neighbors at a time when they are leaving to go to work. Mr. Koerner asked that the driveway be relocated so that the site would be accessible from Lee Highway.

Renate Eschman, 4806 Spruce Avenue, Fairfax, Virginia, said she has lived in the neighborhood for approximately 7 years and that they chose the street because of the rural environment. She said when Lee Highway was expanded to accommodate the Fairfax County Parkway they were concerned with the traffic generation from that improvement. Ms. Eschman said she would like to see the service drive extended to accommodate the additional traffic. She also expressed concern with the evening hours and the impact that the septic field might have on the neighbors' wells.

Scott Rugh, owner of the property at the corner of Spruce Avenue and Lee Highway, expressed concern with the safety of the children who wait on the corner for the school bus. He said the intersection is very dangerous and the additional traffic will only aggravate the situation.

Bridget Merz, 4742 Spruce Avenue, Fairfax, Virginia, said she had lived in the neighborhood for approximately 20 years. She said the school bus is prohibited from entering Spruce Avenue; therefore, the bus will have to stop on Lee Highway to pick up or drop off children at the day care center. Ms. Merz agreed the intersection is very dangerous and the additional traffic will make a hazardous situation worse.

Shirley Kerl said her family has owned 4651 and 4701 Spruce Avenue since 1948. She said there are currently two day care centers on the street and she was also concerned with the impact of the septic field on the neighbors' wells, congestion, noise, and the size of the proposed center.

Mr. Kelley asked staff if they were aware of the other day care centers on the street. Ms. Kelsey said she was not and explained that a day care provider could have seven children by right without special permit approval. She added that many times there is confusion on the part of the day care provider because the State and County requirements differ and she would investigate the other centers.

Mr. Pammel asked if the proposed day care center met the square footage requirement per child. Ms. Kelsey said she hoped that the applicant had supplied the Health Department with that information.

A discussion took place between the Board and Ms. Kelsey with regard to the notation on the plat regarding dedication along Lee Highway. Ms. Kelsey explained that since the applicant had shown the dedication on the plat, staff had not addressed it in the staff report or in the development conditions.

The applicant's agent, Mr. Smith, explained that the Office of Transportation had requested that the applicant dedicate 114 feet from the centerline of Lee Highway for the future widening of Lee Highway in accordance with the Comprehensive Plan. He noted that at the present time there are no plans for that widening. Mr. Kelley asked if the dedication was part of the special permit approval. Mr. Smith and Ms. Kelsey both confirmed that was correct. Mr. Smith added that it would be a part of the site review process. Chairman DiGiulian said the dedication would be approximately 20 percent of the gross area of the land, which he believed would impact the remainder of the site.

The Board and the speaker discussed the purpose of the dedication. Mr. Smith said at the present time the Plan calls for an extension of the service drive, but the future Plan denotes six lanes from the Governmental Center to Stringfellow Road in addition to the service roads. He said the Office of Transportation will not support an egress/ingress into the site from Lee Highway. Mr. Smith said the applicant offered to widen Spruce Avenue with curb and gutter, but the applicant had not offered to extend the service drive.

Page 532 April 15, 1997, (Tape 1-2), SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004, continued from Page 531)

A discussion took place between Mr. McPherson and the speaker with regard to the number of children currently attending the existing child care center, the maximum number of trips that would be generated, how the children will be transported from the center to area schools, and how food will be brought to the center. Mr. Smith said the applicant has State approval for 12 children. He said it was difficult to estimate the number of trips that would be generated since the arrival and departure of the children will be staggered, but he believed there would be approximately 35 trips which will include transporting the children to and from public school. Mr. Smith said there will be no kitchen on site and the meals will be catered to the center.

Mr. McPherson said it was his understanding that an applicant had to submit documentation showing the trips per day into a day care center site. Ms. Kelsey said the Office of Transportation used the average of 5 vehicle trips per child but added that the applicant has not provided staff with a maximum number; therefore, she did not know the number.

Mr. Pammel asked the speaker about the space requirements per child. Mr. Smith deferred to the architect.

Max Borges, 6129 Leesburg Pike, Fairfax, Virginia, said the State Code requires an internal space of 35 square feet per infant and 25 square feet for toddlers and older. He said there would be approximately 2,000 square feet designated for the total number of children with approximately 2,000 left over for hallways, offices, etc. Mr. Borges said it was based on net square footage.

In response to a question from Mr. Hammack as to the number of employees, Ms. Smith replied there would be nine employees who would work in shifts.

Mr. Pammel asked if the applicant would be willing to provide an entrance from Lee Highway into the site with a decel lane. Ms. Kelsey said staff had discussed that possibility with the Office of Transportation and the Virginia Department of Transportation and both offices had indicated that they would never support that solution since Lee Highway is a major arterial. The Board questioned how they could require that the applicant dedicate land for future improvements if they would not allow an entrance.

Mr. Dively said he did not believe Ms. Kelsey could speak to the intentions of the Office of Transportation and that he believed there were two problems. The first being if the Office of Transportation will not allow an entrance, then why allow traffic to access the site by way of Spruce Avenue. The second being that the taking of land is unfair to the applicant if it bears no relationship to the use. Mr. Dively said he did not believe the Board was ready to make a decision on this application.

Mr. Hammack questioned why a portion of the service drive was constructed if there were no plans to extend the drive. Mr. Smith explained that was part of a special exception approval heard by the Board of Supervisors and the drive would be completed at the time Lee Highway is widened. Mr. Hammack said there are no plans to widen Lee Highway. Ms. Kelsey said the widening of Lee Highway is designated on the Six Year Plan.

In response to concerns raised by the speakers, Mr. Smith said the septic field has been approved by the Health Department. With regard to the school bus, he suggested that perhaps this would encourage either the School Board or the Office of Transportation to provide an area for the children to wait for the bus. Mr. Smith said he believed the citizens would be pleased with the improvements that the applicant will provide to Spruce Avenue.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Dively said he did not believe the Board was ready to make a decision on the application based on the discussion, but he also did not want to deny the request. He believed there were many aspects of the application that were good, but there were many questions that needed to be resolved with regard to the entrance from Lee Highway, the transportation issues, and the property dedication. Mr. Dively also believed that some of the questions raised by Mr. McPherson also needed to be addressed with regard to trips per day and how the children will be transported to public school. Mr. Dively also suggested that staff from the Office of Transportation be present to respond to questions at the next scheduled public hearing.



Page 533, April 15, 1997, (Tape 1-2), SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004, continued from Page 532

Mr. Kelley questioned why the land dedication was not in the development conditions and said he would prefer that it be added and let the Board decide whether to delete the requirement.

Mr. Pammel asked that the applicant look at redesigning the property in order to provide better internal circulation by providing an egress/ingress from both Lee Highway and Spruce Avenue. Mr. Hammack also expressed concern with the internal circulation.

Mr. Pammel questioned the legality of Development Condition Number 20 with regard to requiring the applicant to provide a contribution to a County Road Fund which will probably not benefit the property. Chairman DiGiulian agreed.

Mr. McPherson said he did not believe the application complied with the Zoning Ordinance as it was presented and suggested that the applicant review the application and see it could be improved upon.

There was no further discussion and the motion to continue the public hearing carried by a vote of 7-0. Ms. Kelsey suggested June 10, 1997, at 9:00 a.m.

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Page 533, April 15, 1997, (Tape 2), Action Item:

Approval of February 25, 1997 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 633, April 15, 1997, (Tape 2), Action Item:

Request for Additional Time  
Hacor Inc., SP 91-Y-028

Mr. Ribble made a motion to approve the request as suggested by staff. Mr. Dively seconded the motion which carried by a vote of 7-0. The new expiration date will be October 10, 1999.

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Page 533, April 15, 1997, (Tape 2), Action Item:

Out of Turn Hearing Request from  
Cynthia McBride, VC 97-H-036

Mr. Dively made a motion to deny the applicant's request for an out of turn hearing. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 533, April 15, 1997, (Tape 2), Action Item:

Approval of April 8, 1997 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 7-0.

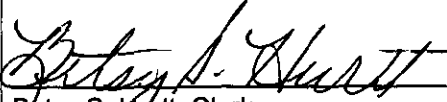
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Page 534, April 15, 1997, (Tape 2), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 9:32 p.m.

Minutes by: Betsy S. Hurtt

Approved on: June 24, 1997



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 22, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 535, April 22, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL ANN C. AND DONALD E. BROWN, VC 97-B-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 11.0 ft. from side lot line and stairs 11.0 ft. from side lot line. Located at 4105 Elizabeth Ln. on approx. 23,127 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) 69.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Michael Ann Brown, 4105 Elizabeth Lane, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance of 9.0 feet to permit a two-story addition to be located 11.0 feet from a side lot line. The applicant also requested a variance of 4.0 feet to permit stairs to be located 11.0 feet from a side lot line.

Ms. Brown said they would like to convert a one-car garage into a two-car garage. She said this is the only feasible location for the garage because she would not like to remove the large oak tree in the rear yard.

Mr. McPherson said the plat showed a two-story addition. Ms. Brown explained there will be a room above the proposed two-car garage.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 97-B-019 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-B-019 by MICHAEL ANN C. AND DONALD E. BROWN, under Section 18-401 of the Zoning Ordinance to permit addition 11.0 feet from side lot line and stairs 11.0 feet from side lot line, on property located at 4105 Elizabeth Lane, Tax Map Reference 58-4((8))69, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 23,127 square feet.
4. The request is reasonable.
5. The lot is somewhat narrow and a variance to a 11.0 foot side yard that would result after the development of the property will meet the Standards of the Ordinance.
6. This is a substandard lot with R-1 zoning.

7. The size of the lot is a little over a half acre, but the homeowner is required to meet the setback standards for R-1.
8. The hardship is certainly there because of the tree that the applicant would like to preserve and it is a worthy goal on the applicant's part to try to save a good, mature hardwood specimen.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably by restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the two-story addition and stairs shown on the plat prepared by Richard A. Schoppet, dated March 5, 1979 revised through January 24, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition and stairs shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 531, April 22, 1997, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS HEMPHILL, VC 97-D-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.0 ft. from front lot line, 21.3 ft. from rear lot line, deck 7.9 ft. from rear lot line, addition 7.0 ft. from side lot line and 9.8 ft. from rear lot line. Located at 1654 Kirby Rd. on approx. 10,958 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 124.

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 M. Hemphill, 109 Buxton Road, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested variances for several additions to the dwelling including a two-story addition 28.0 feet from the front lot line and 21.3 feet from the rear lot line requiring a front yard variance of 12.0 feet and a side yard variance 3.7 feet. A garage addition 9.8 feet from the rear lot line and 7.0 feet from a side lot line requiring a rear yard variance of 15.2 feet and a side yard variance of 13.0 feet. Since a deck greater than 4.0 feet in height may extend 12.0 feet into the minimum rear yard, the applicant requested a variance of 5.1 feet to allow a deck to be located 7.9 feet from the rear lot line.

Mr. Hemphill said they purchased the property in 1989 and noted since that time the area has been substantially redeveloped. The house has approximately 1,400 square feet of living space compared to the new houses which have approximately 3,000 square feet. He realized that he was requesting several variances but added that he believed the subject property was a substandard lot citing the extreme shallowness of the lot. Mr. Hemphill said the house is constructed to the side of the lot that is adjacent to Kirby Road. He said he would like to maintain the style of the existing house and said there is no other feasible location to construct the additions and noted the easement to the rear of the lot. Mr. Hemphill said other neighbors have been granted similar variances and that he believed the request is reasonable and appropriate.

Mr. Kelley asked what the square footage of the house would be once the additions have been constructed and asked if he resided on the property. Mr. Hemphill said the finished size would be approximately 2,500 square feet plus the garage. He said he does not live on the property.

There were no speakers in support of the request and the Chairman called for speakers in opposition to the request. The following came forward: Tom Friel, 6239 Linway Terrace, McLean, Virginia; and, Atoona Amin, 1656 Kirby Road, McLean, Virginia. The speakers' objections were based on the negative impact it would have on their property values and stated that they believed there are other options open to the applicant. One speaker believed that the applicant could better design the driveway to allow for a turnaround which would provide better access to Kirby Road from the site.

A discussion took place between Mr. McPherson and Ms. Amin as to the type of variance she had obtained.

In rebuttal, Mr. Hemphill believed the proposed design would be the safest ingress/egress and added that he believed the proposed design would be more architecturally compatible with the neighborhood.

Mr. McPherson asked if there was any practical way to move the garage to the other side of the house. Mr. Hemphill said they had considered that option, but he did not believe that was the most practical. He said he would be open to suggestions from the Board.

There was no further discussion and the Chairman closed the public hearing.

Mr. McPherson made a motion to deny VC 97-D-017 for the reasons noted in the Resolution.

Mr. Kelley said he believed the application came close to meeting the standards required for the granting of a variance, but not quite. He encouraged the applicant to request a waiver of the 12-month time limitation for filing a new application.

Mr. Pammel said he could not support the motion as he believed the lot is clearly nonconforming and it is an unusual lot as it is very shallow and very restrictive.

The applicant requested a waiver of the 12-month time limitation. Mr. Kelley made a motion to approve. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-017 by THOMAS HEMPHILL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 28.0 feet from front lot line, 21.3 feet from rear lot line, deck 7.9 feet from rear lot line, addition 7.0 ft. from side lot line and 9.8 ft. from rear lot line, on property located at 1654 Kirby Road, Tax Map Reference 31-3((1))124, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 10,958 square feet.
4. This is a difficult area to work with, not only this lot but this general area of the County.
5. The Board has been open minded with regard to applicant's presentations to try to design things that will be functional for each particular lot given the Standards that the Board has to apply.
6. The advantages to the applicant in this particular case are the relative shallowness of the lot, the location of the house at the present time being off center, and the fact that there are some easements on the right hand side of the property.
7. The fact that this is a rather extensive development for this particular lot is the negative side of the application.
8. The request for the two-story addition on the right hand side of the lot is not unreasonable, but when considering the application in its entirety it is too much for the lot, in particular the garage addition that would abut the next door neighbor.
9. Although the neighbor received a variance, there is a distinction that could be made in the nature of the variance received by the neighbor and the totality of the variances requested by the applicant.

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 to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 5-0-1 with Mr. Pammel voting nay. Mr. Hammack abstained.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1997. The Board waived the 12-month waiting period for the filing of a new application.

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Page 539, April 22, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH M. SWOBODA, SP 97-P-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 3.2 ft. from rear lot line. Located at 2861 Oak Knoll Dr. on approx. 7,200 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-3 ((13)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph M. Swoboda, 2861 Oak Knoll Drive, Falls Church, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a special permit to permit a storage shed to remain 3.2 feet from the rear lot line.

Mr. Swoboda said the house has no basement thus there is no room storage; therefore, the shed was constructed large enough to accommodate storage.

Chairman DiGiulian questioned the speaker on the width of Outlots A2 and A3 and how the structure was constructed in error. Mr. Swoboda replied the outlots are approximately 60 feet. He explained that when he contacted the County he received conflicting information as to how to measure the height of the shed.

Mr. Hammack asked the speaker if he had a copy of the contract that he had signed with Storage Unlimited. The speaker supplied the Board with a copy.

Mr. Kelley made a motion to grant SP 97-P-005 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 15, 1997.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-P-005 by JOSEPH M. SWOBODA, under Section 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 3.2 feet for rear lot line, on property located at 2861 Oak Knoll Drive, Tax Map Reference 50-3((13))15, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an addition (storage shed) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated December 3, 1996, submitted with this application and is not transferable to other land.



This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 541, April 22, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BELVA J. WARNER, VC 97-D-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 6.6 ft. from side lot line. Located at 6723 Weaver Ave. on approx. 10,641 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 153A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Belva J. Warner, 6724 Danforth Street, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant was requesting a variance of 5.4 feet to allow the enclosure of a carport in order to construct a two-car garage.

Ms. Warner referenced the statement of justification submitted with the application and cited the bowl shape topography of the lot to the rear and to the left which prevented constructing the addition elsewhere on the lot.

Chairman DiGiulian asked the speaker if the addition would be any closer to the lot line than the existing carport and Ms. Warner said it would not.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 97-D-016 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-D-016 by BELVA J. WARNER, under Section 18-401 of the Zoning Ordinance to permit addition 6.6 feet from side lot line, on property located at 6723 Weaver Avenue, Tax Map Reference 30-4((17))153A, 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 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,641 square feet.
4. The applicant has met the nine required Standards for the granting of a Variance; in particular, the citing of the topographical difficulties on the lot.
5. The applicant was granted a variance in 1991 which was similar to the request before the Board.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by Kenneth W. White, dated January 22, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-2 with Mr. Hammack and Mr. Pammel voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1997. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. CHANTILLY BIBLE CHURCH, SPA 85-C-023-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-023 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. (PREVIOUSLY DEF. INDEF.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Dennis A. Smith, 13159 Apple Grove Lane, Herndon, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant was requesting an amendment to a special permit to allow extension of the term limit to the previously approved temporary classroom building until July 2000. She explained that in 1990 the Board granted an special permit amendment on this property which included approval of two double wide portable classroom buildings with a term limit of five (5) years. Ms. Langdon said one of the buildings was installed and the Non-Residential Use Permit (NonRUP) was issued in April 1993. The church has indicated that they do not intend to acquire the second portable classroom building and were requesting the time extension for the one building with no other construction or changes proposed with the application. On April 18, 1997, the applicant submitted a Deed of Dedication for right-of-way dedication along West Ox Road which addressed Development Condition Number 12. In closing, Ms. Langdon said staff believed the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval subject to the Development Conditions contained in the staff report.

Mr. Smith said the church is a Independent Fundamental Angelical church which began meeting in Greenbriar West Elementary School in January 1979. The current special permit was approved in July 1985 and the church began meeting on the property after extensive renovations to the existing barn and farm house. Mr. Smith said when the church moved to the property there was approximately 200 people attending services on Sunday morning; there are now over 650 attending two morning services. To address the overcrowding, the church began holding two services in April 1989 and requested additional parking and classroom space. Mr. Smith said the church's expansion plans have changed frequently during this time frame and the church was approached by the Fairfax County Park Authority with respect to a land swap. The Park Authority offered them a larger parcel just around the corner from the proposed site, but major cuts in the Park's budget and reduction in staff delayed bringing this swap to conclusion. Mr. Smith said the church has now purchased a 17 acre parcel off of Pleasant Valley Road and is now preparing to file a special permit. He thanked staff for working with the church and for the patience they have shown to the church during the process.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

A discussion took place between the Board and staff as to the location of the proposed trail. Ms. Langdon said that was a condition from a previous approval and she did not know the status of the trail. Mr. Smith said the Department of Environmental Management (DEM) had not required that the church construct the trial.

Mr. Dively asked the speaker if he would like Development Condition Number 11 deleted. Mr. Smith replied that he would.

Mr. Dively made a motion to grant SPA 85-C-023-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with the deletion of the condition previously discussed relating to the trail.

A discussion took place between the Board and staff as to the process an applicant would follow if they would like to request a waiver of trail construction.

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In Special Permit Amendment Application SPA 85-C-023-2 by CHANTILLY BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 85-C-023 for a church and related facilities to permit change in development conditions, on property located at 2739 West Ox Road, Tax Map Reference 25-1((1))30, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.60 acres.
4. The request is reasonable since it is merely an extension and frankly it is a less intense request than the one previously before the Board.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles P. Johnson & Associates, P.C., dated September, 1989, revised through August 1, 1995 and approved with this application, as qualified by these development conditions.\*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. Transitional Screening 1 shall be modified in favor of the 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 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. A tree preservation plan for safeguarding and preserving the large mature trees on the property to the greatest extent possible shall be provided as determined necessary by the Urban Forestry Branch at the site of site plan.\*
8. The seating capacity in the main worship area shall be a maximum of two-hundred and fifty seats (250).\*
9. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM and shall be a maximum of 150 spaces. All parking shall be on site as shown on the special permit amendment plat. The 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 DEM and all findings and recommendations for stormwater management shall be implemented to the satisfaction and approval of the Director, DEM.\*
11. Dedication of right-of-way to 56 feet from the centerline of West Ox Road shall be provided for the entire frontage of the property and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, which ever occurs first. Ancillary easements shall be provided if necessary to facilitate any improvements.
12. All required handicapped parking areas shall be paved with a dustless surface.\*
13. The approval of trailers on the site shall be limited to a term of forty-two (42) months beginning from the date of final approval of this special permit amendment.\*

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

The special permit use shall become established with the Board of Zoning Appeals approval of this amendment.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 545, April 22, 1997, (Tape 1), Scheduled case of:

9:30 A.M. FAIRFAX-BREWSTER SCHOOL, Appeal A 96-M-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the addition of 2 trailers to the site is not in substantial conformance with the special permit plat for SP 24200, and constitutes an expansion of the school use in violation of Par. 1 of Sect. 2-304 of the Zoning Ordinance. Located at 5860 Glen Forest Dr. on approx. 2.22 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 26. (MOVED FROM 6/11/96 TO ALLOW APPLICANT TO FILE SPECIAL EXCEPTION. MOVED FROM 8/13/96 AND 1/7/97)

William Shoup, Deputy Zoning Administrator, noted for the record that this appeal had been deferred several times to allow the appellant an opportunity to file a special exception to try to resolve the issue. Mr. Shoup said on April 4, 1997, the appellant filed a special exception although preliminary review indicated that several issues needed to be addressed prior to the application being accepted and being scheduled for public hearing. He said if it was the Board's intent to defer the appeal staff would recommend the morning of June 24, 1997, which would allow the appellant sufficient time to address any deficiencies. Mr. Shoup informed the Board that he believed there were citizens present who wished to speak to the deferral request.

Chairman DiGiulian polled the audience to determine if anyone wished to speak.

Winifred Clore, 5847 Glen Forest Drive, said the Board stipulated the last time the application came before it there would be no further deferrals. She pointed out that the school has had ample time to submit a proper application and to meet the notice requirement, which it has again failed to do. Ms. Clore believed it was a delaying tactic on the part of the appellant to circumvent the Ordinance which could go on for years. She pointed out that the trailers are on the property and the school is conducting business as usual and she believed their action was undermining the County's enforcement procedures and encouraging an undesirable precedent for others to follow. Ms. Clore asked the Board to deny the request and have the trailers removed.

Page 546 April 22, 1997, (Tape 1), FAIRFAX-BREWSTER SCHOOL, Appeal A 96-M-008, continued from Page 545

John Connor, attorney for the appellant, said he had not had an opportunity to talk to the speaker but he would do so to try to address her concerns. He assured the Board that the appellant was not trying to delay and that he believed the special exception was properly filed. Mr. Connor asked the Board to bear in mind that the school disagrees with the Zoning Administrator's determination that the trailers are structures and believes that the school is operating under a valid permit. He agreed that staff's request was reasonable and that both he and the school would work toward ensuring that the application is properly filed and work toward resolving the matter immediately.

Mr. Dively asked the speaker as to what type of time frame he was discussing. Mr. Connor said the special exception had been filed and that he has met with Supervisor Gross. Mr. Shoup said he did not believe the special exception application would be heard before September or October. Mr. Connor said the school would like to resolve this issue prior to the next school year.

Mr. Kelley asked why it took ten months for the appellant to file the special exception. Mr. Connor said there was some confusion as to the proper way to proceed. Mr. Hammack asked why notices were not mailed to the adjoining property owners for this public hearing. Mr. Connor said it had been his understanding that staff was going to support a deferral in light of the filing of the special exception. Mr. Hammack said this appeal has been pending since November 1995. Mr. Connor said he was aware of that and apologized to the Board. He assured the Board that the school was committed to resolving the issue.

Mr. Hammack said although there does not appear to be a good reason as to why the special exception was not filed a long time ago, he would not like to disrupt the children's school year. He added that if the appellant is so confident that the trailers are not structures and the Zoning Administrator's determination is incorrect, a public hearing should have been held long ago. Mr. Hammack said he definitely wanted this issue resolved before the next school year begins. He made a motion to defer this appeal to June 24, 1997, at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-1 with Mr. Kelley voting nay.

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Page 546, April 22, 1997, (Tape 1), Scheduled case of:

9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, Appeal A 96-S-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant added structures and storage/display areas without site plan, Building Permit, and Non-Residential Use Permit approval, and in noncompliance with applicable location regulations all in violation of Zoning Ordinance provisions. 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 7/23/96. DEF. FROM 10/15/96 AND 1/14/97)

Chairman DiGiulian said the Board was in receipt of a letter from the appellant's attorney requesting a withdrawal of the appeal. Mr. Ribble made a motion to allow the withdrawal of the appeal. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 546, April 22, 1997, (Tape 1), Scheduled case of:

9:30 A.M. NABIL MANSOUR, Appeal A 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31. (DEF. FROM 6/11/96. MOVED FROM 9/17/96. DEF. FROM 11/7/96 FOR NOTICES. DEF. FROM 1/28/97 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, said this appeal involved the appellant's operation of a motor vehicle storage impoundment yard on the subject property and said staff believed the last site plan waiver authorizing such a use expired in October 1989; therefore, Non-Residential Use Permits (Non-RUPS) that were issued in 1993 and 1994 to the appellant were null and void thus the appellant is in violation. Mr. Shoup said the

Board held a public hearing on March 25, 1997, and at that time there was some discussion about the Department of Environmental Management's (DEM) response to the appellant's most recent submission of a minor site plan. The appellant's engineer withdrew the plan after DEM advised that they would not be able to approve the submission. The Board continued the hearing to this morning to allow DEM representatives to be present to respond and he introduced John Winfield and Bruce Nassimbeni.

Chairman DiGiulian said he recalled at the last hearing the Board had been told that DEM had agreed to review a minor site plan with waivers. Mr. Shoup said staff had indicated that they would talk to DEM about reviewing the minor site plan if the engineer chose to resubmit one. He deferred to Mr. Winfield for further explanation. Mr. Winfield said DEM would be willing to fully review any plan that the engineer chose to resubmit, but to his knowledge this has not yet been done.

Mr. Connor said he had discussed this issue with the appellant's engineer, John Marshall with Land Design Consultants, immediately following the last public hearing. He was assured by the engineer that this would be done and he conveyed that to Mr. Shoup. As of this date, Mr. Shoup and DEM say they do not have the resubmission although the appellant's engineer says he filed the paper work.

Chairman DiGiulian asked staff how they would proceed if the Board heard the appeal today and found in favor of the Zoning Administrator. Mr. Shoup said if the appellant diligently pursued minor a site plan staff would hold the violation in abeyance until DEM rendered a decision. He noted that a considerable length of time has elapsed since the time this appeal was filed.

Mr. Connor pointed out that some of the waivers that the appellant is requesting is going to be difficult for DEM to grant, and that he believed DEM was trying to work with the appellant due to the amount of money involved in filing the waivers. He proceeded to discuss issues involved in the appeal and referencing the history of the site outlined in the staff report. Mr. Connor said he believed the proper solution would be to allow the appellant to continue the use although he realized there was some procedural difficulty in how to reach this goal. He pointed out that the appellant is "between a rock and a hard place."

Mr. Kelley said he believed in this case the County is clearly and demonstrably wrong. He disagreed with putting someone out of business who pays taxes, employs approximately twenty-five people, has obtained permits, and has had a contract with the County to do business during this period of time.

Karen Harwood, with the County Attorney's office, disagreed that the appellant is "between a rock and a hard place." She suggested that the proper procedural steps for the appellant to take would be to pursue the site plan waiver and noted that the appellant was advised two months ago that the submission was incomplete. Ms. Harwood said the Board can procedurally bring the case into proper form, if the appellant submits the waiver (minor site plan) to DEM, has DEM act on it, and then pursue his options from that point. She pointed out that if the waiver is denied, the appellant can appeal that denial to the BZA. Ms. Harwood said the appellant's waiver has to be evaluated under today's Ordinance, and there have been some significant changes since the early 1980s, for instance the Chesapeake Bay.

Mr. Winfield reaffirmed Ms. Harwood's comments and pointed out that it is the appellant's responsibility to submit documentation to support any waiver requests, which in this case the appellant has not done.

Mr. Kelley made a motion to defer for a period of three months to preserve any option that the appellant might have to try to resolve this appeal. Mr. Ribble seconded the motion which carried by a vote of 7-0.

Staff suggested a date and time of July 29, 1997, at 9:00 a.m.

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In reference to comments made during the discussion on an earlier application, Mr. Winfield clarified for the record that he enforces the same rules for an appellant as he does on property owned by the Park Authority, the School Board, and the Board of Supervisors.

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Mr. Ribble recognized that Regina Thorn, Deputy Clerk to the Board of Zoning Appeals, has received a promotion and would be moving to the Office of Transportation. The Board congratulated Ms. Thorn and wished her well in her future endeavors.

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Page 548, April 22, 1997, (Tape 1), Action Item:

Request for Additional Time from Shiloh Baptist Church, SP 91-D-064

Mr. Hammack made a motion to approve the applicant's request. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new expiration date recommended is May 6, 1998.

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Page 548, April 22, 1997, (Tape 1), Action Item:

Request for Waiver of 12-month limitation period  
for refiling a variance from Andrew Latessa, VC 97-P-001

Mr. Kelley said he had no particular problem with granting the waiver, but would like the applicant to know that the submission must be something different. The members agreed. Mr. Hammack seconded the motion. The motion carried by a vote 7-0.

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Page 548, April 22, 1997, (Tape 1), Action Item:

Approval of April 15, 1997 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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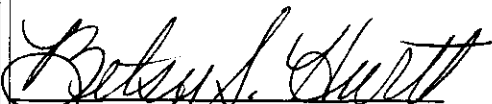
Mr. Hammack referenced an Information Item that was distributed to the BZA with regard to the Annandale Community Business Center Urban Guidelines. He suggested that the BZA meet with the County Attorney's office in Executive Session to discuss the memorandum submitted to the BZA. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed to contact the County Attorney's office to schedule a meeting for the following week.


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As there was no other business to come before the Board, the meeting was adjourned at 10:31 a.m.

Minutes by: Betsy S. Hurtt

Approved on: June 10, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 29, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:09 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 549, April 29, 1997 (Tape 1), Action Item:

9:00 A.M. JOHN CAMERON FRASER, VC 97-H-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.4 ft. from side lot line and 8.0 ft. from rear lot line and existing dwelling to remain 20.0 ft. from rear lot line. Located at 1830 Foxstone Dr. on approx. 11,629 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((33)) 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. John Cameron Fraser, 1830 Foxstone Drive, Vienna, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She explained that the applicant sought a 4.6-foot and 5.0-foot variance in order to construct a deck onto his home.

John C. Fraser explained that his home's design included a deck with doors placed off a second-story room opening onto the deck. He stated that his contractor had reversed the house's placement in order to best utilize the lot resulting with the garage area being placed on the opposite side of the house bringing it closer to the lot line. Mr. Fraser pointed out that there was presently a safety issue concern because of the doors which opened out to a ten-foot drop. He also said that his family was unable to make full use of the house's amenities without the planned deck. Mr. Fraser requested that, if the Board granted his variance request, that they also waive the eight-day waiting period.

Chairman DiGiulian called for speakers either in support or in opposition to the application and receiving no response, he closed the public hearing.

Mr. Hammack moved to grant VC 97-H-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-H-031 by JOHN CAMERON FRASER, under Section 18-401 of the Zoning Ordinance to permit construction of deck 7.4 feet from side lot line and 8.0 feet from rear lot line and existing dwelling to remain 20.0 feet from rear lot line, on property located at 1830 Foxstone Drive, Tax Map Reference 28-4((33))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 April 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,629 square feet.

4. The lot's topographic conditions resulted in the dwelling being placed in the corner of the property.
5. The builder reversed the side of the house where the garage was placed so as to best utilize the lot's size and configuration.
6. The next-door neighbor, who would be most affected, has no objection.
7. There is a danger consideration as there are doors which open out to a 10-foot drop where the deck should be.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a deck shown on the plat prepared by Walter L. Phillips, dated December 13, 1996, as revised through January 31, 1997 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The deck addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a unanimous vote of 5-0. Mr. Ribble was not present for the vote; Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 29, 1997. This date shall be deemed to be the final approval date of this variance. The Board waived the eight-day waiting period.

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Page 551, April 29, 1997 (Tape 1), Action Item:

9:00 A.M. FREDERICK W. AND ELIZABETH F. CROOK, VC 97-D-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 2 lots with proposed Lot 1A having a lot width of 6.86 ft. Located at 770 Carol Ct. on approx. 5.10 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((16)) 1. (Formerly 7-4 ((8)) D1 and pt. D2).

Chairman DiGiulian called the applicant's agent to the podium and asked if the revised affidavit dated April 22, 1997 before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C. Martin, Esquire, with the Arlington, Virginia firm of Walsh, Colucci, Stackhouse, et al, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicants, Frederick W. and Elizabeth F. Crook, sought a variance to subdivide one lot into two with proposed Lot 1A having a lot width of 6.86 feet where 200 feet is required by Sect. 3-E06 of the Zoning Ordinance. She stated that it was staff's judgment that the application has not met the nine required standards for variance particularly that the parcel does not have extraordinary shape, size or topography, that there is no extraordinary situation or condition existing on the adjacent property, and that the applicants have not demonstrated undue hardship, nor that all reasonable use of the property would be prohibited without approval of this variance. Ms. Langdon pointed out that, irrespective of the requested variance, the subject property consisted of a buildable lot which already contained an existing single family dwelling. She stated that staff recommended denial of the variance.

Keith C. Martin, Esquire, pointed out that the proposed two lots would be compatible in size with the new development of Timber Pointe and that with Carol Street's extension, Lot 1B was afforded full public street frontage. He stated that the applicants had their neighbors support. He explained that the applicants had acquired the property in 1984 in good faith with the expectation of subdividing the five-acre property into two lots. Mr. Martin professed that the property has both an exceptional shape and an exceptional condition because of the major utility easement which runs through it as well as the newly acquired road frontage on Carol Street. Mr. Martin justified the Crook's variance request by reiterating that their situation was not general or recurring; that strict application of the Zoning Ordinance would produce undue hardship that was not shared by other properties in the vicinity and it would restrict reasonable use of the property; that authorization of the variance would have no detrimental impact on the surrounding parcels; that the character of the R-E zoning district would not be changed; and that the variance would be in harmony with the Ordinance. He stated that the applicant agreed to staff's development conditions.

Chairman DiGiulian called for speakers in support.

Mary Walsh, 742 Miller Avenue, Great Falls, Virginia, stated that she was the neighbors' representative and that they supported the Crook's application. She submitted a statement of support which is contained in the record. Ms. Walsh maintained that the Crooks should be allowed to subdivide their five-acre property without being required to construct a roadway which would remove too much vegetation.

There being no response when Chairman DiGiulian called for speakers in opposition, he closed the public hearing.

Mr. Pammel moved to deny VC 97-D-015 for the reasons set forth in the Resolution.

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-015 by FREDERICK W. AND ELIZABETH CROOK, under Section 18-401 of the Zoning Ordinance to permit subdivision of 1 Lot into 2 lots with proposed Lot 1A having a lot width of 6.86 feet, on property located at 770 Carol Court, Tax Map Reference 7-4((16))1 (Formerly 7-4((8))D1 and pt. D2), 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 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.10 acres.
4. The hardship criteria has not been satisfactorily demonstrated; the request appears to be more a matter of convenience.
5. The factors that existed when the property was purchased and which influenced the site's development have not changed.
6. The applicants were initially aware of the situation.
7. There would be more of an impact from the gas line easement on two lots than currently if the variance to subdivide were granted.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

Page 553, April 29, 1997 (Tape 1), FREDERICK W. AND ELIZABETH F. CROOK, VC 97-D-015, continued from Page 552

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 3-2 vote with Messieurs Dively and Kelley opposed; Mr. Ribble not present for the vote; Mr. McPherson absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 14, 1997.

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Page-553, April 29, 1997 (Tape 1), Action Item:

9:00 A.M. JUDY C. MARTINEZ, VC 97-D-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.2 ft. from rear lot line. Located at 1631 Sadlers Wells Dr. approx. 8,459 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((4)) 429A.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert V. Swiger, with Reamco Inc., DBA (doing business as) Patio Enclosures, located at 6826 Hill Park Drive, Lorton, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a 15.8-foot variance to construct a sunroom onto the side of her house.

Mr. Swiger explained that Ms. Martinez's home was placed on its lot in such a manner as to leave the rear of the lot exceptionally shallow. He pointed out that the sunroom addition would not encroach onto anyone's privacy or property because the area behind her lot was a large, wooded, common area owned by the homeowners' association. Mr. Swiger explained that because the addition was prefabricated and in storage, he was requesting that the Board waive the eight-day waiting period.

In response to Mr. Hammack's question, Ms. Langdon explained that Lot C-1 behind Ms. Martinez's lot was homeowners' owned open space with no structures on it and no future development planned.

Chairman DiGiulian called for speakers either in support or opposed and receiving no response, he closed the public hearing.

Mr. Kelley moved to grant VC 97-D-022 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-022 by JUDY C. MARTINEZ, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.2 feet from rear lot line, on property located at 1631 Sadlers Wells Drive, Tax Map Reference 10-2((4))429A, 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 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 8,459 square feet.
4. The particular placement of the house on the lot is to the rear.
5. The area behind the lot is open space owned by the homeowners' association.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the sun room addition shown on the plat prepared by Alexandria Surveys, Inc., dated January 17, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 555, April 29, 1997 (Tape 1), JUDY C. MARTINEZ, VC 97-D-022, continued from Page 554

Mr. Dively seconded the motion which carried by a unanimous vote of 5-0 with Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 29, 1997. The Board waived the eight-day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 555, April 29, 1997 (Tape 1), Action Item:

9:00 A.M. M.T.O. SHAHMAGHSOUDI, SPA 94-D-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-D-049 for a church and related facilities to permit relocation of the barrier wall, reduction of the transitional screening and redesign of church facilities. Located at 11326 Leesburg Pi. on approx. 5.00 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22B. (DEF. FROM 4/8/97 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. May M. Salehi, 9608 Minstead Court, Burke, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, concurred with Chairman DiGiulian's statement that the application had been deferred from April 8th's meeting for submission of the applicant's intent and clarification of proposed Development Condition #18 concerning the height of the structure's dome. She called the Board's attention to staff's April 21, 1997 memo detailing the dome's size, its relationship to the total surface of the roof area and, in accordance with the Zoning Ordinance, its inclusion in the overall height of the structure. Ms. Schilling stated that staff's intention in proposed Condition #18 was to limit the visual impact from adjacent properties and to clarify the height measurement, as defined in the Ordinance, in an R-1 District. She pointed out that the applicant has requested an increase in gross floor area and it is staff's suggestion to defer that reconsideration pending receipt of special permit plats detailing the increase in floor area ratio (FAR) and the areas of the footprint where the increase would occur. Ms. Schilling verified that, although the applicant has indicated that the increased FAR was within the footprint, staff required that it be shown on the plat and staff recommended that the application be re-advertised in order to allow surrounding property owners the opportunity to review the revised application. In concluding staff's presentation, Ms. Schilling called the Board's attention to the letter of opposition from Dr. Wenk which was recently received and which is contained in the record.

Chairman DiGiulian clarified that it was staff's recommendation not to follow the Zoning Ordinance's definition for height but to limit the dome's height to its peak.

May M. Salehim, agent for the applicant, requested that the dome's 50-foot height be measured at mid-point as the Ordinance stipulated. She pointed out that the requested change in the FAR was very slight at .108 from .103 and this was necessary due to the relocation of the mechanical/electrical equipment. She emphasized that the increase did not change the building footprint.

In response to the Board's questions, Ms. Schilling and Jane Kelsey, Chief, Special Permit and Variance Branch, explained that if the applicant wishes additional square footage in the building, she should submit a revised plat. Ms. Kelsey mentioned a recent amendment to the Zoning Ordinance which allowed minor modifications, up to a certain percentage, explaining that it assured citizens that an approved application would remain basically as it was advertised. She added that this application far exceeded the accepted parameters which necessitated staff to recommend its deferral until receipt of a revised plat evidencing the proposed change.

Discussion followed between Board members, the applicant's representative, and Ms. Kelsey concerning the necessity to re-advertise, the change in the square footage, the current plat and what it depicts, and the requested change sought by the applicant.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Dively commented that, given the particulars of this case, it might be prudent to re-advertise the application and that he believed the Board should consider the Ordinance's standards of measurement. Mr. Dively moved to defer the decision on SPA 94-D-049 which was seconded by Mr. Ribble.

Discussion followed between Mr. Hammack, Mr. Dively, and Ms. Salehi regarding the feasibility of an interpretation letter, the inconvenience and expense of a deferral, and the possibility of a partial approval.

Mr. Dively withdrew his initial motion for deferral which was seconded for procedural discussion purposes by Mr. Hammack. Mr. Dively then moved to **GRANT** SPA 94-D-049 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated April 1, 1997.

Chairman DiGiulian clarified that Mr. Dively's motion for approval of the floor area pertained to the present plat that was before the Board that day, but without the 5 percent. Chairman DiGiulian's suggested language to clarify Development Condition #18 was concurred with unanimously.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 94-D-049 by M.T.O. SHAHMAGHSOUDI, under Section 3-103, of the Zoning Ordinance to permit relocation of the barrier wall, reduction of the transitional screening and redesign of church facilities, on property located at 11326 Leesburg Pike, Tax Map Reference 11-2((1))22B, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.00 acres.

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. 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1.\* This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 11326 Leesburg Pike, 5.0 acres and is not transferable to other land.
- 2.\* This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by MS & Associates dated November 25, 1996, and approved with this application, as qualified by these development conditions.
- 3.\* A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.



- 4.\* This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5.\* The maximum number of seats/number of worshipers shall be 150 at any one time.
- 6.\* Fifty-six (56) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on-site in the location shown on the Special Permit Plat.
7. The limits of clearing and grading shall be as shown on the special permit plat, except to allow the stormwater management facility to be located as shown on the Special Permit Plat.
8. The transitional screening yard shall be reduced to a minimum of 20 feet along the east and west lot lines in the area of the septic field. Transitional Screening Type I shall be provided along the remainder of the lot lines as shown on the plat. The existing vegetation shall be preserved to the greatest extent possible as approved by the Urban Forestry Branch, DEM, and may be used in the transitional screening yards provided it is supplemented to a level of screening equivalent to Transitional Screening 1. Supplemental landscaping shall be provided along the transitional screening areas adjacent to the side lot lines, to screen the view of the travel aisle and enhance the appearance of the barrier wall, with the type and number of supplemental plantings subject to the review and approval of the Urban Forestry Branch of DEM.
9. The barrier requirement shall be modified to allow the six foot high solid architectural wall shown on the special permit plat to be located 5 feet from the property line, except within the front yard where the wall shall be limited to 4 feet in height. This wall shall be constructed without the use of continuous footings so as to minimize disturbance to existing vegetation. The wall shall be relocated to a distance of 10 feet from the property line, if determined necessary by the Urban Forestry Branch/DEM that additional width is needed to preserve existing vegetation or support supplemental landscaping between the wall and the property line. In all instances, trees shown on the Special Permit plat shall be planted outside of the proposed wall adjacent to surrounding residential lots.
- 10.\* If a waiver of stormwater management requirement requirements is not granted by the Director of DEM, on-site stormwater management facilities or a contribution to a regional pond shall be provided as determined by the Director, DEM.
- 11.\* Any proposed lighting shall be in accordance with the following:
  - A. The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - B. The lights shall be focused directly on the subject property.
  - C. Shields shall be installed, if necessary, to prevent the light or glare from projecting beyond the property.
- 12.\* Approval of this special permit use shall not be construed to imply an obligation on the part of Fairfax County to provide public sewer to the property.
- 13.\* Right-of-way to 120 feet from the centerline of 7 necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements as determined by DEM.
- 14.\* A right turn deceleration lane shall be provided as shown on the plat and shall be designed and constructed to a standard as required by DEM and the Virginia Department of Transportation (VDOT).

- 15.\* A service drive shall be provided as shown on the plat along the site's frontage and shall be designed and constructed to a standard determined by DEM and VDOT.
- 16.\* So as to allow stacking of vehicles on-site, the gate at the entrance to the site shall be shifted to the north into the site a minimum of 25.0 feet and shall be marked with reflective panels so as to be easily visible at night.
17. Prior to site plan approval, the applicant shall escrow sufficient funds, as determined by DEM, to provide for removal of the entrance from the service drive to Route 7 at such time as the service drive is extended to the intersection of Route 7 and Reston Parkway.
18. The design of the building shall be generally as shown in Appendix 1B, south elevation, and shall not exceed 50 feet in height.
19. There shall be no outside activities conducted on the property, and the use of outside speakers shall not be permitted.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 14, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 558, April 29, 1997 (Tape 1), After Agenda Action Item:

#### ANTHONY V. ANZALONE APPEAL REQUEST

William Shoup, Deputy Zoning Administrator, called the Board's attention to his April 21, 1997 memorandum which summarized the history and nature of Mr. Anzalone's long-standing dispute over a stormwater drainage issue between Mr. Anzalone and his neighbors, the Connors. Mr. Shoup asserted his position that Mr. Anzalone's appeal request did not constitute a proper appeal nor was it timely filed. He pointed out that Mr. Anzalone had been informed several times that there was no zoning violation. Mr. Shoup indicated that the most recent letter from the County Attorney reiterated what Mr. Anzalone previously was told and he also indicated that it was his position that the letter from the County Attorney was not a decision made in the administration of the Zoning Office. Mr. Shoup stated that staff recommended that the Board not accept the appeal for public hearing.

Anthony V. Anzalone, referencing Mr. Shoup's April 21st memo, submitted that all County actions addressing his complaint were moot as of Board of Supervisors' Chairman Katherine Hanley's May 28, 1996 action to reopen his case. Mr. Anzalone professed that the impetus of his complaint was that no County employee had complied with the Code requirements for notification of his right to an appeal. He pointed out specific

instances and challenged the Board to show circumstances to the contrary.

Chairman DiGiulian instructed Mr. Anzalone that he must address the issue of whether or not the Board of Zoning Appeals should hear his request for an appeal and not the merits or justification for his appeal.

Mr. Anzalone reiterated that there was no reference in any of his correspondence from the County of his right to an appeal and that there were additional issues with his case, property value being one, besides access to a storm drain.

Chairman DiGiulian asked if there was anyone to speak to the question of acceptance of this appeal.

Brian Miller, Esquire, representing the adjoining neighbor, the Connors, whose landscaping was the subject of Mr. Anzalone's complaint, stated that, in the capacity of agent to the Connors, he was present to observe and to register their concurrence with Mr. Shoup's recommendation to not accept the appeal.

Mr. Shoup voiced his concern over Mr. Anzalone's statement that his case had been reopened by

Chairman Hanley. He suggested that the contact with the Chairman's office was only one of numerous County contacts made by Mr. Anzalone with results similar to those on file; that Mr. Anzalone's situation could not be rectified by the County as it was not within its purview. Mr. Shoup again referenced his April 21st memorandum to the Board and reiterated the recommendation that this appeal should not be accepted for public hearing by the BZA.

Discussion followed between Mr. Hammack and Mr. Shoup concerning the requirements to give notice of appeal rights.

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Mr. Hammack commented that the Ordinance requiring written notification regarding appeal rights did not change until July 1, 1993, which is a substantial amount of time since Mr. Anzalone's October 9, 1992 unfavorable determination and that Mr. Anzalone has had numerous opportunities to exercise appeal rights which were not pursued. Mr. Hammack cited that the application was not timely filed and that he concurred with Mr. Shoup's determinations as reported in the April 21st memorandum. For those reasons, Mr. Hammack moved that the BZA **NOT ACCEPT** the Application for Appeal filed by Anthony V. Anzalone.

Mr. Ribble seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 559, April 29, 1997 (Tape 1), Action Agenda Item:

Request for Additional Time, DENNIS F. RATNER, VC 93-D-033

Mr. Pammel commented that there have been numerous requests for extensions from Mr. Ratner over the past four years and that his motion to approve would be predicated upon this being the last extension. Mr. Pammel then moved to **APPROVE** the request for additional time for VC 93-D-033 with the final expiration date of March 22, 1998. Mr. Kelley seconded the motion which carried unanimously by a 6-0 vote with Mr. McPherson absent from the meeting.

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Page 559, April 29, 1997 (Tape 1), Action Agenda Item:

Request for Intent to Defer  
GEORGE KYRIACOU, A 96-L-054

Mr. Pammel pointed out that this was a case with a continued violation and, in his opinion, it is the applicant's responsibility to comply with County regulations and requirements.

Mr. Shoup explained that a previous deferral and this deferral request were based on the appellant's intention to pursue a rezoning to resolve the issue. He noted that staff did not support this deferral request and that staff recommended that the public hearing be heard on its scheduled date of May 13, 1997. In response to Mr. Pammel's question, Mr. Shoup stated that the appellant's agent, Paul W. Mengel, III, Esquire, had sent the required appeal notices for the May 13, 1997 public hearing in the event this deferral request was denied. In response to Mr. Kelley, Mr. Shoup reported that the required plans submitted with the rezoning application contained minor deficiencies of which Mr. Mengel had been notified about. Mr. Shoup indicated that these minor deficiencies were not corrected for several months until April 1997 when revised plans were received.

Paul W. Mengel, III, Esquire, with the law offices of Richards, McGettigan, Reilly & West, P.C., 225 Reinekers Lane, Alexandria, Virginia, representing the appellant, explained that his unfamiliarity with the County's application filing process along with erroneous instructions given by County staff had contributed to this lack of communication which resulted in non-receipt of the necessary documents. He presented a brief history of the site; explained the nature of the owner's marble/tile business, noting that it was an allowed use; indicated the current zoning and pointed out that Mr. Kyriacou had requested to rezone the property. Mr. Mengel clarified that the subject of this Notice of Violation was the utilization of the display room. He then presented, chronologically, the events and the materials requested during the rezoning's filing process. Mr. Mengel pointed out that it was no fault of Mr. Kyriacou that the rezoning application, which would resolve the violation issue, had been delayed and he respectfully requested a deferral of the appeal hearing.

Chairman DiGiulian called for speakers either in support or opposed to the appeal deferral request.

Frances R. Day acknowledged Mr. Kyriacou's right to appeal but informed the Board that he had submitted a request to operate the same type of business in January 1996 which was denied by the Zoning Administration Office just two days before he received his occupancy permit for office use. She reported that Mr. Kyriacou then proceeded to turn his office into a showroom. Ms. Day maintained that all other tile industry businesses have a showroom to display their wares and must be located in either C-8 or Industrial Zoned property and urged the denial of Mr. Kyriacou's request.

Discussion followed among the Board members and Mr. Shoup regarding the merits of and possible date for the deferral.

Mr. Ribble moved that the **BZA ISSUE AN INTENT TO DEFER** Appeal A 96-L-054 to the morning of October 28, 1997. The motion was seconded by Mr. Dively and passed by a vote of 5-1 with Mr. Pammel opposed and Mr. McPherson not present for the vote.

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Page 560, April 29, 1997 (Tape 1), Action Agenda Item:

Out-of-Turn Hearing Request  
MCLEAN CHILDREN'S ACADEMY, INC., SP 97-S-015

Jane Kelsey, Chief, Special Permit and Variance Branch, after briefly explaining the subject application's request for a special permit, stated that staff recommended denial of the out-of-turn hearing in order to adequately review the application.

Mr. Dively then moved to **DENY** the request for an out-of-turn hearing which was seconded by Mr. Pammel and passed unanimously by a vote of 6-0. Mr. McPherson absent from the meeting.

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Page 561, April 29, 1997 (Tape 1), Action Agenda Item:

Out-of-Turn Hearing Request  
DAVID & CAROL FLANAGAN, VC 97-D-042

Jane Kelsey, Chief, Special Permit and Variance Branch, described briefly the Flanagan's situation pointing out that the swimming pool was dug and a stop work order was issued with an explanation that the building permit had been issued in error and a variance was necessary in order to complete and keep the pool.

Mr. Dively moved to **ACCEPT** the out-of-turn hearing request with the rescheduled date of June 17, 1997. The motion was seconded by Mr. Kelley which carried by a vote of 5-1 with Mr. Pammel opposed; Mr. McPherson was absent from the meeting.

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Page 561, April 29, 1997 (Tape 1), Action Agenda Item:

CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP &  
DOMINION SCHOOL, SPA 78-C-055-2

Mr. Hammack moved to **ACCEPT** the intent to defer to a rescheduled date of June 3, 1997. The motion was seconded by Mr. Dively seconded the motion which carried unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 561, April 29, 1997 (Tape 1), Action Agenda Item:

MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 & SP 97-V-006

Mr. Dively moved to **ACCEPT** the intent to defer request to a rescheduled date of June 24, 1997. Mr. Hammack seconded the motion which carried unanimously. Mr. McPherson was absent from the meeting.

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Page 561, April 29, 1997 (Tape 1), Action Agenda Item:

Approval of Revised Resolution and Revised Plats  
CAROLYN R. FRICKEL, VC 97-D-005

The Board unanimously moved to **ACCEPT** the revised plats and **APPROVED** the Resolution for Carolyn R. Frickel, VC 97-D-005.

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Page 561, April 29, 1997 (Tape 1), Action Agenda Item:

Approval of April 22, 1997 Resolutions

The Board unanimously moved to approve the April 22, 1997 Resolutions. The vote was 6-0 with Mr. McPherson absent from the meeting.

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Mr. Hammack moved that the BZA go into Executive Session for the purpose of discussing legal issues. Mr. Dively seconded the motion which carried unanimously. The Board of Zoning Appeals went into Executive Session at 10:35 a.m.

At 11:01 the BZA came out of Executive Session and Mr. Dively then **MOVED THAT THE MEMBERS OF THE BOARD OF ZONING APPEALS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE, ONLY**

Page 562, April 29, 1997 (Tape 1 ), EXECUTIVE SESSION:


PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED BY THE VIRGINIA FREEDOM OF INFORMATION ACT, AND ONLY MATTERS IDENTIFIED IN THE MOTION TO CONVENE EXECUTIVE SESSION WERE HEARD, DISCUSSED, OR CONSIDERED BY THE BOARD OF ZONING APPEALS DURING THE EXECUTIVE SESSION. Mr. Dively then moved that the April 29, 1997 meeting of the Board of Zoning Appeals be adjourned. Mr. Ribble seconded the motion which carried unanimously.

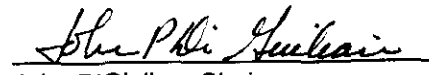
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As there was no other business to come before the Board, the meeting was adjourned at 11:01 a.m.

Minutes by: Paula A. McFarland

Approved on: August 5, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 6, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 563, May 6, 1997, (Tape 1), Scheduled case of:

- 9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking to remain less than 10.0 ft. from front lot line. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with SP 97-V-006).
- 9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, SP 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and a child care center. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with VC 97-V-020).

Chairman DiGiulian noted that last week the Board issued an intent to defer to June 24, 1997 at 9:00 a.m. Mr. McPherson so moved and 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.

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Page 563, May 6, 1997, (Tape 1), Scheduled case of:

- 9:00 A.M. BRUCE S. & JUDITH D. IRVINE, VC 97-S-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from rear lot line. Located at 8807 Cuttermill Pl. on approx. 10,524 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 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. The applicant, Bruce Irvine, 8807 Cuttermill Place, Springfield, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 16.5 feet to allow an enclosure of a carport and construction of an attached shed to be located 8.5 feet from the rear lot line. Ms. Schilling noted that in the staff report the table calculation is off by a tenth of a foot and should reflect 16.5 feet as she previously stated.

Mr. Irvine presented his request as outlined in the statement of justification submitted with the application. He said it was an enclosure of a carport and would go no closer to the lot line than what currently exists. Mr. Irvine noted that due to the way the house is situated on the lot the front of the house is considered a side yard; therefore, a variance was required.

In response to several questions from Mr. Hammack, Mr. Irvine said his neighbor's house is situated parallel with his front lot line and they support his application. He said the shed will be for the storage of garden equipment; therefore, he felt the most logical location for the shed was connected to the garage.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Hammack moved to grant VC 97-V-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-S-021 by BRUCE S. AND JUDITH D. IRVINE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.5 feet from rear lot line, on property located at 8807 Cuttermill Place, Tax Map Reference 89-3 ((6)) 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 May 6, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 10,524 square feet.
4. The applicant meets the nine required standards for a variance. In particular, the unusual way the affected side yard of the dwelling is treated as a rear yard requirement.
5. The applicant is only enclosing an existing carport which will not extend any further into the required area than what now exists.
6. The proposed shed addition will be in an appropriate place.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.



NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage and shed shown on the plat prepared by Kenneth W. White, dated January 2, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage and shed addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 May 14, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 565, May 6, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT L. & EILEEN N. MCCARTY, VC 97-V-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.18 ft. from side lot line. Located at 2108 Woodmont Rd. on approx. 8,974 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 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. The applicant's agent, David Gallagher, 450 North Alfred Street, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of 1.82 feet for a two story addition to be located 8.18 feet from the side lot line.

Mr. Gallagher presented the applicant's request as outlined in the statement of justification submitted with the application. He explained that he was proposing to expand an existing garage into a habitable structure.

Chairman DiGiulian called for speakers in support, and hearing no reply he called for speakers in opposition.

Eoanna Giannopoulos, 6215 Foxcroft Road, Alexandria, Virginia, expressed concern over the proposed addition obstructing her view. Ms. Giannopoulos explained that her lot sits three to four feet lower than the applicants and because the roof of the garage is currently slanted, it allows an open view from her upstairs window. In sum, she said her main objection was to the structure being built straight up and not slanted.

In rebuttal, Mr. Gallagher said he had several discussions with the Giannopouloses, listened to their concerns, and tried to design the addition with those concerns in mind. However, it was not possible to lower the roof and still have a habitable second floor. He gave a brief history on how he decided on the current design of the addition and said he tried to make it as compact as possible.

Chairman DiGiulian closed the public hearing.

Mr. Ribble noted that this is a minimal variance request and only affects one small area of the neighbors' house. He said the neighbors could plant trees in their back yard to block the view of the structure if so desired.

Mr. Ribble moved to grant VC 97-V-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 29, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-V-030 by ROBERT L. AND EILEEN N. MCCARTY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.18 feet from side lot line, on property located at 2108 Woodmont Road, Tax Map Reference 83-3 ((14)) (15) 11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 6, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,974 square feet.
4. The applicant meets the nine required standards for a variance. In particular, the exceptional narrowness of the lot as stated in the applicants' application.
5. As noted in the staff report, there have been numerous variances approved in the Belle Haven subdivision.
6. The proposed addition will go no closer to the lot line than the existing dwelling.
7. The Board did not see where the variance of less than 2.0 feet will make a difference to the neighbor, the Giannopouloses, and if the applicants build the addition by-right the concerns of the Giannopouloses would still be the same.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of an addition shown on the plat prepared by David R. Gallagher, dated November 25, 1996, as revised through February 15, 1997, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 14, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LINCOLNIA PRIVATE DAY SCHOOL, INC., SPA 74-M-042 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-42-74 for a nursery school to permit a child care center with less than 100 students daily, change in development conditions and site modifications. Located at 6396 Lincolnia Rd. and 6365 Hillcrest Pl. on approx. 33,825 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 3, 4 and 19. (Concurrent with VC 97-M-037)

9:00 A.M. LINCOLNIA PRIVATE DAY SCHOOL, INC., VC 97-M-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6396 Lincolnia Rd. and 6365 Hillcrest Pl. on approx. 33,825 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 3, 4 and 19. (Concurrent with SPA 74-M-042).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Lynn Strobel, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to S 42-74 for a nursery school to expand to a child care center and nursery school, an increase in enrollment from 78 to 90 children, and an increase in the ages to reflect infants to 12 years old. The hours of operation would be increased by half an hour and the center's operation would be extended to year round with occasional weekend and evening programs. The request would also permit modifications to the playground, inclusion of the existing picnic pavilion on the special permit plat, and modifications to the parking lot. The variance request was to allow the existing picnic pavilion to remain in the front yard of a lot containing less than 36,000 square feet. Ms. Schilling noted that the school was issued a Notice of Violation for operating in violation of the approved conditions of the original special permit. Staff recommended that the Board approve the application in part, with the enrollment limited to 78 children because staff believed an increase in children from 78 to 90 combined with year round attendance would be too intense for the size of the lot and would result in insufficient space to provide transitional screening. Ms. Schilling further noted that yesterday, May 5, she received new Development Conditions proposed by the applicant with regards to both the special permit amendment and the variance request but she did not have time to prepare a response to the suggested changes.

Ms. Strobel presented the applicant's request as outlined in the statement of justification submitted with the application. She said the child care center has been operating since its original approval in 1973 and has changed over the years to address the changing needs of the community. Unfortunately, that resulted in its existing operations not being completely consistent with the development conditions of the original special permit approval. Ms. Strobel said the applicant has filed this application to modify the previously approved conditions so the child care center can be brought into compliance with Fairfax County requirements. She noted if the amendment request was granted it would not change the current operations of the existing child care center and there would not be any expansion of the existing building. Ms. Strobel briefly went over the changes that the applicant proposed to the Development Conditions dated May 5, 1997.

With regards to the variance request, Ms. Strobel said a variance was required for the existing pavillion because the property is less than 36,000 square feet and the rear of the property is considered a front yard. She noted that the property has two front yards which is an unique characteristic and an extraordinary condition that limits the location of accessory uses on the property. Ms. Strobel felt the picnic pavillion is an appropriate and reasonable use that enhances the activities that can be provided at the child care center. She also submitted a petition signed by the parents at the child care center and a letter from a parent in support of the application who could not attend the hearing.

In response to a question from Mr. McPherson, Ms. Strobel said the child care center had a change in ownership in 1979 and she introduced one of the current owners, Charles Leopold, 14316 Spriggs Road, Woodbridge, Virginia, who spoke in support of the application. He stated that to his knowledge the center has always operated on a year round basis. Mr. Leopold noted that 8 years ago, the State licensed the center to increase their enrollment to 90 children after they renovated the basement into a classroom. He said the center does not have weekend activities except for once a year when they hold a graduation ceremony for the children and their parents to attend.

In response to a question from Mr. Ribble, Mr. Leopold said the three churches located in the immediate area do not currently have child care facilities.

The following spoke in support. Anita Klima, 4215 Summit Place; Jacklyn Berkhart, 205 Yoakum Parkway; Fran Gad, 2656 Falmouth Court, Woodbridge, Virginia; and Susan Labarka, 4442 Park Road. They felt the school was exceptionally run and asked the Board to grant the application as submitted.

Chairman DiGiulian called for speakers in opposition.

Samuel Watson, 6364 Hillcrest Place, Alexandria, Virginia, stated that he was also speaking on behalf of Hampton McGee, an adjacent property owner, who was ill and could not attend. Mr. Watson said he agreed with the staff report and asked that the school be required to demonstrate that they can operate within the original special permit conditions before they are granted any further expansion. He said the owners knew they were operating in violation several years ago and did not have it resolved. Mr. Watson also felt Mr. McGee would be concerned over the applicant's proposed Development Condition regarding the fence

being placed east of the storm drainage because he had a problem with the children throwing pebbles into it which caused his basement to flood. Mr. Watson felt the fence should be moved west to fence off the storm drain from the children.

Mr. McPherson asked Mr. Watson whether the center was operating on a year round basis when he moved into the neighborhood. Mr. Watson was unable to answer because he could not recall.

In rebuttal, Ms. Strobel said the applicant has already corrected the storm drain issue by fencing off the storm drain area. She said that she could not speak to what happened 10 years ago on the property and noted that the applicant was before the Board now trying to do their best to bring this property into compliance with current regulations, many of which were not applicable when this property was originally approved. In conclusion, Ms. Strobel noted that the applicant had a meeting with County representatives in 1984 and submitted a special permit amendment application; however, it was returned to him and he was told that it did not appear appropriate at the time to go through the process. She asked the Board to consider the applicant's Proposed Development Conditions dated May 5, 1997.

Mr. Ribble asked Ms. Strobel about the 3 year State license that was issued to the child care center allowing them a capacity of 90 children from the ages of 2 to 9 years old which would be in conflict with the requested 2 to 12 years old that the applicant was requesting. Ms. Strobel agreed and stated that if the applicant took in a child older than 9 years of age then they would have to get a new license issued from the State to reflect that change. She noted that currently, their enrollment is in accordance with the Virginia State Permit.

Chairman DiGiulian closed the public hearing.

Mr. McPherson asked staff if they had time to go over the applicant's Proposed Development Conditions during the hearing or if they would need an additional week to address the changes. Ms. Schilling said she could comment on some of the proposed changes today but she would need an additional week to review them with staff; in particular, the issue of allowing three weekend activities per year. Ms. Schilling elaborated by stating that normally three weekend activities per year would not be a problem; however, it could present a parking issue since the parking requirement was based on the parents dropping off the children at staggered times. If all the parents gather at one time, it was questionable whether there would be enough available parking to accommodate everyone.

Mr. McPherson expressed concern about several parts of the application. He said the Board did not want to interrupt the families and children who receive care from the center but this was a serious deviation from the prior approval that the Board has granted. Mr. McPherson said even though some of the applicant's suggested Development Conditions were appropriate he wanted to allow staff time to review all of the changes before the Board made their decision. Mr. McPherson made a motion to defer decision only for one week to receive input from staff and allow the applicant an opportunity to respond, but not necessarily with testimony, at that time.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 569, May 6, 1997, (Tape 1), Scheduled case of:

9:30 A.M. PROPERTY PROFESSIONAL, INC., VC 97-H-018 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 6B having a lot width of 137.0 ft. Located at 1748 Brookside Ln. on approx. 3.98 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((6)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John P. Sekas, 100 East Street, Vienna, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit subdivision of one existing lot into two lots, with proposed Lot 6B having a lot width of 137 feet and consisting of 2.2 acres. A lot width of 150 feet is required in the R-1 District. Proposed Lot 6A would have a lot width of 150 feet and would consist of 1.7 acres. Each lot would access Brookside Lane via individual entrances. The existing dwelling would remain on Lot 6B and a new septic field would be constructed. Proposed Lot 6A would also be served by private septic system and private wells would serve both lots. It was staff's judgment that this application did not meet all of the Variance Standards, specifically Standards 2 through 6 and 8 as outlined in the staff report.

Mr. Sekas presented the applicant's request as outlined in the statement of justification submitted with the staff report. He said he bought the property in good faith with the intent to develop three or four properties; however, if they were to install a road and build the properties by right it would have a negative impact on the neighborhood because of the amount of clearing that would have to take place due to the steepness of the grades on the lot. Mr. Sekas said he has met with the neighbors and except for some clearing concerns from one adjacent property owner, they are all in support of the application and he submitted letters to that effect. He said the variance would have a minimum impact on the surrounding neighborhood and would result in saving trees. Mr. Sekas cited exceptional narrowness and topographical situations on the property; in particular, its steep slopes.

In response to a question from Mr. Hammack, Mr. Sekas said they could develop the property as a matter of right by putting in a road and under the R-1 Zoning District they would have enough area to create the frontage.

The following spoke in opposition. Bud Roeder, 9708 Meadowmere Drive; Michael Briggs, representing the owners of adjacent property Lot 7; and Cindy Savino, 9711 Meadowmere Drive. They felt the applicant was not in a unique position because there were 11 other lots located in the neighborhood that were in a similar situation as the applicant. Ms. Savino further requested that the Board require the applicant to define the tree save area prior to the septic field being built if they granted the variance.

In rebuttal, Mr. Sekas said he wanted to add two Development Conditions, 1) a 50 foot buffer of existing trees of the northwest property line will be preserved and replacement trees shall be provided by the applicant should any clearing of trees occur within this buffer; and, 2) clearing around the proposed drainfields forcemains shall be the least amount as required by the Fairfax County Health Department to install the drainfields as already approved by the Health Department. In sum, Mr. Sekas said he was simply trying to prevent the loss of a large amount of trees which had previously occurred in the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 97-H-018 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 29, 1997 to include the two additional Development Conditions proposed by the applicant.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he was going to oppose the motion because he felt the applicant ran into two of the unyielding rules that the Board is suppose to apply. First, if the applicant can develop the property under the Subdivision Ordinance and can do it as a matter of right then the variance in and of itself is a convenience, although the variance would probably result in better development. Secondly, the applicant knew he would need a variance when he bought the property. Mr. Hammack referred to the staff report which showed there were other parcels similar to the applicants so he did not feel this was a unique situation. Mr. Hammack noted that everything in that area has topographical conditions and even though he liked the proposed development he felt he had to vote against it.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-H-018 by PROPERTY PROFESSIONAL, INC., under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 6B having a lot width of 137.0 feet, on property located at 1748 Brookside Lane, Tax Map Reference 28-1 ((6)) 6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 6, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.98 acres.
4. The applicant meets the nine required standards for a variance. In particular, the narrowness of the lot and exceptional topographic conditions.
5. The applicant planned it this way in order to save trees.
6. The applicant's submission of additional development conditions will clarify, to a large degree, some of the questions the neighbors had.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lot 6 as shown on the plat prepared by Ned A. Marshall, dated January 24, 1997. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for the lots submitted with this application and are not transferable to other land.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
3. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance. The minimal amount of clearing possible shall be allowed for construction of the driveway, dwelling and septic field on Lot 6A and the septic field on Lot 6B, as determined by the Urban Forestry Branch during review of the overlot grading plan.
4. A 50 foot buffer of existing trees at the northwestern property line will be preserved. Replacement trees shall be provided by the applicant should any clearing of trees occur within this buffer.
5. Clearing around the proposed drainfields and forcemain shall be the least amount as required by the Fairfax County Health Department to install the drainfields as already approved by the Health Department.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-1, with Mr. Hammack voting nay. Mr. Kelley 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 May 14, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 572, May 6, 1997, (Tape 1), Scheduled case of:

9:30 A.M. CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP AND DOMINION SCHOOL, SPA 78-C-055-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 78 C-055 for a church and related facilities and private school of general education to permit changes in development conditions. Located at 10922 Vale Rd. on approx. 17.95 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((1)) 17 and 17A.

Chairman DiGiulian noted that last week the Board issued an intent to defer this case to June 3, 1997. Mr. McPherson so moved and Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Request for Change of Permittee  
from The New Jerusalem Church, SP 95-S-071

Mr. McPherson moved to grant the request for change in permittee from the Trinity Presbyterian Church to the New Jerusalem Church. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Approval of Minutes  
for March 4 and March 25, 1997 Meetings

Mr. Ribble moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Request for Additional Time  
from Brian F. and Margaret J. Frydenlund, VC 94-V-051

Mr. Hammack moved to grant the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting. The new expiration date is January 13, 1998.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Request for Additional Time  
from Church of Jesus Christ of the Latter Day Saints, SP 93-H-017

Mr. McPherson moved to grant the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting. The new expiration date is March 27, 1999.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Request for Additional Time  
from William Carter Reynolds, VC 92-V-081

Mr. McPherson moved to grant the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting. The new expiration date is April 21, 1999.

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Page 523 May 6, 1997, (Tape 1), Scheduled case of:

Request for Out of Turn Hearing  
from Georgie C. Nance, SP 97-D-019 and VC 97-D-044

Page 574 May 6, 1997, (Tape 1), GEORGIE C. NANCE, SP 97-D-019 and VC 97-D-044, continued from Page 573)

Mr. McPherson moved to deny the request. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 574, May 6, 1997, (Tape 1), Scheduled case of:

Approval of Resolution  
from the April 29, 1997 Meeting

Mr. Hammack made a motion to defer approval of the Resolutions to next week so Mr. Pammel could be present to review the MTO Shahmaghsoudi Resolution since he had made changes to the Development Conditions. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and 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 10:40 a.m.

Minutes by: Teresa M. Wang

Approved on: July 29, 1997

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 13, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 515 May 13, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BELLE HAVEN COUNTRY CLUB, INCORPORATED, SPA 82-V-093-4 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 82-V-093 for a country club to permit construction of two platform tennis courts and site modifications. Located at 6023 Fort Hunt Rd. on approx. 156.70 ac. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((1)) 5; 83-4 ((2)) (5) 1-32 and B; 83-4 ((2)) (6) 1-29; 83-4 ((2)) (13) 1-30; 83-4 ((2)) (14) 1-32; 83-4 ((2)) (21) 1-5; 83-4 ((2)) (22) 1-19; 83-4 ((2)) (23) 1-30; 83-4 ((2)) (30) 1-4 and 11-30; 83-4 ((2)) (31) 1-32; 83-4 ((2)) (33) 1-15 and A; 83-4 ((2)) (34) 1-30 and 83-4 ((2)) (41) 3-11, 14-19. (OUT OF TURN HEARING GRANTED)

Mr. Kelley disclosed that he has been a member of Belle Haven Country Club for approximately 20 plus years, the Club is not a stock club, and he has no ownership interest. He added that in prior occasions he has been advised by the County Attorney's office that he could participate; therefore, he would participate in the public hearing.

Mr. Ribble made a similar disclosure and pointed out that in the past he abstained from participating as he was an officer at the Club, but since he no longer holds those positions he would take part 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. The Club's General Manager, Ed Shonessey, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit amendment to allow construction of two pre-fabricated platform tennis courts 360 feet from Fort Hunt Road. The courts will rest on pressure treated wood decks supported by concrete piers and will be no higher in elevation than the existing courts. Staff concluded that the application would be in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions for this use and recommended approval subject to the Proposed Development Conditions contained in the staff report. Ms. Langdon noted that the Conditions incorporated and superseded the previous Development Conditions. She added that Condition Number 11 had required the construction of a deceleration/acceleration lane and the applicant has met that requirement.

Mr. Shonessey agreed with staff's comments and said the tennis courts are located in a low lying area which is not visible from Fort Hunt Road and the courts will be used only for recreational purposes by the members. He agreed with the development conditions.

Mr. Hammack asked if there would be any increase in the Club's members and the speaker replied the membership would not increase.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 82-V-093-4 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with the deletion of Condition Number 11 referencing the deceleration lane, which staff indicated had been addressed. He also revised the wording in Condition Number 9 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-093-4 by BELLE HAVEN COUNTRY CLUB, INCORPORATED, under Section 3-303 of the Zoning Ordinance to amend SP 82-V-093 for a country club to permit construction of two platform tennis courts and site modifications, on property located at 6023 Fort Hunt Road, Tax Map Reference 83-4 ((1)) 5; 83-4 ((2)) (5) 1-32 and B; 83-4 ((2)) (6) 1-29; 83-4 ((2)) (13) 1-30; 83-4 ((2)) (14) 1-32; 83-4 ((2)) (21) 1-5; 83-4 ((2)) (22) 1-19; 83-4 ((2)) (23) 1-30; 83-4 ((2)) (30) 1-4 and 11 30; 83-4 ((2)) (31) 1-32; 83-4 ((2)) (33) 1-15 and A; 83-4 ((2)) (34) 1-30 and 83-4 ((2)) (41) 3-11, 14-19, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 13, 1997; 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 156.70 acres.
4. The tennis courts will not be visible from Fort Hunt Road.
5. There will no increase in membership of the club.
6. The tennis courts will only provide an option for added recreational use for the existing members.

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. 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6023 Fort Hunt Road and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by R. C. Fields, dated December, 1996, revised February 21, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The hours of operation shall be limited to 8:00 a.m. to 11:00 p.m., Tuesday through Sunday.\*
6. There shall be 201 paved and striped parking spaces. In addition, the existing overflow parking area shall be retained. All parking shall be confined to the site.\*

Page 577, May 13, 1997, (Tape 1), BELLE HAVEN COUNTRY CLUB, INCORPORATED,  
SPA 82-V-093-4, continued from Page 576

7. All lighting and noise shall be confined to the site.\*
8. The total family membership shall not exceed 540 family members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.\*
9. Transitional Screening 1 shall be provided along Fort Hunt Road for 500 feet on either side of the entrance except where waived.\*
10. The barrier requirement shall be fulfilled by the six (6) foot chain link fence that presently exists on the property.\*
11. No fuel storage facilities shall be located within the floodplain.\*

These development conditions incorporate and supersede all previous development conditions. The previous conditions are marked with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless 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. McPherson 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 May 21, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 577, May 13, 1997, (Tape 1), Scheduled case of:

9:00 A.M. GARY M. & JURA G. ZICKAFOOSE, VC 97-L-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line. Located at 5830 Bethel Rd. on approx. 19,015 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((8)) 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. Gary M. Zickafoose, 5830 Bethel Road, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented made staff's presentation as outlined in the staff report. The applicant requested a variance of 9.0 feet in order to construct a two-story detached garage and work shop 6.0 feet from the side lot line.

Mr. Zickafoose said he proposed constructing a two-car garage with a hobby studio above on the rear of the lot. He said the lot is exceptionally narrow as it is only 90 feet wide with a uphill slope.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant VC 97-L-028 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

Mr. Hammack said the garage was rather large and it appeared from the photographs that the garage could be moved over to require a lesser variance. For those reasons, he said he could not support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-L-028 by GARY M. AND JURA G. ZICKAFOOSE, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 feet from side lot line, on property located at 5830 Bethel Road, Tax Map Reference 82-4((8))15, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 19,015 square feet.
4. The zoning section map clearly shows the exceptional narrowness and unusual topography of the lot, especially how it relates to other lots in the area.
5. The granting should incorporate the comments contained in the staff report and the testimony presented the applicant.
6. The applicant has met the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

Page 579, May 13, 1997, (Tape 1), GARY M. & JURA G. ZICKAFOOSE, VC 97-L-028, continued from Page 578

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of accessory structure (2-story detached garage and workshop) shown on the plat prepared by Ned A. Marshall, Land Surveyor, dated May 24, 1995, revised by Gary M. Zickafoose, Architect, dated February 21, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 with Mr. Hammack voting nay. 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 May 21, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 578, May 13, 1997, (Tape 1), Scheduled case of:

9:00 A.M. LOUISE KITTI SMITH, VC 97-P-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line. Located at 2805 Marshall St. on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 10.

Susan Langdon, Staff Coordinator, said the notices for the case were not in order and although staff had attempted to notify the applicant of the problem they were unable to do so.

The applicant, Ms. Smith, came forward and said she had mailed the certified letters approximately a month ago and she was unaware of the problem until she arrived at the Board Room.

Mr. Hammack suggested deferring the application for one week to allow the applicant an opportunity to submit the notices to the Clerk. Chairman DiGiulian asked that the applicant submit the information to the Clerk as soon as possible so the notices could be verified. He then polled the audience to determine if there was anyone present who wished to speak to the deferral.

Hearing no reply, Mr. Hammack made a motion to defer the public hearing to May 20, 1997, at 8:00 p.m. Mr. McPherson seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining.

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9:00 A.M. DEBE MOSKOWITZ, SP 97-D-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.3 ft. from side lot line. Located at 1001 Turkey Run Rd. on approx. 36,140 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((2)) 4. (Concurrent with VC 97-D-024).

9:00 A.M. DEBE MOSKOWITZ, VC 97-D-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side lot line. Located at 1001 Turkey Run Rd. on approx. 36,140 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((2)) 4. (Concurrent with SP 97-D-008).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's husband, Jay Moskowitz, 1001 Turkey Run Road, McLean, Virginia, replied that it was. He pointed out that the affidavit was revised to show him as a co-applicant.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit to allow reduction to a minimum yard requirement based on an error in building location to permit a 9.5 foot high accessory storage structure to remain 10.3 feet from a side lot line. A minimum side yard of 20 feet is required; therefore a modification of 9.7 feet was requested. The applicant also requested a variance of 12.0 feet from a side lot line in order to construct an 18.0 foot high detached garage 8.0 feet from a side yard. Ms. Langdon said copies of the revised affidavit was submitted to the Board just prior to the public hearing.

Mr. Moskowitz said they were not aware that the previous owner had constructed the shed in error and only learned of the error when they filed the variance application. He said the shed was built with materials that match the dwelling and is surrounded by large trees. With respect to the variance, Mr. Moskowitz said they would like to construct a garage at a 90 degree area and construct a turn around area so they will not have to back out on to Turkey Run Road. He explained that the garage would back up to the neighbor's septic field and the proposed location is the only feasible location due to the topographic constraints on the lot with the least impact on the neighbors.

Mr. Ribble asked if there was any way to construct the garage without a variance. Mr. Moskowitz said they have looked at other options, but this was the most appropriate.

Mr. Ribble made a motion to grant SP 97-D-008 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 97-D-008 by DEBE MOSKOWITZ, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.3 feet from side lot line, on property located at 1001 Turkey Run Road, Tax Map Reference 22-3((2))4, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 13, 1997; and

WHEREAS, the Board has made the following findings of fact:



Page 581, May 13, 1997, (Tape 1), DEBE MOSKOWITZ, SP 97-D-008 and VC 97-D-024, continued from Page 580

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner, and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of accessory storage structure shown on the plat prepared by Andrew P. Dunn, Land Surveyor, dated January 24, 1997, and revised through February 17, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 21, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble made a motion to grant VC 97-D-024 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-D-024 by DEBE MOSKOWITZ, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 feet from side lot line, on property located at 1001 Turkey Run Road, Tax Map Reference 22-3((2))4, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 13, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 36,140 square feet.
4. The applicant has met the nine required standards for the granting of a variance; in particular, the topographical conditions and extraordinary situation on the subject 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.

Page 583 May 13, 1997, (Tape 1), DEBE MOSKOWITZ, SP 97-D-008 and VC 97-D-024, continued from Page 582

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the accessory structure (detached garage) shown on the plat prepared by Andrew P. Dunn, dated January 24, 1997, revised through February 17, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The detached garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 21, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 583, May 13, 1997, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE BOGDANOVIC, VC 97-D-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard. Located at 721 Forest Ridge Dr. on approx. 40,070 sq. ft. of land zoned R-1. Dranesville District. Tax Map 7-4 ((7)) 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. George Bogdanovic, 721 Forest Ridge Drive, Great Falls, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance in order to construct a 6 foot high fence in a front yard of a corner lot 19.2 feet from the front lot line.

The applicant's wife, Mahe Bogdanovic, spoke on behalf of the application and said they had been taken to court twice on complaints about their German Shepherd dog. She said the court had stipulated certain guidelines that they have to follow in order to keep their dog and to protect the neighbors from the dog. Ms. Bogdanovic said they began construction on a fence based on their attorney's advice and were unaware of the front yard restrictions. She explained that to construct the fence by right would cut their rear yard in half and it would be located over the septic field. Ms. Bogdanovic submitted photographs of the proposed fence to the BZA and called the Board's attention to a petition signed by the neighbors in support of the request.

Chairman DiGiulian said the Board was in receipt of approximately nine letters and one petition with approximately twelve signatures in opposition to the request.

Mrs. Bogdanovic said they have lived in the house for 7 ½ years and they have had nothing but complaints about their dog. She said if the fence is built within the setback requirements, the dog will be confined to only a small area in the yard.

A discussion took place between Mr. McPherson and the speaker regarding the current accommodations for the dog. Mrs. Bogdanovic said the dog stays in a 4x6 foot run 12 feet high in the corner of the lot. She said

the only other exercise the dog receives is when they walk her on a leash and during those walks the dog must wear a muzzle.

Chairman DiGiulian called for speakers, either in support or in opposition, and the following came forward to speak in opposition.

Steve Pellegrino, 10204 Carol Street, Great Falls, Virginia, believed the fence would be located to close to the street if the variance was granted and it would not be adequate protection for small children. He pointed out that a court of law has declared the applicant's dog dangerous and has stipulated that the dog must be kept in a five sided enclosure. Mr. Pellegrino used an exhibit to depict where the fence could be built by right.

Mr. Kelley asked staff if they agreed with the speaker's depiction of where the fence could be built by right and Ms. Schilling replied in the affirmative. He pointed out that what the applicant was proposing is an attractive fence, but could construct a stockade fence if they chose to do so.

Virginia Roman, 10201 Carol Street, Great Falls, Virginia, said there are several corner lots in the neighborhood and she had been bitten by the dog. She said the applicant was ordered by the court to confine the animal to a five sided enclosure, they were not ordered to construct a 6 foot high fence. Ms. Roman said she is an adjacent property owner and pointed out that the fence would be very visible from her property if the variance was granted and believed it would adversely impact her property value and would be a convenience for the applicant.

Carol Browning, 10202 Carol Street, Great Falls, Virginia, said the neighborhood is a very natural setting with large, beautifully landscaped properties and submitted photographs of the neighborhood to the BZA. She believed the fence would have a negative impact on the neighborhood.

Priscilla Pellegrino, 10204 Carol Street, Great Falls, Virginia, said they have taken the applicants to court three times since 1993. She said providing a 6 foot high fence on a corner lot to confine a dangerous animal is not an unusual situation, provided the fence is located within the lot lines as permitted by the Zoning Ordinance. Ms. Pellegrino said she believed this would set an undesirable precedent in the neighborhood and that she did not believe the applicant had shown a hardship.

In rebuttal, Mr. Bogdanovic said they had gone to a great deal of expense to design a presentable fence that would satisfy the neighbors. Mrs. Bogdanovic stated that to construct the fence in the location suggested by the neighbors would be directly across the septic field. She said she has tried to cooperate with the neighbors and agreed that her dog is dangerous but only when another dog enters their property.

Mr. McPherson asked the applicant if she had obtained the certificate from Animal Control as stipulated in the court order. Mrs. Bogdanovic said they did have documentation and even when the dog is loose in the fenced yard, the dog must have on a muzzle. Mr. McPherson said it appears from the court order that the dog must be confined to a five sided enclosed structure at all times. Mrs. Bogdanovic said the Animal Warden had suggested that they construct the fence. Mr. McPherson said a fence is not a part of the decree.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to deny VC 97-D-026 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-026 by GEORGE BOGDANOVIC, under Section 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard, on property located at 721 Forest Ridge Drive, Tax Map Reference 7-4((7))6, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 585, May 13, 1997, (Tape 1), GEORGE BOGDANOVIC, VC 97-D-026, continued from Page.

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 40,070 square feet.
4. The application did not meet the required standards for the granting of a variance.
5. The style of the fence is very nice, but the applicant failed to demonstrate a hardship.
6. The applicant can erect a fence by right in order to enclose the yard and confine the dog.

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 21, 1997.

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Page 586, May 13, 1997, (Tape 1), Scheduled case of:

- 9:00 A.M. LINCOLNIA PRIVATE DAY SCHOOL, INC., SPA 74-M-042 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-42-74 for a nursery school to permit a child care center with less than 100 students daily, change in development conditions and site modifications. Located at 6396 Lincolnia Rd. and 6365 Hillcrest Pl. on approx. 33,825 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 3, 4 and 19. (Concurrent with VC 97-M-037) (DEF. FROM 5/6/97)
- 9:00 A.M. LINCOLNIA PRIVATE DAY SCHOOL, INC., VC 97-M-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6396 Lincolnia Rd. And 6365 Hillcrest Pl. on approx. 33,825 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 3, 4 and 19. (Concurrent with SPA 74-M-042) (DEF. FROM 5/6/97)

Chairman DiGiulian noted for the record that the Board had received a letter from Samuel Watson requesting that the application be deferred to a later date.

The applicant's attorney, Lynne J. Strobel, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said she had not seen the letter and would like an opportunity to confer with her client. The Chairman provided Ms. Strobel with a copy of the letter.

Mr. Dively asked the speaker if the applicant had reviewed the Development Conditions dated May 13th. Ms. Strobel said she had reviewed the revisions and disagreed with two of the Conditions.

After reviewing the letter from Mr. Watson, Ms. Strobel said since the public hearing was closed she did not see any benefit in an additional deferral. She said although she would prefer to proceed she would not object to a one week deferral.

Mr. McPherson said this case was deferred to this date for decision only to allow staff an opportunity to respond to issues raised by the Board. He saw no reason for another deferral. The other members agreed.

Julie Schilling, Staff Coordinator, outlined the revisions to the Development Conditions for both the special permit and variance application. She called the Board's attention to Conditions, 5, 6, and 7. Ms. Schilling said the applicant and staff did not agree on the maximum daily enrollment and staff had recommended that the number of children be reduced from 90 to 78 by attrition provided that the reduction occurs no later than January 1, 1998. Staff had no objections to the applicant holding three weekend activities per year as stipulated in Condition 6 provided that all parking occur on site, be held between the hours of 9:00 a.m. and 5:00 p.m., and be limited to no more than four hours in duration. With respect to Condition 7, Ms. Schilling said there is still disagreement regarding transitional screening.

Ms. Schilling said additional wording has been added to Condition 2 of the variance application in response to the applicant's request.

Mr. McPherson said it appeared that staff had adopted the wording requested by the applicant to Condition 10. Ms. Schilling replied that was correct.

Ms. Strobel asked that Condition 5 be revised to reflect the maximum daily enrollment as "90" with the deletion of the last sentence. She said if Condition 7 is implemented as suggested by staff, it will have a further impact on the day care center since the applicant is already losing a substantial amount of play ground with the setback from Hillcrest Road. The applicant was willing to relocate the fence adjacent to Lot 20 as shown on the plat which would be to the east side of the existing sanitary sewer and they would provide plantings in that area. Ms. Strobel said if the applicant were to relocate the fence as suggested by staff it would impact the existing sidewalk that is adjacent to the building, would possibly impact daily and emergency access, would also impact the asphalt driveway, and would eliminate some areas where there are currently mulched flower beds. The applicant suggested deleting the reference to Lot 5 in line eight, and delete the reference to, "... 15 feet from the lot line to adjacent Lot 5" and change the word west to "east side ...". Ms. Strobel called the Board's attention to the photographs and the letters in support of the request that she had submitted at the beginning of the discussion.

Mr. McPherson discussed the revisions to the conditions with the speaker for clarification prior to making his motion.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant SPA 74-M-042 for the reasons noted in the Resolution subject to the Revised Development conditions dated May 13, 1997, with revisions to Conditions 5 and 7 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 74-M-042 by LINCOLNIA PRIVATE DAY SCHOOL, INC., under Section 3-303 of the Zoning Ordinance to amend S-42-74 for a nursery school to permit a child care center with less than 100 students daily, change in development conditions and site modification, on property located at 6396 Lincolnia Road and 6365 Hillcrest Place, Tax Map Reference 72-1((7))3, 4, and 19, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1997; 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 33,825 square feet.
4. This is a situation where the use has increased over a period of time and there was testimony that the applicant came to the County in the '80s to try to bring the site into conformance but was dissuaded from doing so.
5. The property has been used for this purpose for some time and, while it is appropriate for the site to be brought into compliance, the County must be realistic about the continuation of this business and keep in mind the impact on all the other people who utilize this day care facility.
6. The comments contained in the staff report and the applicant's testimony should be incorporated into the approval.
7. This is an appropriate move to bring this day care facility into conformity with the requirements of the special permit in general and they have done a good job in meeting those requirements based on where they were when they started back in the early '70s.

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 Sects. 8-301 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6396 Lincolnia Road and 6365 Hillcrest Place, (33,825 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 GJB Engineering, Inc., dated October 1996, as revised through March 19, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions, and shall be submitted to the Department of Environmental Management within 120 days of the final approval date. These development conditions incorporate and supersede all previous development conditions.
5. The maximum daily enrollment shall be 90 children, ages two to 12 years.
6. The hours of operation shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday. Open house, parent programs and similar functions shall be limited to weeknights, and shall not extend beyond 9:00 p.m. There shall be no more than three (3) weekend activities per year. Activities shall be limited to Saturdays to be conducted between the hours of 9:00 a.m. and 5:00 p.m., and shall be limited to no more than 4 hours in duration. All parking for the three (3) weekend activities shall occur on-site.
7. Transitional Screening Type I shall be modified along the north (Hillcrest Place), east and south (Lincolnia Road) property boundaries in favor of that shown on the Special Permit Plat, with the exception that additional landscaping shall be provided along the eastern property boundary to provide as much transitional screening as possible, as determined by the Urban Forestry Branch of DEM. The number of plantings may be reduced in the vicinity of the sanitary sewer easement, provided that the maximum amount possible is provided as determined by the Urban Forestry Branch, DEM in order to screen the use from the view of lot 20. The barrier requirement shall be modified along the north, south and east property boundaries as shown on the special permit plat, with the exception that a six foot high solid wood fence be provided: 1) along the western property boundary; and, 2) 4 feet from the lot line adjacent to lot 20, (so as to be on the east side of the existing sewer easement). All fencing surrounding the perimeter of the play ground shall be solid wood with a height of 6 feet, except that the fencing parallel to Hillcrest Place shall be a height of 4 feet, and the fencing adjacent to the parking lot may remain as a 4 foot high chain link fence. All fencing and landscaping shall be maintained in good condition, with replacement of dead or dying plants with like quality, quantity and/or size within 30 calendar days, weather permitting.
8. The trash dumpster shown on the plat shall be shielded from view from Hillcrest Place and adjacent residences by a six foot high solid wood fence. Trash pick-up or any other noise generating activity shall comply with the Fairfax County Noise Ordinance.
9. A total of 19 parking spaces shall be provided as shown on the special permit plat. Four of these parking spaces shall be reserved along the southern end of the parking lot for pick-up and drop-off of children only. The geometrics of the parking areas shall be approved by DEM. All parking for the use shall be on-site.
10. A sidewalk shall be provided along the frontage of the property adjacent to Hillcrest Place in accordance with the Public Facilities Manual as determined by DEM, unless waived or modified by DEM.
11. Irrespective of the signage shown on the special permit plat, all signage shall comply with the provisions of Article 12, Signs, of the Zoning Ordinance.



- 12. Outside lighting shall focus directly onto the subject property and shall be shielded to prevent the light from projecting beyond the facility. There shall be no lights on the parking lot.
- 13. No outdoor or maintenance activities shall take place on the application property on Sunday except for emergency maintenance. As the use of the property includes the presence of children on weekdays, construction or maintenance may be required on Saturday; however, no such activity shall take place prior to 9:00 a.m. or after 5:00 p.m.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, nine (9) months after the date of approval unless the use has been established 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. Dively seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining. 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 May 21, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. McPherson made a motion to grant VC 97-M-037 for the reasons reflected in the Resolution subject to the Development Conditions contained in the staff report dated May 13, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-M-037 by LINCOLNIA PRIVATE DAY SCHOOL, INC., under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 35,000 square feet, on property located at 6396 Lincolnia Road and 6365 Hillcrest Place, Tax Map Reference 72-1((7))3, 4, and 19, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1997; 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 33,825 square feet.
- 4. This is an appropriate variance and the applicant has met the necessary standards necessary for the passage of a variance.
- 5. The granting should incorporate the comments contained in the staff report and the applicant's testimony.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of accessory structures (covered picnic pavilion and play equipment) shown on the plat prepared by GJB Engineering, Inc., dated October, 1996, as revised through March 19, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit, as determined by the Department of Environmental Management, shall be obtained prior to issuance of a Non-Residential Use Permit for the property.
3. The swing set shown outside the fence surrounding the playground shall be relocated to within the fenced play area.
4. The sides of the covered picnic pavilion shall not be enclosed.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, nine (9) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 591, May 13, 1997, (Tape 1), LINCOLNIA PRIVATE DAY SCHOOL, INC., SPA 74-M-042 and VC 97-M-037, continued from Page 590

Mr. Dively seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining. 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 May 21, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 591, May 13, 1997, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE KYRIACOU, Appeal A 96-L-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a showroom which displays architectural stone and tile products is not permitted as part of an office use, nor is it a permitted use in the C-3 District, and therefore is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8306 Richmond Hwy. on approx. 1.17 ac. of land zoned C-3, C-8 and HC. Lee District. Tax Map 101-4 ((4)) 14B. (MOVED FROM 3/11/97)

Chairman DiGiulian said the Board issued an intent to defer this appeal to the morning of October 28, 1997, at its April 29th meeting. Mr. McPherson so moved. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

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Page 591, May 13, 1997, (Tape 1), Scheduled case of:

9:30 A.M. HUNTINGTON GATEWAY, Appeal A 1997-MV-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a car rental company may establish in the PDH-40 District as an office use provided that no vehicles are stored, maintained or delivered on the site. Located at 5954 Richmond Hwy. on approx. 8.79 ac. of land zoned PDH-40 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 76.

William Shoup, Deputy Zoning Administrator, outlined staff's position as contained in the staff report. He said at issue in the appeal is a proposal by the appellant to lease space in the commercial portion of a planned development for a car rental business. The proposal was to involve an office for the rental transactions, the pick up and drop off of vehicles on site, and the storage of the vehicles in the parking structure that serves the development. Mr. Shoup said by definition in the Zoning Ordinance, such a use is considered a vehicle sale, rental, and ancillary service establishment and is permitted in the P-District when shown on an approved development plan and by special exception in a number of commercial districts and also the I-3 to I-5 Districts. However, that type of use is not permitted under any circumstances in the PDH District; therefore, it was staff's determination that the use as proposed is not allowed on the subject property. Mr. Shoup said as noted in the staff report and consistent with staff's previous determinations the appellant was advised that the office component only could be allowed on the property provided there was no vehicle storage and no customer pick up and delivery on site.

Lynn M. Kiley, Regional Property Manager with Huntington Gateway, 5982 Richmond Highway, Alexandria, Virginia, referred to the letter she submitted to staff dated February 27, 1997, which explained that the appellant was only requesting to be allowed to park ten vehicles on the lot. She said the parking tabulation that she had conducted indicated there is more than adequate parking and the office could have thirty parking spaces if necessary. Ms. Kiley said there are 600 garage spaces and each apartment comes with a minimum of one parking space, which is included in the rent, and the proposed use would be primarily for the residents. She called the Board's attention to a petition in support of the request and said she would submit a copy of the parking tabulation. Ms. Kiley said the appellant has been actively involved in the revitalization of the Route 1 Corridor and this will be another positive use in the area.

Mr. Dively asked the speaker to clarify as to what exactly would be placed on the site. Ms. Kiley said Enterprise Car Rental presently has an administrative office directly across the street at the Howard Johnson's and they propose relocating the office to the subject property. She said all of the car servicing will

be performed at the Ford dealership located next door to the subject property. Ms. Kiley said there was a short down time between the time the vehicles came to the lot and the time they are rented. Mr. Dively asked the length of time involved. Ms. Kiley deferred to the Enterprise representative.

Patrick Fieraz, Regional Vice President for Enterprise, explained that the down time on the rental cars will be short because they will be dealing with car dealerships and body shops in the surrounding area; therefore, the storage of cars is minimum.

Mr. Dively asked how many cars would be parked on the subject property and for what length of time. Mr. Fieraz said between Monday and Friday there would be approximately 10 cars on the site and they would constantly change due to drop offs and pick ups. He said this use would be very minimal compared to other Enterprise sites.

Mr. Kelley asked how many cars were currently parked at the Howard Johnsons. The speaker replied approximately 85. Mr. Kelley asked staff if that was a permitted use. Mr. Shoup said he did not know what the circumstances were with respect to the use, but some hotels do have a car rental component as an accessory use.

A discussion took place between the Board and the speaker regarding where the cars would be parked when not rented. Mr. Fieraz said there would never be a large number of cars sitting on the site because if the cars are not rented then Enterprise would not be making a profit.

Mr. Pammel called Ms. Kiley back to the podium to clarify a statement made in her presentation regarding who the primary users would be. Ms. Kiley said there are 80 corporate apartments that are rolled over basically one month to three months and those apartments are utilized by the Department of Defense, FBI, Defense Intelligence Agency, etc., and those residents use rented cars. Mr. Pammel asked the speaker for a percentage breakdown as to the type of use. Ms. Kiley said 60 percent is repeat business which would probably be the residents.

Mr. Kelley asked where the cars would be cleaned. Mr. Fieraz said that is presently done at the Howard Johnsons and that could be continued. Mr. Kelley asked why they could not continue to store the cars at the Howard Johnsons. Mr. Fieraz said they could, but they would prefer to make it more convenient to the Huntington Gateway residents.

Gleena Martins, with Executive Furniture and Execustay, came forward to speak in support of the appeal. She said her company has worked with Huntington Gateway for a number of years and that she personally has been in corporate housing for 14 years in this immediate area and she believed this is a very unique property. Ms. Martins said the appellant has been involved in the revitalization of the area and has provided services that are unique to the community as well as to the people who are relocating to the area on a temporary or permanent basis.

Mr. Kelley asked if the car rentals were long term. Ms. Kiley said the rentals could be as long as six months.

A discussion took place between Mr. Dively and the speaker regarding Section 6-103 of the Zoning Ordinance which she believed the use would fall under. Ms. Kiley said the parking of the rental cars would be secondary to the primary use.

Mr. Dively asked staff if the term "automobile oriented use" was applicable. Mr. Shoup said that definition was primarily for drive-in facilities but it functions as a "catch all" for similar type of uses. He indicated that the term was not applicable to the subject situation and he added that the use as proposed by the appellant would come under the definition of a vehicle, sale, rental, and ancillary service establishment.

Ms. Kiley pointed out that under the use of an office it does stipulate that sales can be conducted in an office.

Mr. McPherson said staff has indicated that they do not believe the proposed use would qualify as an accessory use either and the use would not cater primarily to the residents of Huntington Gateway. He asked if Section 10-202. 1(c) would be the appropriate category if one were trying to category this use as an

Page ~~592~~ 593, May 13, 1997, (Tape 1), HUNTINGTON GATEWAY, Appeal A 1997-MV-005, continued from Page 592]

accessory use. Mr. Shoup said the definition for personal service establishment includes beauty salons, barbers, dry cleaners, and so forth, and that term would not be applicable to the use at issue. He said it was his understanding that although the use would service some of the residents in the development it will still operate like any other Enterprise Car Rental operation.

Mr. Pammel said the appellant had stated that 60 percent of the car rental business would be generated from Huntington Gateway which indicated that the use would be primary to that development. Mr. Shoup said staff had not heard that figure before now, but staff still had to look at how the use would be oriented.

Mr. Kelley said if two subsidiaries were formed, one dealing with the use the appellant described and the second dealing with accidents and other type uses, would the portion dealing with Huntington Gateway, in staff's opinion, be permitted as an accessory use. Mr. Shoup said if it could be demonstrated that the appellant was almost solely serving that community, then it could be considered an accessory use but in this instance that was not the case.

In rebuttal, Ms. Kiley said she believed the primary function would be to utilize the Huntington Gateway residents. She said, of course, Enterprise will not turn away business from other sources but it will primarily benefit the residents.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Pammel said this was an interesting issue and that historically the Zoning Ordinance and the language contained therein addressed uses that have accepted definitions and over a period of time that definition basically describes the activities that take place in any given place in the County. He added that changes occur in merchandising and the way services are performed and made available to the community. Mr. Pammel believed that clearly in this instance there is a situation where the determination or the definition that was used by the Zoning Administrator was not consistent with what would be taking place on the property. This would not be a vehicle sale, rental, and ancillary service establishment as defined by staff as taking place on the premises. There is an office which is for the business that takes place on the premises including activities off the site itself, but testimony by the appellant indicated that 60 percent of the business is derived by tenants on the premises of Huntington Gateway; therefore, they are serving and providing a service to that particular project and given that the appellant does meet the criteria in the Ordinance. Mr. Pammel made a motion to overrule the Zoning Administrator in A 1997-MV-005 based on the Board's interpretation that the use is an accessory use and provides a service predominantly to the residents of Huntington Gateway. He included the caveat that the number of cars allowed to be parked on site is 10, there is to be no servicing to the cars on site, and the Howard Johnsons site is to continue as the site for the major activity.

Mr. McPherson asked the maker to modify his motion to reflect that any servicing be off site to alleviate any confusion. Mr. Pammel accepted the modification. Mr. McPherson seconded the motion with the requested modification.

Mr. Kelley said he would also support the motion based solely on the 60 percent testimony and agreed with Mr. Pammel's comments. Mr. Kelley added that he certainly hoped that the remarks referencing the 60 percent was not just an "off the cuff" remark and hopefully the appellant has documentation to back up that comment. He noted for the record that the appellant was nodding affirmatively from the audience and asked that this affirmation be made a part of the record.

Mr. Dively said he would support the motion although he believed it was a close case and it seemed like the use is reasonable, he did not want it to appear that the Board of Zoning Appeals was substituting their judgment for that of the Board of Supervisors or for that of the draftsman of the Ordinance. He believed it would be best if the use fit under one of the commercial uses and the appellant had to understand if the use was going under the accessory use the 60 percent had to be maintained since that is what the Board relied upon in making its decision.

The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote. The decision became final on May 21, 1997.

Page 594, May 13, 1997, (Tape 1), After Agenda Item:

Request for Additional Time  
Joan J. and Tom V. III Richardson, SPA 91-Y-035-1

Susan Langdon, Staff Coordinator, called the Board's attention to a letter received from the applicant dated May 12, 1997, and the applicants are present should the Board have any questions.

Mr. Pammel asked if the applicants would like to add anything to the comments contained in their letter prior to his making a motion.

The applicant, Tom Richardson, came forward and said they had no idea of how involved and how expensive the process would be in obtaining a special permit. Mr. Richardson said the Tri-County Connector was added to the Comprehensive Plan in 1994 and has caused numerous problems since a portion of it runs in the front of their house down to Bull Run Post Office Road. He said when the Connector was added they had to make a decision as to whether they wanted to continue their business and made the decision to do so last September and were informed they would be required to dedicate land to the Connector. Mr. Richardson said the Connector would take approximately two acres of their 40 acre lot and they have delayed processing their application in order to take advantage of their rights through waiver processes and taking the opportunity to raise objections to the dedication. He said they were now willing to dedicate the land in order to complete the special permit application process. Mr. Richardson introduced Kevin Murray, engineer with Tri-Tek Engineering, who has been working on the site plan.

Mr. Pammel asked how much of a hardship it would be for the applicants to dedicate the two acres. Mr. Richardson said translated into money it is a considerable amount since over the next ten years the land will grow in value.

Mr. Murray, engineer with Tri-Tek Engineering, 690 Center Street, Herndon, Virginia, said they had been working with the applicants over the past 2 ½ to 3 years on this project. In June 1996, a site plan was submitted which they believed addressed the requirements of the special permit and based on staff's comments they began the process of preparing waiver requests. Mr. Murray said for the most part those waivers have been granted with the exception of two issues, one dealing with right-of-way dedication and the other dealing with the new Federal regulations regarding wetlands. These new wetland regulations require that the design of the pond be modified to alleviate the necessity of going through a Federal procedure for an individual permit to construct the pond. Mr. Murray said the size of the arena was also questioned, but he believes they are close to a resolution on the matter and only minor issues remain to bring the plan to the final stage.

Mr. Pammel asked if 12 months would be sufficient. Mr. Murray said it was more than adequate since Mr. Richardson has now relented and will dedicate the land.

Mr. Pammel said he did not believe it was fair to now require the applicant to dedicate the land because the Plan was changed after the special permit was granted.

Mr. Murray said the dedication is along the frontage but the dedication will in essence reduce the pasture area by approximately one acre, which is significant.

Mr. Pammel made a motion to grant the applicant an additional 18 months and noted that concerning the Tri-County dedication, the County was making this request after the fact and should purchase the land from the applicant rather than require dedication. 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 599, May 13, 1997, (Tape 1), After Agenda Item:

Approval of April 29, 1997 Resolutions

Mr. Ribble made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 595, May 13, 1997, (Tape 1), After Agenda Item:

Out of Turn Hearing Request from  
Temple Baptist Church, SPA 85-D-009-4

Mr. Kelley said he was disturbed about the comments contained in the letter from the applicant regarding the length of time involved in the acceptance of the application. He asked staff to comment.

Susan Langdon, Senior Staff Coordinator, said she was not familiar with the application but it was her understanding that the delay was on the part of the County Attorney's regarding the accuracy of the affidavit. She said this was not a minor application and listed all that was involved in the request.

Mr. Dively made a motion to deny the request. 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 595, May 13, 1997, (Tape 1), After Agenda Item:

Approval of May 6, 1997 Resolutions

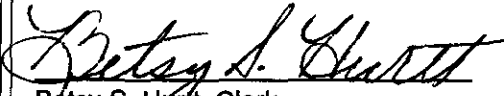
Mr. Ribble made a motion to approve the Resolutions as submitted. Mr. McPherson seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining. Mr. Hammack was not present for the vote.

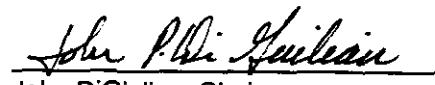
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As there was no other business to come before the Board, the meeting was adjourned at 11:11 a.m.

Minutes by: Betsy S. Hurtt

Approved on: July 29, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 20, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:01 p.m. and asked if there were any Board matters. Mr. Ribble said he thought the Deputy Clerk had resigned but noticed that she was present at the Board meeting. Jane Kelsey, Chief, Special Permit and Variance Branch, indicated that Regina Thorn was helping staff by covering the night meetings until they were able to hire someone to fill her vacant position. Chairman DiGiulian called for the first scheduled case.

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Page 597, May 20, 1997, (Tape 1), Scheduled case of:

8:00 P.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal 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.)

William Shoup, Deputy Zoning Administrator, said staff had incorrectly posted the property for the subject appeal. The property was posted for May 22, 1997, as opposed to May 20, 1997, and as a result, the appeal could not go forward. Mr. Shoup apologized for the inconvenience and recommended a deferral date to the morning of July 22, 1997.

There were no citizens present to speak to the deferral.

Mr. Pammel said he had a problem with the application being heard on a day meeting. He said he would prefer that it be scheduled for an evening hearing.

Mr. Shoup said there was a controversial application scheduled a week prior to July 22, 1997, which would be the night meeting, and that the applicant's agent had a conflict with scheduling in August.

Mr. Dively moved to defer Appeal A 96-P-046 to the morning of July 22, 1997. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 597, May 20, 1997, (Tape 1), Scheduled case of:

8:00 P.M. LOUISE KITTI SMITH, VC 97-P-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line. Located at 2805 Marshall St. on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 10. (DEF. FROM 5/13/97 TO ALLOW THE APPLICANT TO SUBMIT NOTICES TO THE CLERK FOR VERIFICATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Louise Kitty Smith, 2805 Marshall Street, replied that it was.

Chairman DiGiulian noted that the subject application had been deferred from the May 13, 1997, hearing because the notices needed to be verified.

Jane Kelsey, Chief, Special Permit and Variance Branch, said it was her understanding that the notices had been submitted and had been verified by the Clerk to be correct.

Ms. Kelsey, made staff's presentation as contained in the staff report prepared by Susan Langdon. The applicant requested a variance of 2.7 feet to the minimum side yard requirement. Ms. Kelsey noted that the addition would not be closer than the existing house.

Ms. Smith presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 97-P-029 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 6, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-P-029 by LOUISE KITTI SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line, on property located at 2805 Marshall Street, Tax Map Reference 50-2((4))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 May 20, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 6,250 square feet.
4. The addition will not encroach any closer to the lot line than the existing structure.
5. The lots are narrow compared to the requirements under the existing Ordinance.
6. The proposed addition will not have any effect on the appearance or harmony 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.

Page 599, May 20, 1997, (Tape 1), LOUISE KITTI SMITH, VC 97-P-029, continued from Page 588)

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated February 19, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 4, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 599, May 20, 1997, (Tape 1), Scheduled case of:

8:00 P.M. CALVARY BAPTIST CHURCH, SP 97-D-010 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP #25598 for camp and recreation grounds to permit construction of caretaker's quarters and site modifications. Located at 101 Springvale Rd. on approx. 43.62 ac. of land zoned R-E. Dranesville District. Tax Map 3-2 ((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. Glen Burgfalk, 3568 Brandywine Street, Washington, D.C., replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Heidi Powell. The applicant requested a special permit to allow construction of a caretaker's quarters and site modifications. Ms. Kelsey said that from her discussions with the applicant before the meeting she found that the applicant was not aware that their statement of justification would become conditions of the special permit approval. Consequently, the applicant had not projected the number of people attending the camp functions in the future and wanted to amend the application to reflect another number. The applicant was also concerned that they might have to pave the parking areas and driveways. Ms. Kelsey stated that staff had not had an opportunity to review the concerns because staff was not aware that there was a problem.

Mr. Burgfalk discussed the applicant's concerns with some of the development conditions. He said there was a misunderstanding on the part of the applicant in not realizing that the description of the present program was not what was being called for in establishing a maximum number of people. He said the numbers that

were put into the application did not reflect the top use in the past years but just the current program. Mr. Burgfalk said the lodge was constructed to service 100 people even though there were 50 sleeping spaces in the lodge and another 35 in the tent platform. The applicant requested use of the camp facilities to the capacity they had used it previously.

The Board members and the applicant discussed the maximum enrollment requested.

Mr. Kelley asked staff about Condition Number 11 relating to sidewalks. Ms. Kelsey replied the condition was recommended by the Office of Transportation to provide access from the caretaker's house to the lodge building.

Chairman DiGiulian called for speakers.

Richard Peters, Great Falls Civic Association, came forward to speak in support of the application. He said the application was a tremendously worthy endeavor and the association would like the project to continue.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SP 97-D-010 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 24, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-D-010 by CALVARY BAPTIST CHURCH, under Section 3-E03 of the Zoning Ordinance to amend SP #25598 for camp and recreation grounds to permit construction of caretaker's quarters and site modifications, on property located at 101 Springvale Road, Tax Map Reference 3-2((1))3, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 43.62 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 Sects. 8-603 and 8-605 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 101 Springvale Road (43.62 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 Hamid Moghavemi-Tehrani, Professional Engineer, dated July 29,

1995 and revised through December 1, 1996, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum total daily enrollment for the summer camp program shall be limited to 100 children and 25 staff members. The maximum number of participants in the weekend retreats shall be limited to 150 participants and 15 leaders on any given weekend.
6. There shall be two (2) parking spaces for the caretaker's quarters. All parking shall be on site as shown on the special permit plat.
7. The use of the caretaker's residence shall be for the caretaker and the caretaker's family only.
8. All tents shall be temporary and shall be located no closer than 100 feet to any lot line. No structure or camp site shall be located closer than 100 feet to any lot line.
9. The existing vegetation shall satisfy the Transitional Screening requirement along all lot lines. The barrier requirement shall be waived along all lot lines.
10. Any signs on the property shall be located in accordance with Article 12, Signs.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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. McPherson seconded the motion which carried 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 4, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 601, May 20, 1997, (Tape 1), Action Item:

Approval of February 18, and April 1, 1997 Minutes

Mr. Hammack moved to approve the Minutes of February 18, 1997, and April 1, 1997. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 602, May 20, 1997, (Tape 1), Action Item:

Approval of Revised Plat  
Dory and Jenny Saad, VC 96-D-115

Mr. McPherson moved to approve the revised plats for VC 96-D-115. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 602, May 20, 1997, (Tape 1), Action Item:

Approval of May 13, 1997 Resolutions

Mr. McPherson said there was a question on Condition Number 7 of the Lincolnia Day School's resolution. He asked if the applicant was aware of the correction. Ms. Kelsey replied that the applicant was aware of the change and was very concerned about it being corrected because even though the Board indicated that the fence could be moved on the other side closest to the lot line from the sanitary sewer easement, the condition still read that the fence had to be 15 feet from the property line, when in reality once it was moved, it would be 4.0 feet from the lot line. With that clarification, Mr. McPherson moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Jane Kelsey, Chief, Special Permit and Variance Branch, said that the cases scheduled for the May 27, 1997, public hearing had been moved to other dates at the request of the applicants and there would not be a public hearing held that day.

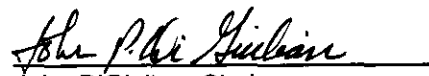
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As there was no other business to come before the Board, the meeting was adjourned at 8:31 p.m.

Minutes by: Regina Thorn

Approved on: September 9, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 3, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:04 a.m. As there were no Board Matters to bring before the Board, Chairman DiGiulian called for the first scheduled case.

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Page 603, June 3, 1997 (Tape 1 ), Action Item:

9:00 A.M. HAL & PHILIPPA HINDMAN, VC 97-S-033 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit construction of additions 18.6 ft. from rear lot line and 9.1 ft. from side lot line. Located at 6100 Fox Run on approx. 25,998 sq. t. of land zoned R-C and WS. Springfield District. Tax Map 67-3 ((12)) 16.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hal and Philippa Hindman, 6100 Fox Run, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presenting the staff report, stated that the applicants were requesting two variances; one for the construction of an addition onto their home which would require a side yard variance of 10.9 feet, and another for a rear yard variance of 6.4 feet to construct an enclosed deck.

Hal Hindman addressed the nine variance requirements by calling the Board's attention to his February 10, 1997 letter of justification which he had submitted to the zoning office. He noted the double septic easement that runs through the front of his property which necessitated that the requested additions be placed behind the house. Mr. Hindman submitted that the zoning change and septic fields made his lot atypical. He also pointed out that his homeowners architectural board approved his proposal.

Chairman DiGiulian called for speakers either in support or opposed and receiving no response, he closed the public hearing.

Mr. Hammack moved to grant VC 97-S-033 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-S-033 by HAL & PHILIPPA HINDMAN, under Section 18-401 of the Zoning Ordinance to permit construction of additions 18.6 feet from rear lot line and 9.1 feet from side lot line, on property located at 6100 Fox Run, Tax Map Reference 67-3((12))16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 25,998 square feet.

4. The house's location at the rear of the lot necessitates the variance.
5. There are two septic fields which additionally hinder where an addition can be 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the additions shown on the plat prepared by William H. Gordon and Associates, dated December 20, 1996 as revised by Stanley Heiser, dated March 5, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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.



Page 606, June 3, 1997 (Tape 1), HAL & PHILIPPA HINDMAN, VC 97-S-033, continued from Page 604

Mr. Pammel seconded the motion which carried by a unanimous 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 June 11, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 605, June 3, 1997 (Tape 1), Action Item:

9:00 A.M. JUAN & CINDY PAGNAN, VC 97-S-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of six ft. high fence in front yard of a corner lot. Located at 8301 Greenside Dr. on approx. 15,541 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3((13))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. Juan Pagnan, 8301 Greenside Drive, Fairfax Station, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought to construct a six-foot high fence in one front yard of a corner lot but the Zoning Ordinance states that a fence no higher than four feet is permitted in a front yard.

Juan Pagnan read his statement of justification dated February 26, 1997 to warrant his variance request. He explained that his only son, John, was autistic, and required that their yard be fenced so as to provide a safe place for John to play. He then called the Board's attention to the information on autism which was submitted for the record. Mr. Pagnan pointed out that his lot is a corner lot which presents an extraordinary situation in that his yard actually has two front yards, although one was utilized as a side yard which he requested permission to fence.

Chairman DiGiulian called for speakers but received no response. He closed the public hearing.

Mr. Pammel moved to grant VC 97-S-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-S-034 by JUAN & CINDY PAGNAN, under Section 18-401 of the Zoning Ordinance to permit construction of six-foot high fence in the front yard of a corner lot, on property located at 8301 Greenside Drive, Tax Map Reference 97-3((13))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 15,541 square feet.

4. The fact that the lot is a corner lot results in it having two front yards.
5. The unusual narrow shape of the lot restricts the family's accommodating its use.
6. Granting the variance has no adverse affect on the neighbors.
7. The fence will be set back 13 feet from the right-of-way.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the 6.0 foot high fence shown on the plat prepared by Urban Engineering & Associates, Inc., dated June 24, 1993, revised February 18, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 607, June 3, 1997 (Tape 1), Action Item:

9:00 A.M. WILLIAM C. & LENORE R. BINZER, VC 97-V-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.0 ft. from side lot line and 38.0 ft. from front lot line. Located at 10753 Greene Dr. on approx. 22,441 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((2)) 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. William C. Binzer, also speaking in behalf of his wife, Lenore R. Binzer, residing at 10753 Greene Drive, Lorton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She explained that two variances were being requested, a six-foot variance for the construction of a two-car garage, and a twelve-foot variance for an addition of a front foyer and an extra room.

William C. Binzer stated that his family had increased in size which necessitated renovations to accommodate its members. He noted that his adjoining neighbors had no objection to his garage proposal. He responded to Mr. Ribble's questions concerning the topography of his property noting that the steep slope and floodplain restricted the placement of the garage.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Ribble moved to grant VC 97-V-035 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-V-035 by WILLIAM C. & LENORE R. BINZER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 14.0 feet from the side lot line and 38.0 feet from the front lot line, on property located at 10753 Greene Drive, Tax Map Reference 117-2((2))46, 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 3, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is 22,441 square feet.
4. The property is narrow with a flood plain running through the yard.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the additions shown on the plat prepared by Kenneth W. White, dated May 18, 1985, as revised through March 2, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 unanimous vote of 7-0.

Page 609, June 3, 1997 (Tape 1), WILLIAM C. & LENORE R. BINZER, continued from Page 608

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 609, June 3, 1997 (Tape 1), Action Item:

9:00 A.M. PATRICK J. & CYNTHIA C. MCBRIDE, VC 97-H-036, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.2 ft. from rear lot line and 0.0 ft. from side lot line. Located at 11035 Solaridge Dr. on approx. 5,049 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((12)) (1) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia C. McBride, also representing her husband, Patrick J., who was unable to be present, residing at 11035 Solaridge Drive, Reston, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicants sought to construct a deck onto their home which would require a 4.8-foot rear yard setback variance and a 2.2-foot side yard setback variance.

Cynthia McBride stated that the permitted extension was actually 1.15 feet which made their variance request 5 feet instead of 4.8. (See Ms. Langdon's closing staff comments) Mrs. McBride explained that the house has four sliding glass doors which open out to a two to nine foot drop where a deck was obviously designed. She submitted that this was a safety concern as they have a toddler. Mrs. McBride also noted the rear yard had a severe slope which greatly reduced the amount of yard suitable for her family's recreation. She pointed out that the house has no other access, except where the sliding glass doors are, from which a deck could be placed. Mrs. McBride cited that a deck would allow her family full use of their property and that they had the approval of the Reston Association Design Review Board. She responded to questions from Mr. McPherson regarding the house's layout.

Ms. Langdon did not have the information available to answer Mr. Kelley's question as to whether the record indicated if the deck had been an option. Discussion followed between the Board members and staff to determine the pertinence of this information and a suggestion to defer the decision on this application until staff could present the information was entertained.

There being no further questions from the Board, Chairman DiGiulian called for speakers.

Robert Swetnam, 1940 Barton Hill Road, Reston, Virginia, an adjoining neighbor, was opposed to the deck being placed, basically, on the zero lot line and he added that neither he nor his wife had been consulted about the McBride proposal.

There being no further speakers, no more questions or comments by the Board and Mrs. McBride waived rebuttal, Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 97-H-036 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

Mr. Hammack seconded the motion for purposes of discussion.

Discussion followed between the Board members and staff regarding whether there was a typographical error in the staff report concerning the permitted deck extension deck and whether the application had been advertised correctly. It was determined that there was no errors.

Ms. Langdon responded to questions from the BZA members concerning what had been approved on the original plans at the time of development. Mr. Kelley stated that he believed the setback information was

Page 610, June 3, 1997 (Tape 1), PATRICK J. & CYNTHIA C. MCBRIDE, VC 97-H-036, continued from Page 609

necessary for him to ascertain the requested variance. He submitted that, before the Board made its determination, that staff obtain the original plat's setbacks from the zoning records. Mr. Kelley then made a substitute motion to defer the decision on VC 97-H-036 for one week, to June 10, 1997, at 9:00 a.m., pending the BZA's review of the requested information.

Mr. Hammack seconded the substitute motion which carried by a vote of 6-1 with Mr. Dively opposed.

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Page 610, June 3, 1997 (Tape 1), Action Item:

9:00 A.M. MARC A. & ROSALYN BUSMAN, SP 97-S-009 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a home professional office. Located at 7012 Wolf Run Shoals Rd. on approx. 6.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-2 ((1)) 16 and 18.

Chairman DiGiulian called the applicants' representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, Esquire, McCandlish & Lillard, Fair Oaks Plaza, Fairfax, Virginia replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She briefly explained that the applicants' were requesting a special permit to allow a home professional law office consisting of three attorneys and two secretaries in an R-C and WS zoned area. It was staff's determination, she stated, that this type of special permit use was not consistent with the low density, residential character of the neighborhood submitting that office activities of this requested scale were more appropriate in areas zoned and planned for commercial uses. Ms. Schilling stated that staff recommended denial; however, if the BZA should intend to approve the special permit, that approval be subject to the Proposed Development Conditions in Appendix 1 of the Staff Report.

Steven Fox, Esquire, claimed that the Busman's request for a professional home office was appropriate for that rural area. He played a brief video which depicted the isolated home's ample screening and he pointed out how the well-buffered driveway turned off from a quiet, rural road. He informed the Board that the Busmans' practice was limited due to Mr. Busman's health which had prompted this special permit request, that the hours were reduced and the work force pared down, and that there would be only a few clients, no more than five per week, which should not have an adverse affect or impact on the neighbors, and that the business was largely conducted by facsimile and telephone with a high volume of paperwork utilizing computers. Mr. Fox submitted that an R-C zone, under Section 8-902 of the Zoning Ordinance, is eligible for consideration for special permit for a home professional office. Mr. Fox responded to the Board's questions concerning storage for files, the square footage of the office area, the number of employees, and he acknowledged that there were no other non-residential uses in the area.

Marc A. Busman stated that his practice consisted of mostly paperwork, that there were only a few clients who would be required to come to his home/office during the week, and that the law mandated that there be a highly trained professional on hand to supervise the staff when assisting in servicing their clients. Mr. Busman confirmed that they would be good neighbors, that the practice was quiet and low-key, that there would be no traffic concerns and that there would be no adverse environmental impact.

There being no speakers, Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to approve SP 97-S-009 which was seconded by Mr. Dively but **FAILED** by a vote of 3-4 with Messieurs Kelley, Pammel, Ribble, and Chairman DiGiulian voting nay. (A copy of the Verbatim transcript for this case is contained in the file.)

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**THE MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 97-S-009 by MARC A. & ROSALYN BUSMAN, under Section 3-C03 of the Zoning Ordinance to permit a home professional office, on property located at 7012 Wolf Run Shoals Road, Tax Map Reference 86-2((1))16 and 18, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 6.00 acres.
4. Although this application does not adhere to the letter, it does meet the standards as outlined in the Ordinance.
5. The property is well screened and an impact on the neighbors, if any, in granting this special permit, would be nominal.
6. The Ordinance outlines provisions for a home-professional office and, if requested, its merits and approval must be carefully considered.
7. The applicants have made considerable concessions which meet Special Permit demonstration of good faith.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7012 Wolf Run Shoals Road, 6.0 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat entitled "Grading Plan, Lots 1 and 3, of the Division of the Estate of Lemuel J. Davis" prepared by R.C. Fields, Jr. and Associates dated December 9, 1997, and on the floor plan entitled "Busman Residence, Schematic Foundation, Basement Floor Plan B", prepared by Robert E. Beach, dated October 11, 1996, as annotated and approved with this application; and as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum amount of square feet within the residence devoted to the home professional office use shall not exceed 1,700 square feet.
6. The maximum number of employees shall not exceed five (5), including the residents of the home.
7. The maximum number of clients permitted on the site shall not exceed 2 at any one time, or five (5) per week.
8. The hours of operation shall be limited 8:00 a.m. to 6:00 p.m., on Monday through Friday.
9. Six (6) parking spaces shall be provided as shown on the special permit plat; During the hours of operation of the home professional office, residents of the home shall park their personal vehicles within the garage for the residence.
10. There shall be no exterior alterations to the residence which give the appearance of an office establishment.
11. Landscaping shall be generally provided as shown on the special permit plat, as determined by the Urban Forestry Branch of the Department of Environmental Management, in order to screen the proposed parking lot from adjacent properties. Trees shall be a minimum height of 6 feet, and a planting tabulation indicating the size and type of plantings shown on the landscape plan shall be submitted to the Urban Forester for review and approval.
12. No signs shall be permitted.
13. This permit is granted for a period of five (5) years from the date of this 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. Dively seconded **the motion to grant which failed** by a vote of 3-4 with Messieurs Kelley, Pammel, Ribble, and Chairman DiGiulian voting nay. The motion to grant failed due to the lack of four (4) affirmative votes which are required to approve a special permit.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 613, June 3, 1997 (Tape 1 ), Action Item:

9:00 A.M. JOAN K. & HARRISON G. WEHNER, JR., VC 97-D-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lots 2 and 3 having a lot width of 1.0 ft. Located at 9601 Georgetown Pike on approx. 8.24 ac. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 72D.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harrison G. Wehner, Jr., 9601 Georgetown Pike, Great Falls, Virginia, speaking on behalf of his wife, Joan K., and himself, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained the site's size, existing dwellings, what the applicants proposed, and the sizes of the proposed subdivided lots. She noted that, in staff's judgment, the Wehners had not met the nine standards required for Variance, specifically 4, 5, and 6.

Harrison G. Wehner, addressing the Board, relayed his civic duty contributions to the community affirming that he was instrumental in the continued preservation of the beauty and rural character of the Great Falls area. He pointed out that he sought to retire on this property on which they resided and had raised his family. He brought the Board's attention to the numerous and considerable improvements to his land which he had undertaken over the years. Mr. Wehner submitted that property tax concerns had prompted him to consider a variance to allow the subdivision of his large parcel into three smaller lots, thereby relieving the financial burden, and allow them to comfortably live on their homestead as retirees. He justified his variance request by addressing each of the nine standards required for variance indicating with each the advantages of his proposed design regarding aesthetics, density, ingress and egress and compatibility. Mr. Wehner said his proposal conformed to the Comprehensive Plan and had the support of the Great Falls community.

Chairman DiGiulian called for speakers in support or in opposition.

Don McCoy, 9609 Georgetown Pike, Great Falls, Virginia, vigorously opposed the variance. He noted issues of special privilege, that the Wehners had no justification to their financial hardship argument, and that several of the property's numerous amenities actually made money. Mr. McCoy informed the Board that the Great Falls Citizens Association had opted to support the Wehner's present proposal, although they had rejected the same proposal three years ago, on the basis that this was more desirable than Mr. Wehner's threat to build a four-lot subdivision with a public, state maintained cul-de-sac and a possible deceleration lane on Georgetown Pike. Mr. McCoy professed that variance requests like the Wehners undermines and weakens the objectives of the Master Plan and he urged the Board to deny it. He then read the written statement of Ms. Dorothy DeFrancis, a Great Falls resident who was unable to attend the meeting and who was opposed to the Wehner's variance request, submitting that each variance approval detrimentally changes the character of Great Falls.

At Mr. Dively's request, Ms. Langdon explained the subdivision rights in an R-E district such as the Great Falls area.

In rebuttal, Mr. Wehner disputed Mr. McCoy's surmise that the Great Falls Citizens Association had rejected an earlier proposal of his maintaining that he had continually worked with the Association over the years to devise a plan that would be amenable to all while relieving his financial burdens. He also pointed out the total inaccuracy of Mr. McCoy's accusation that several of his property structures commanded an income, explaining that the rent received from two of the rental units did not cover the mortgage nor property taxes. Mr. Wehner said his proposed variance was a realistic and positive compromise to the current situation.

There being no further questions or comments from the Board, Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant the variance. Mr. McPherson seconded the motion. However, **the motion to grant FAILED BY A LACK OF FOUR VOTES** with Chairman DiGiulian, Mr. Hammack, Mr. Pammel, and Mr. Ribble opposed.

Page 614, June 3, 1997 (Tape 1 ), JOAN K. & HARRISON G. WEHNER, JR., VC 97-D-027, continued from Page 613)

Chairman DiGiulian commented that this is a land use issue and that financial concerns cannot enter into the Board's decision. He stated that, in this case, he found it difficult to apply the variance standards as the applicant can develop four lots by-right. He further stated that, although he was not ordinarily in favor of pipestem driveways, in his opinion for this parcel, it was a better way to develop with three lots.

Mr. Kelley stated that he would support the comments by Mr. Dively and commended the applicant for coming up with his solution.

Mr. Hammack said that he opposed the motion because the applicant has acknowledged that he can develop the property by-right and it is not the function of the BZA to "second guess" what would be environmentally superior and while he didn't disagree that it might be, it was a self created hardship and Mr. Wehner could develop by-right without a Variance. Mr. Hammack further stated that, in his opinion, the Board of Zoning Appeals, with this motion, was getting into the area of rezoning and that was not within its purview.

The Wehner's variance request, VC 97-D-027, was **DENIED**.

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Page 614, July 3, 1997 (Tape 1 ), Action Item:

9:00 A.M. GRAYFORD C. PAYNE, SP 97-M-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements **based on error** in building location to permit addition to remain 7.0 ft. from side lot line and accessory structure to remain 3.0 ft. from rear lot line. Located at 7105 Village Dr. on approx. 10,978 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 60-3 ((17)) 27. (MOVED FROM 5/13/97)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayford F. Payne, 4421 Duncan Drive, Annandale, Virginia, the son of the applicant and acting as his representative, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that, due to an error in the addition's location, a modification of three feet was needed for it to remain and to allow the shed to remain, a six-foot variance was being requested.

Grayford F. Payne, addressing the Board, explained that the "Florida room" addition was built when his father had purchased the property in 1981 and the Paynes had assumed everything had been as the Code required. He pointed out that, to replace the room's windows with only screens, in compliance with Code requirements, would relegate the room into deterioration because of exposure to inclement weather. After discussion with County staff, and with considerable effort, the shed was moved to the rear yard and placed atop cinder blocks but that added height and the yard's slight slope rendered the shed's roof slightly visible over the fence. Mr. Payne submitted that moving the shed closer to the house would place it far too close, a mere four feet, and that he had his neighbors support for the requested variance.

Chairman DiGiulian called for speakers either in support or in opposition but received no response. He therefore closed the public hearing.

Mr. Kelley moved to grant SP 97-M-007 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-M-007 by GRAYFORD C. PAYNE, under Section 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on an error in the building location to permit an addition to remain 7.0 feet from the side lot line and an accessory structure to remain 3.0 feet from the rear lot line, on property located at 7105 Village Drive, Tax Map Reference 60-3((17))27, 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 3, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development condition:

- 1. This Special Permit is approved for the location of the Florida room addition and accessory storage structure shown on the plat prepared by William E. Ramsey, dated February 27, 1996, and revised through October 14, 1996, submitted with this application and is not transferable to other land.

Page 616, July 3, 1997 (Tape 1), GRAYFORD C. PAYNE, SP 97-M-007, continued from Page 615

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. McPherson seconded the motion which carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 616, June 3, 1997 (Tape 1), Action Item:

9:00 A.M. CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP AND DOMINION SCHOOL, SPA 78-C-055-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 78-C-055 for a church and related facilities and private school of general education to permit changes in development conditions. Located at 10922 Vale Rd. on approx. 17.95 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((1)) 17 and 17A. (DEF. FROM 5/6/97)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Dawson, 10606 Oxford Court, Great Falls, Virginia, Trustee for the school and the agent for the applicant, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She explained that the applicant sought approval of a development condition change in order to seek re-approval of the school of general education without a term. She gave a brief history of the school noting that the original special permit had been approved with a term limit of five years. Ms. Langdon stated that the applicant was requesting no other changes or additions and that staff recommended approval, subject to the Proposed Development Conditions in Appendix 1 of the Staff Report.

Mr. Dawson explained that the school had been operating over the past five years under the original development conditions and that the school was requesting to continue its operations at its present site under the same terms and conditions.

There being no response to Chairman DiGiulian's call for speakers, he closed the public hearing.

Mr. Hammack moved to grant SPA 78-C-055-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 78-C-055-2 by CHURCH AT NORTHERN VIRGINIA - WHOLE WORD FELLOWSHIP AND DOMINION SCHOOL, under Section 3-E03 of the Zoning Ordinance to amend SP 78-C-055 for a church and related facilities and private school of general education to permit changes in development conditions, on property located at 10922 Vale Road, 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 3, 1997; and

Page 617, June 3, 1997 (Tape 1), CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP AND DOMINION SCHOOL, SPA 78-C-055-2, continued from Page 616

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 17.95 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10922 Vale Road, and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, dated September 5, 1991, revised through December 27, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. Hours of operation of the church shall be limited to the hours of normal church operation.\*
6. The maximum number of church seats shall be limited to 430.\*
7. There shall be no concurrent use of the existing facility by the church and the private school of general education. However, the church office may remain open for use by the church pastor and administrative staff during hours of operation of the private school of general education.\*
8. The maximum daily enrollment of the private school of general education shall not exceed seventy-five (75) students, ages five (5) to fourteen (14) years, enrolled in grades kindergarten through eight (8).\*
9. The maximum number of employees of the private school of general education shall be limited to twelve (12) on-site at any one time.\*
10. Hours of operation of the private school of general education shall be limited to 9:00 a.m. until 3:15 p.m., Monday through Friday, during the months of September through June. No students shall arrive prior to 8:45 a.m.\*
11. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum and a maximum of 127 spaces, per Department of Environmental

Management (DEM) approval. All parking shall be on site and shall be designed according to the Public Facilities Manual (PFM) requirements.\*

12. Transitional Screening shall be provided along all lot lines as shown on the special permit amendment plat with supplemental evergreen plantings maintained at least six (6) feet in height as shown along the lot line in common with Lots 18 and 19. Any dead or dying plantings shall be replaced as approved by the Urban Forestry Branch.\*
13. Interior parking lot landscaping shall be maintained in accordance with Article 13.\*
14. Barrier requirements shall be waived along all lot lines in favor of the natural existing vegetation and supplemental evergreen plantings as shown on the approved special permit amendment plat.\*
15. The limits of clearing and grading shall be established as shown on the approved special permit amendment plat prepared by Walter A. Phillips, Inc., dated September 5, 1991 as revised through December 27, 1991.\*
16. Four vans, each capable of carrying a minimum of seventeen (17) students, shall be operated by the applicants to transport students to and from the subject site. In addition, the remainder of the 75 students shall be transported to and from the subject site in approved car pools with a minimum of four riders each, in order to reduce the number of vehicles accessing the subject site to a minimum. A minimum of one (1) van and eight (8) car pool vehicles shall be instituted to accommodate the initial enrollment of fifty (50) students and one (1) additional van shall be added as the enrollment increases beyond fifty (50) students with each increment of seventeen (17) students.\*
17. The existing facility shall remain connected to public water and the previously approved on-site sewage disposal system.\*

These development conditions incorporate and supersede all previous development conditions. Previously approved conditions are marked with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless 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. McPherson seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. BARBARA BRADFORD SHEA AND NORMAN F. BRADFORD, JR., APPEAL A 95-D-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that properties located at 9803 and 9805 Georgetown Pi. are not buildable lots under Zoning Ordinance provisions. Located at 9803 and 9805 Georgetown Pi. on approx. 20,517 sq. ft. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 29 and 30. (MOVED FROM 10/1/96)

William Shoup, Deputy Zoning Administrator, explained that the buildable status of two lots was the issue for this appeal. He briefly summarized the staff report information noting the zoning requirements which were applicable in 1943 at the time of each lot's recordation. Mr. Shoup then explained the current zoning requirements for an R-1 District pointing out that both of the subject lots, 29 and 30, clearly did not meet the current requirements. He then described the applicability of the grandfathering rights under Sect. 2-405 of the Zoning Ordinance. Mr. Shoup stated that at the time of Lot 29's recordation, it did not meet minimum Zoning Ordinance requirements for lot area and lot width and that Lot 30 did not satisfy the requirement for lot area when it was recorded; therefore, it was staff's determination that neither lot satisfied the criteria set out under Sect. 2-405. Consequently neither lot could enjoy grandfathered rights pertaining to use, thus it was staff's position that the two lots were not buildable lots.

In response to Chairman DiGiulian's questions, Mr. Shoup explained what dwellings were on the subject lots as well as a rear adjoining lot 31. He noted that in 1994, due to a staff error, Lot 31 was issued a building permit to allow a single family detached dwelling. He stated that Lots 29, 30, and 31 were not buildable lots and although Lot 31 had erroneously been approved for a dwelling, it was staff's position that regardless of that error, there was no justification for Lots 29 and 30 to be determined buildable lots.

Discussion followed between Mr. Shoup and Chairman DiGiulian concerning staff's decision not to issue a Notice of Violation to Lot 31.

Grayson P. Hanes, Esquire, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, the appellants' attorney and agent, stated that the Sheas had filed their appeal after having been informed by Fairfax County that they were not allowed to build, renovate or consolidate their two parcels, that it was in violation of the Zoning Ordinance, although their neighbor, Lot 31, had done what they were requesting. Mr. Hanes pointed out that all alternatives, an amendment to the Ordinance, a variance, vested rights, i.e. grandfathering or Constitutional, or filing suit for taking, had been considered but abandoned because a reasonable, feasible solution appeared unattainable. After quoting Ordinance language from 1941 regarding nonconforming uses, Mr. Hanes submitted that the BZA should find that Lot 29 be ruled nonconforming and allowed to continue.

Norman F. Bradford, Jr., 9803 and 9805 Georgetown Pike, Great Falls, Virginia, recalled several memories about his boyhood and growing up on the subject parcels. He believed that the house on Lot 29, 9803 Georgetown Pike, was built during the late 1930's because of his own personal observations and the shared recollections of one of his neighbors. Mr. Bradford advocated that the property should be grandfathered.

Chairman DiGiulian called for speakers but received no response. He called for staff's closing comments.

In closing statements, Mr. Shoup cited that, with respect to the mistake on Lot 31, 'two wrongs don't make a right' and it was a fact that many lots had been conveyed and were recorded without compliance to the Ordinance requirements back in the early 1940s. He pointed out that Sect. 2-405 of the current Zoning Ordinance is applicable and under those provisions, it was clear that the lots must meet the Ordinance's requirements at the time of their recordation, which County records show, was in 1942 and 1945 for the subject lots. Since they did not meet requirements at the time of recordation, Mr. Shoup reiterated that staff maintains their determination that the lots are not buildable lots.

Mr. Shoup responded to Mr. Hammack's question concerning what action would be taken against the properties if the Board upheld the Zoning Administrator.

Chairman DiGiulian closed the public hearing.

Page 620, June 3, 1997 (Tape 1), BARBARA BRADFORD SHEA AND NORMAN F. BRADFORD, JR., APPEAL A 95-D-035, continued from Page 619

After making comments regarding the particulars of a nonconforming use, the application of recent, pertaining legislation, and the legality and feasibility of consolidation for the purpose of constructing one dwelling, Mr. Pammel moved to **REVERSE** the Zoning Administrator's determination that properties located at 9803 and 9805 Georgetown Pike are not buildable lots under Zoning Ordinance provisions to the extent that one dwelling unit could be constructed on the two lots consolidated.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. McPherson not present for the vote.

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Page 620, June 3, 1997 (Tape 2), Action Item:

9:30 A.M. ROLLING VALLEY PROFESSIONAL CENTER CONDOMINIUM UNIT OWNERS ASSOCIATION, Appeal A 96-S-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's issuance of a Non-Residential Use Permit to Rolling Valley Nail Care as an accessory service use in the C-1 District. Located at 9295 Old Keene Mill Rd. in a condominium unit of approx. 1,315 sq. ft. on land zoned C-1. Springfield District. Tax Map 88-2 ((24)) 28. (MOVED FROM 1/28, 3/4/97 AND 4/22/97)

Chairman DiGiulian announced that staff has requested that the public hearing for A 96-S-046 be deferred to 9:00 a.m. on August 12, 1997. Mr. Kelley SO MOVED and the motion carried unanimously by a vote of 4-0 with Messieurs Dively, McPherson, and Ribble not present for the vote.

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Page 620, June 3, 1997 (Tape 2), Action Item:

9:30 A.M. MICHAEL D. AND JOCEYLN W. BRITTIN, Appeal A 1997-DR-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are allowing an accessory structure to be used by a nonresident of the property as an artist studio which constitutes an office use in the R-E District in violation of Zoning Ordinance provisions. Located at 916 Peacock Station on approx. 4.1815 acs. of land zoned R-E. Dranesville District. Tax Map 19-2((1))20.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated May 27, 1997, summarizing that the independent use of the artist's studio was most similar to an office use which was not permitted.

Jocelyn Brittin disagreed with staff's determination stating that she believed the studio's utilization did not merit an office use category as it was neither primary nor that of a business. She maintained that the structure was within the definition of a permitted accessory use.

Krish Murthy, 908 Peacock Station Road, McLean, Virginia, the adjoining neighbor, voiced his opposition to the appeal because he was concerned that his private driveway would be used if the use was granted and he also worried that granting the use would set a detrimental precedent for his quiet neighborhood.

In closing statements, Mr. Shoup maintained that, in his opinion, the use was most similar to an office use in that it is leased and it is used independently on the site with the fact remaining that the use is not used by the dwelling's occupants. He requested that, for those reasons as well as those listed in the staff report, that the Board uphold the Zoning Administrator's decision.

In rebuttal, Ms. Brittin clarified that Mr. Murthy's driveway is a pipestem with easements granted for access and egress to all properties along the drive. She stated that Mr. Murthy has never shared with her his concerns or opposition to their property's use but she would agree, if the use of this jointly maintained access road was problematic, that the artist would be instructed never to use the driveway in the future.



Page 621, June 3, 1997 (Tape 1), MICHAEL D. AND JOCEYLN W. BRITTIN, Appeal A 1997-DR-006, continued from Page 620)

Chairman DiGiulian closed the public hearing.

Mr. Pammel then made a motion to **UPHOLD** the Zoning Administrator's determination that the appellants are allowing an accessory structure to be used by a nonresident of the property as an artist studio which constitutes an office use in the R-E district in violation of Zoning Ordinance provisions.

The motion was seconded by Mr. Hammack and carried by a unanimous vote of 6-0 with Mr. McPherson not present for the vote.

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Page 621, June 3, 1997 (Tape 2), Action Item:

Request for Additional Time  
A & K Family Recreation Center, SP 92-M-040 & VC 92-M-068

Mr. Pammel moved to approve the request for an extension to the new expiration date of January 15, 1998. The motion was seconded by Mr. Ribble and carried unanimously by a vote of 6-0 with Mr. McPherson not present for the vote.

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Page 621, June 3, 1997 (Tape 2), Action Item:

Change in Permittee  
Shell Oil Company & Richard Stohlman Family Limited Partnership

Chairman DiGiulian announced that this item was a change in permittee request for Shell Oil Company and Richard Stohlman Family Limited Partnership. Mr. Ribble so moved to approve this change and Mr. Pammel seconded the motion which carried unanimously by a 6-0 vote with Mr. McPherson not present for the vote.

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Page 621, June 3, 1997 (Tape 2), Action Item:

Approval of May 20, 1997 Resolutions


Mr. Pammel moved to approve the May 20, 1997 resolutions which was seconded by Mr. Dively and carried unanimously by a 6-0 vote with Mr. McPherson not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Paula A. McFarland

Approved on: September 9, 1997



Betsy S. Hirtt, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 10, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:09 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 623, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping less than 10.0 ft. from front lot lines. Located at 6211 Leesburg Pi. on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A.(DEF. FROM 3/25/97 AND 4/8/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Bellaschi, with the law firm of McGuire, Woods, Battle, and Boothe, replied that it was.

Jane Kelsey, Chief, Special Permits and Variance Branch, made staff's presentation as contained in the staff report dated March 18, 1997, prepared by Heidi Powell, Staff Coordinator. The applicant requested three variances; a variance of 45.6 feet to allow the existing building to remain 21.7 feet from one street line, Leesburg Pike; a variance of 15.3 feet to allow an existing building to remain 57.8 feet from the other street line, Juniper Lane; and a variance of 7.6 feet and 8.9 feet to allow the existing parking spaces to remain 2.4 feet and 1.1 feet from a street line.

Mr. Bellaschi presented the applicant's request as outlined in the statement of justification submitted with the application. He gave a brief history of the property by stating that the building was constructed in 1964, prior to the Zoning Ordinance, then the applicants dedicated a part of their property for expansion of Leesburg Pike. As a result, the property became an allowable non-conforming use. Mr. Bellaschi said the applicants were merely requesting to "clean up" an existing condition which involves two setbacks; one for the building itself and another for the parking spaces. The applicant was also proposing to build a by-right addition which would not aggravate the current non-conforming use. He noted that the last time this case was before the Board it was deferred because of a problem with the affidavit which has been addressed. Mr. Bellaschi noted that Caldor is the current tenant and is in Chapter 11 bankruptcy; therefore, the applicant wants to protect themselves in the event that Caldor rejects the lease and is unable to pull out of bankruptcy.

Chairman DiGiulian called for speakers in support and hearing no reply he called for speakers in opposition.

Bernard Fagelson, representing the tenant, said that Caldor was opposing this variance request because of the damaging effect this hearing has had on the morale of its employees. He requested this hearing be deferred to a date after August 4, 1997, at which time Caldor will be prepared to discuss the equities of the situation.

Mr. McPherson commented that the Bankruptcy Courts tend to have a life of their own. He questioned Mr. Fagelson on how that case or decision would impact the narrow request the applicant has before the Board. Mr. Fagelson replied that it is "subjective". He elaborated further by saying if this variance is approved then the employees of Caldor will think that their jobs are in jeopardy.

Mr. McPherson further questioned Mr. Fagelson by asking if Caldor was not in bankruptcy, what difference would that make to the request before the Board today. Mr. Fagelson replied that if Caldor was not in bankruptcy then the applicant would not have a subjective reason for suggesting that they might want to do something else.

Mr. Kelley commented that this case has been deferred twice and he has never seen employee morale used as a reason not to continue with a land use case. Mr. Kelley said he was not satisfied with Mr. Fagelson's explanation and asked him to expand further. Mr. Fagelson used an analogy to get his point across. He

said, "If you have a single line between two residences and somebody wants to put a shed closer to the line of a R-1 or R-2 piece of property, then the shed is not going to affect the light, air, or breathing space of the objecting neighbor but that neighbor is objecting because he feels its impingement on him which is a subjective reason." Mr. Fagelson said his client felt their employees were going to be looking for new jobs because "subjectively" they felt it was an infringement upon their space. He summed up by saying that basically, it was a morale issue.

In rebuttal, Mr. Bellaschi said there was no legal reason for denying this application. He said it was a very narrow land use application and it was not fair to suggest that the applicant was responsible for the morale of Caldor's employees. Mr. Bellaschi said there has not been an injunction issued to prevent this hearing from going forward.

Chairman DiGiulian closed the public hearing.

Mr. McPherson commented that the Board could not close their eyes to all the issues that were presented to them, but he felt the issues presented here did not warrant the Board to defer or delay the hearing. He said the merits of this request were well stated.

Mr. McPherson made a motion to grant VC 97-M-008 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 18, 1997.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that he would support the motion although he would prefer to defer the hearing as requested by Mr. Fagelson. He felt Mr. Fagelson's request was reasonable under the circumstances plus the Board has deferred similar cases in the past.

Mr. Ribble and Chairman DiGiulian also stated their preference to defer the hearing until after August 5, 1997.

Mr. Pammel made a substitute motion, based on his previous comments, to defer the hearing to August 12, 1997, at 9:00 a.m. for a decision only. The motion was seconded by an unidentified Board member which carried by a vote of 4-2, with Mr. McPherson and Mr. Dively voting nay. Mr. Hammack was absent from the meeting.

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Page 624, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK J. & CYNTHIA C. MCBRIDE, VC 97-H-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.2 ft. from rear lot line and 0.0 ft. from side lot line. Located at 11035 Solaridge Dr. on approx. 5,049 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((12)) (1) 28. (DEF. FROM 6/3/97 FOR DECISION ONLY)

Chairman DiGiulian noted that this case was deferred from June 3, 1997, for a decision only.

Mr. Pammel said the report from staff concludes that this was a situation that was not unusual and has been granted in the past. He noted that there is a zero lot line provision in the Zoning Ordinance and the basic land requirement is that there be a 200 square foot space for privacy area to the rear which has been accommodated.

Mr. Pammel made a motion to grant VC 97-H-036 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 27, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-H-036 by PATRICK J. AND CYNTHIA C. MCBRIDE, under Section 18-401 of the Zoning Ordinance to permit construction of deck 0.2 feet from rear lot line and 0.0 feet from side lot line, on property located at 11035 Solaridge Drive, Tax Map Reference 27-1 ((12)) (1) 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 June 10, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PRC.
3. The area of the lot is 5,049 square feet.
4. This is an unusual application; however, PRC is an unusual zoning category.
5. The deck may have been exactly where the applicant is requesting had the builder initially submitted the development plans with the deck shown as he apparently had anticipated doing.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance 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 426, June 10, 1997, (Tape 1), PATRICK J. & CYNTHIA C. MCBRIDE, VC 97-H-036, continued from Page 425

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Alexandria Surveys, Inc., dated August 13, 1996, revised February 10, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 5-1 with Mr. Dively voting nay. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 426, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SANTIAGO H. AND SONIA S. VALDIZAN, SP 97-Y-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 12001 Lee Hwy. on approx. 1.64 ac. of land zoned R-1 and WS. Sully District. Tax Map 56-1 ((7)) 7. (CONTINUED FROM 4/15/97 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Don Smith, replied that it was.

Jane Kelsey, Chief, Special Permits and Variance Branch, stated that this public hearing was continued from April 15, 1997, in order to allow the applicant and staff to meet to address concerns raised by the Board and citizens, primarily concerning the access from Lee Highway. Ms. Kelsey stated that an agreement was reached with the Virginia Department of Transportation (VDOT) and the Office of Transportation (OT) whereby there could be access from Lee Highway. Using the viewgraph, Ms. Kelsey showed that the access will come out of Marymeade Drive along the service drive and the service drive would be extended into the applicant's property and the parking lot. She noted that would also improve the circulation on the site. Ms. Kelsey introduced Mark Canale, representing the Office of Transportation, who could answer any questions concerning the transportation issues. The applicant also agreed to a Development Condition that stated, "The school age children will be transported to their schools by private vehicle, van or bus, and not by public school bus." Ms. Kelsey noted that condition would not solve the problems which were raised by the parents of existing school children who catch the bus at that location; however, it would eliminate any exacerbation of the problem. It was noted that several letters and a petition were submitted to the Board from several property owners along Spruce Street expressing their concerns.

Mr. Smith said the issues that were raised at the last meeting were traffic impact, the entrance from Lee Highway, transportation and inner circulation. He said in exchange for the dedication of land for the widening of Lee Highway VDOT has agreed to permit the applicant to extend the service road into their land and the parking lot to create an entrance onto the service road in front of Marymeade Subdivision. He said VDOT has also agreed to allow the applicant to build a temporary turn-around easement in order to improve the inner circulation on the site. He noted that the issue of the existing bus stop at Lee Highway and Spruce Avenue has been addressed in the Proposed Development Conditions as stated by Ms. Kelsey.

The following spoke in support of the application. Louis Holmes, 3814 Marymead Drive, and Hilda Rogford. They stated that they were happy to have a child care center in the neighborhood, especially one that could care for special education children.

The following spoke in opposition of the application. Sheila Marr, president of Marymead Home Owners Association; Shirley St. Francis-Curl, adjacent property owner; Renate Eschmann, 4806 Spruce Avenue; Bob Romanyshun, 4809 Marymead Drive; Janice Mead, 12019 Lee Highway; and George Hawes, 4749 Spruce Avenue. Their concerns were based on the safety issue that the child care center would present if granted; in particular, the end of Marymeade Drive where the service road connects. They requested to have the service road extended and widened all the way from the applicants land to Spruce Avenue in order to have access from Marymead Drive and Spruce Avenue. They also felt the proposed child care center would generate more traffic and congestion which would cause an additional safety concern for the children who catch the school bus at the stop sign on Spruce Avenue.

Mr. Ribble asked Mr. Canale to comment on the citizen's request to have the service road extended. Mr. Canale replied that Lee Highway is on the Fairfax County Comprehensive Land Use Plan to be widened or improved to a six lane facility. He said there was a feasibility study in 1992, and the plan was adopted by the Board of Supervisors (BOS); however, final construction plans have not been developed. Mr. Canale said if the service road is extended at this time it would place it in a different location than where the service road is eventually going to be once Lee Highway is widened. In addition, he noted there was a number of utility poles that run along Lee Highway and VDOT has indicated that if the service drive is extended all the way to Spruce Avenue then the utility poles would have to be relocated outside of the service drive extension. Mr. Canale said the cost to move those poles would be too expensive for a use of this type to incur.

In rebuttal, Mr. Smith said most of the concerns that had been raised will continue to exist whether the Board approves this application or not; in particular, the school bus stop will continue to be located at the end of Spruce Avenue. In sum, he said that the applicant has agreed to van pool all the child care children to school and back and they propose to build a two lane road into the parking lot. He noted that at the April 15th hearing Marymeade Homeowner's Association spoke in support of the application; however, they were now in opposition.

Mr. McPherson stated his concern over the hours of operation and the number of children and employees. Mr. Smith addressed it by stating that they were requesting 75 children and 10 employees.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant SP 97-Y-004 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions as stated in the addendum to the staff report dated June 3, 1997, with the deletion of Proposed Development Condition Number 20 and the deletion of the last sentence of Proposed Development Condition Number 23, "It shall not be a modular structure."

Chairman DiGiulian called for discussion.

Mr. McPherson stated that he felt the applicant has not complied with the requirements of the Zoning Ordinance Section 8-305 and he does not see how the Board can get over that hurdle. He stated that section requires the applicant to inform the Board of the maximum number of expected trips generated and the applicant has failed to do that. Mr. McPherson said the applicant has provided what his estimate of the minimum trip requirements would be but has presented nothing that shows what the maximum would be. He said the applicant did not present any logical analysis which would form the basis for his minimum estimate. Mr. McPherson also felt the total number of people involved was not consistent with the classification that the applicant was going under because when you combine the total number of children and employees it was well above the 75 number of persons which is generally indicated for a local street. Finally, he did not see how the hours of operation would mesh with this particular residential neighborhood.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-Y-004 by SANTIAGO H. AND SONIA S. VALDIZAN, under Section 3-103 of the Zoning Ordinance to permit a child care center, on property located at 12001 Lee Highway, Tax Map Reference 56-1 ((7)) 7, Mr. Divly moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 1.64 acres.
4. The Board expressed reservations about this application; although, it is eminently superior to the previous one before the Board two months ago. The comments from the Office of Transportation representative were clear that now is not the time to put in the service road because of the intended expansion of Lee Highway and requiring anything in that regard would be outside the Board's jurisdiction. Development Condition #19 addresses and lessens the impact on Spruce Avenue and many of the complaints about the transportation problem exist because Lee Highway is a busy highway. This problem is not going to change and may even get worse, but it probably will not have a lot to do with this child care center. This use will not be a terribly onerous requirement for the neighborhood. Although, this application involves difficulties, child care centers are needed and there is no reason to think that this application is not an appropriate development.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 12001 Lee Highway (1.64 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 Kenneth W. White, dated October 29, 1996, revised through May 20, 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 Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment shall not exceed 75 children.



6. A maximum of 39 children shall be in the outdoor play area at any one time.
7. The hours of operation shall be limited to 6:00 a.m. to 10:00 p.m., Monday through Friday.
8. The outdoor play area shall not be used after 7:00 p.m.
9. Fifteen (15) parking spaces shall be provided on site.
10. The driveway entrance/exit shall meet the Public Facilities Manual (PFM) requirements.
11. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
12. All trash shall be stored on site in appropriate containers and shall be screened from view of the adjacent single family properties and from Spruce Avenue.
13. Transitional Screening 1 shall be provided along the northern, western and southern lot lines. Existing vegetation may be used to satisfy this requirement, provided it is supplemented to be equivalent to Transitional Screening 1, as determined by DEM.
14. Plantings shall be provided in an area approximately 10 feet wide along the eastern lot line. The size, quantity, and species shall be determined by the Urban Forestry Branch. The purpose of the plantings shall be to screen to the extent possible, the use from the neighboring residential properties. The applicant shall work with the Health Department in an effort to reduce the area devoted to drainage of septic effluent from that shown on the plat in order to allow space around the field for plantings.
15. A barrier consisting of a six foot high solid wood fence shall be located around the play area and from the eastern corner of the building to the eastern corner of the dumpster pad. The barrier requirements shall be waived along the remaining lot lines.
16. Limits of clearing and grading shall be as shown on the plat.
17. At the time of site plan review, the applicant shall submit a tree preservation plan for review and approval of DEM.
18. Right-of-way to 26 feet from the centerline of Spruce Avenue necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. One-half of a two lane section with curb and gutter shall be constructed along Spruce Avenue.
- 19A. In order to achieve a maximum interior noise level of DNL 45 dBA for the proposed structure, the following attenuation measures shall be provided for any facade of this structure that will be directly exposed to noise from traffic on Lee Highway:
  - ▶ Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
  - ▶ Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20 percent of any facade, they shall have the same laboratory STC rating as walls.
  - ▶ Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmissions.
- 19B. In order to reduce exterior noise levels in the proposed play area to DNL 65 dBA or less, one or more noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof shall be provided. If desired by the applicant, acoustical attributes may be incorporated within the northern portion of the fence surrounding the outdoor play area. At a minimum, the barrier(s)/fence shall be of a height sufficient to break lines of sight between traffic on Lee Highway

(an elevation of 8 feet above the road surface) and children in the play area. The barrier(s)/fence shall be architecturally solid from the ground up with no gaps or openings.

- 19C. The applicant may pursue other methods of mitigating highway noise if it can be demonstrated, through an independent noise study for review and approval by DEM, that these methods will be effective in reducing exterior noise levels in the play area to DNL 65 dBA or less and interior noise levels in the proposed structure to DNL 45 dBA or less.
20. Any proposed 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 (12) feet.
  - ▶ The lights shall focus directly onto the subject property.
  - ▶ Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.
21. The building shall be architecturally compatible with the adjacent residential area in design and materials.
22. The school-age children shall be transported to their schools by private vehicle, van or bus and not by public school bus.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. McPherson voting nay. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 630, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOAN A. WISE, VC 97-V-038, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. and 17.6 ft. from street lines of a corner lot and for pump house and shed to remain in a minimum required front yard. 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 and 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Joan Wise, 11352 River Road, Lorton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation summarizing the information contained in the staff report dated June 3, 1997. The applicant requested a variance of 40.6 feet and 32.4 feet to permit construction of a second story addition to be located 9.4 feet and 17.6 feet from the front yard requirement.

Also, a third variance was requested to permit an existing pump house and shed to remain within the minimum required front yard. Paragraph 12C of Section 10-104 of the Zoning Ordinance states in part that, "no accessory structure or use except a statue, basketball standard, or flagpole shall be located in any required front yard on any lot."

Ms. Wise presented her request as outlined in the statement of justification submitted with the application. She said she was proposing to add a second story onto the existing house because there was no other location to build due to the location of a septic field on her lot. She said she will be widening the second story approximately 3 feet into the interior portion of the lot. Ms. Wise agreed with the Proposed Development Conditions except for Number 4 which stated, "Prior to issuance of building permits for the site, the existing trailer and shelter shall be removed." She said she would prefer the trailer be removed prior to the final inspection because she would like to work out of it while the house is under construction. She submitted letters in support from adjacent property owners.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Ribble made a motion to grant VC 97-V-038 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions as contained in the staff report dated June 3, 1997, with the deletion of Proposed Development Condition #4.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-V-038 by JOAN A. WISE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.4 feet and 17.6 feet from street lines of a corner lot and for pump house and shed to remain in a minimum required front yard, on property located at 11352 River Road, Tax Map Reference 119-4 ((2)) (5) 1 and 9, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 10, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 15,174 square feet.
4. The application meets the nine required standards for a variance. In particular, the existing location of the dwelling and the applicant is just building a second story.
5. The siting of the septic fields on the lot prevents the applicant from building 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of the proposed addition, and for the existing pump house and shed shown on the plat prepared by Kenneth W. White, dated February 22, 1997, as revised through March 25, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 632, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952, Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-952 for nursery school to permit church and related facilities and nursery school, increase in enrollment, and change in hours of operation. Located at 6320 Hanover Avenue on approx. 3.54 acs. of land zoned R-3. Springfield District. Tax Map 80-3((3))(39)2, 2A.

Page 633, June 10, 1997, (Tape 1), ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952, continued from Page 632

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Eric Kephart, with the firm of Baker and Hostetler, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation summarizing the information contained in the staff report dated June 3, 1997. The applicant requested approval of amendment to SP 68-S-952 to incorporate the existing church and related facilities and to increase the enrollment of the nursery school and change in hours of operation. The enrollment of the nursery school would be increased from 45 to 75 children and the hours and days of operation would be adjusted to 9:30 a.m. to 12:30 p.m., Monday through Friday. In addition, the applicant was requesting modification of the transitional screening requirements and waiver of the barrier requirements along the northern, eastern, and southern boundaries in favor of what was shown on the plat. Staff recommended approval of the special permit amendment.

Mr. McPherson questioned staff on the discrepancy between the staff report and what the applicant requested with regards to the hours of operation. Ms. Schilling said staff had adjusted the hours of operation from 9:30 a.m. to 9:00 a.m. to allow the applicant to make another adjustment in hours if they choose without having to come back before the Board.

Mr. Kephart presented the applicant's request as outlined in the statement of justification submitted with the application. He stated that the church has been in operation on the site since 1968 and the request does not involve any construction, only a change in the hours of operation and number of children. He stated that the applicant agrees to all of the Proposed Development Conditions.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. McPherson moved to grant SPA 68-S-952 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions as contained in the staff report dated June 3, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 68-S-952 by ST. CHRISTOPHER'S EPISCOPAL CHURCH, under Section 3-303 of the Zoning Ordinance to permit to amend SP 68-S-952 for nursery school to permit church and related facilities and nursery school, increase in enrollment, and change in hours of operation, on property located at 6320 Hanover Avenue, Tax Map Reference 80-3 ((3)) (39) 2 and 2A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1997; 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 3.54 acres.
4. This is a reasonable, minor request and there is no construction indicated.
5. The findings noted in the staff report are made part of the resolution granting the application as well as the testimony presented by the applicant.
6. The applicant meets the required standards necessary for the issuance of a special permit amendment.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-301 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6320 Hanover Avenue, (3.54 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 Norman W. Fitzgerald, dated April 8, 1996 as revised through May 13, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for the church shall be limited to a total of 270 seats.
6. The maximum daily enrollment for the nursery school shall be 75 children, at such time as a Non-residential Use Permit is issued pursuant to SPA 68-S-952.
7. The hours of operation for the nursery school shall be limited to between 9:00 a.m. and 12:30 p.m., Monday through Friday.
8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11, as determined by the Department of Environmental Management, and shall conform to the standards set forth in the Public Facilities Manual. The two proposed parking spaces shown on the approved Special Permit Plat, located in the northeast and northwest corners of the existing asphalt lot directly adjacent to Monticello Boulevard shall be deleted. All parking associated with this use shall be contained on-site.
9. Transitional Screening Type I shall be modified along the northern property boundary, and waived along the eastern and southern property boundary in favor of that shown on the Special Permit Plat. Natural vegetation may be substituted for transitional screening along the northern property boundary and supplemental landscaping shall be provided in the vicinity of adjacent lot 1 to provide screening from the parking lot for adjacent residences. The exact type, location, size and number of plantings shall be reviewed and approved by the Urban Forestry Branch, DEM. The barrier requirement along the north, east and southern property boundaries shall be waived.
10. The existing sign located within the right-of-way for Hanover Avenue shall be removed; all signs shall conform to 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.

Page 635, June 10, 1997, (Tape 1), ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952, continued from Page 634

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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 635, June 10, 1997, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), SPA 85-C-003-2, Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 for church and related facilities to permit site modifications. Located at 2351 Hunter Mill Rd. on approx. 7.16 acs. of land zoned R-E. Hunter Mill District. Tax Map 37-2((1))26A.

Chairman DiGiulian noted that the applicant has requested to withdraw their application. Mr. McPherson so moved and the motion carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 635, June 10, 1997, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS J. MAINEY, A 1997-MV-007, Appl. under Sect.(s) 18-301 of the Zoning Ordinance. Determination that a storage yard has been established on property located in the C-8 and R-2 Districts in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8139 Richmond Hwy. on approx. 45,438 sq. ft. of land zoned C-8, R-2, H-C. Mt. Vernon District. Tax Map 101-2((1))27.

Chairman DiGiulian noted that the notices for this appeal were not in order.

Mr. Shoup said staff is recommending dismissal of this appeal. He said the appellant, Mr. Mainey, was issued a Notice of Violation for a storage yard use that is not permitted on the subject property. Mr. Shoup noted that the appellant did not send notices and when staff contacted Mr. Mainey to advise him of their recommendation he indicated that he had come to an agreement with the owner of the property and would clear the vehicles and other items that were in violation by the end May. Mr. Mainey also stated that he was going to withdraw his appeal; however, the letter was never received by staff and the property has not been cleared of the violation. Mr. Shoup further noted that Mr. Mainey called his office at 8:30 a.m. today and was advised of staff's recommendation which he did not object to. Mr. Mainey told staff that he would not be present at the hearing. Mr. Shoup requested dismissal of the appeal so staff can go forward with enforcement action.

Mr. McPherson moved to dismiss the appeal. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 635, June 10, 1997, (Tape 1), Scheduled case of:

9:30 A.M. JOHN O. DUNCAN, TRUSTEE, A 1997-SU-008, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant's property cannot be developed separately as two lots

Page 636, June 10, 1997, (Tape 1), JOHN O. DUNCAN, TRUSTEE, A 1997-SU-008, continued from Page 635

under the provisions of Sect. 2-405 of the Zoning Ordinance. Located at the Neverlett Property on approx. 5.0275 ac. zoned R-C. Sully District. Tax Map 65-3((1))71.

The applicant's agent, Robert Lawrence, advised the Board that he was not feeling well this morning and requested a deferral to a date certain in July.

Mr. Ribble made a motion to defer the case to July 8, 1997, at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 636, June 10, 1997, (Tape 1), Scheduled case of:

Approval of Minutes  
from the April 22, 1997 Meeting

Mr. Pammel moved to approve the Minutes. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 636, June 10, 1997, (Tape 1), Scheduled case of:

Request to Reschedule Appeal  
Ebrahim A. Babazadeh, A 1997-SU-012

Mr. Shoup said this was a recommendation to reschedule Mr. Babazadeh's appeal which deals with a Notice of Violation for leasing U-Haul Trucks. Mr. Shoup explained that the Board of Supervisors (BOS) directed staff to review the current Zoning Ordinance requirements governing truck and trailer rental establishments. A proposed amendment was authorized yesterday by the BOS and subsequently, scheduled public hearings for July 9, 1997, before the Planning Commission and August 4, 1997, before the BOS. Mr. Shoup also noted that six other pending truck and trailer rental appeals have been deferred several times to allow this amendment to run its course. Given the circumstances, staff felt it would be appropriate to reschedule this appeal and recommended the morning of October 28, 1997, which should allow the BOS sufficient time to review the proposed amendment and make a decision.

Ebrahim Babazadeh, 13928 Lee Highway, said the tactic of continuing this case would be financially damaging to him. On September 26, 1996, he said he applied for a special exception for a car dealership; however, the application has been delayed and he may lose the property.

Chairman DiGiulian questioned staff on whether Mr. Babazadeh could continue operating his business until the BOS takes action on the proposed amendment. Mr. Shoup responded that because U-Haul had been working with staff on the amendment, the U-Haul company pulled their trucks from the property; therefore, the appellant was not currently operating. Mr. Babazadeh said he felt he was the only one being penalized and did not understand why U-Haul pulled his trucks when others were operating the same as he was. He referred to a letter from the U-Haul Company which he felt indicated that a person from zoning told them to stop him from operating his business, which he submitted to the BZA.

Mr. Shoup explained to the BZA that the special exception Mr. Babazadeh has been referring to is an application which has not yet been accepted. Mr. Shoup further noted that it is for vehicle sales and auto dealership which is a different use than truck and trailer rental; therefore, he did not feel the special exception was relevant to the issue at hand. Mr. Shoup reiterated that because an amendment is pending regarding truck and trailer rental establishments and can change the way staff has been dealing with those establishments, especially in the C-8 District, it appears to be in the best interest of the applicant to await the results of the BOS's action on the amendment.



Page 637, June 10, 1997, (Tape 1), EBRAHIM A. BABAZADEH, A 1997-SU-012, continued from Page 636 )

Mr. Babazadeh reiterated again that he felt he was being singled out and could not understand why U-Haul pulled the trucks from his business.

Chairman DiGiulian said he felt it was in the applicants best interest to defer this hearing because if the BZA went forward with the appeal prior to the proposed amendment, they may end up denying his appeal.

Mr. McPherson agreed with Chairman DiGiulian. He stated that there was nothing the BZA could do to facilitate his predicament at this point and while they may sympathize with the appellant's position they do not have the authority to do anything. Mr. McPherson made a motion to defer this hearing to October 28, 1997. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the hearing.

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Page 637, June 10, 1997, (Tape 1), Scheduled case of:

Out of Turn Hearing Request  
from Claude and Betty Wheeler, VC 97-L-048

Mr. Ribble stated he would like to see the applicant's contracts prior to making his decision. Ms. Kelsey, Chief, Special Permits and Variance Branch, noted that the contracts were not in the file. Mr. Ribble made a motion to defer this request until next week to allow the applicant time to submit their contracts to the Board for review. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 637, June 10, 1997, (Tape 1), Scheduled case of:

Request for Reconsideration  
from Marc and Roslyn Busman, SP 97-S-009

Mr. Fox said he set forth the basis for the request for reconsideration in the letter before the Board and added that he felt the application under reconsideration now is much smaller because of the reduction of employees to two, in addition to the applicants. He said they agreed with staff's suggested condition that the applicants use all of their 3 spaces in the interior of the garage for employee parking. Mr. Fox said the reconsideration represents a very different presentation than last week.

Mr. Ribble stated that this case was a close call for him and noted that he was on the prevailing side that turned the applicants down. He said he would support a reconsideration and so moved for purposes of discussion. Mr. Dively seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley said he still felt the request was "too much". He felt if the Busmans' wish to change their application this much they should resubmit a new one. Mr. Kelley said he was against allowing them to rewrite their application in order to give a little bit each time. He still felt it was excessive and even though he was mindful of one of the applicant's physical condition he noted that there was commercial space available in the area. Mr. Kelley said one office and one employee might be more acceptable but several employees was not what was intended in that area.

Mr. Pammel stated that he supported the comments of Mr. Kelley.

Mr. Kelley made a substitute motion to deny the request for reconsideration. Mr. Pammel seconded the motion which failed by a vote of 3-3, with Mr. Ribble, Mr. McPherson, and Mr. Dively voting nay. Mr. Hammack was absent from the meeting. The motion failed for a lack of four concurrent votes.

Chairman DiGiulian then asked for a vote of the original motion for reconsideration which also failed by a vote of 3-3, with Chairman DiGiulian, Mr. Kelley, and Mr. Pammel voting nay. The original motion also failed for a lack of four concurrent votes.

Mr. Pammel made a motion to waive the 12-month limitation on the refiling of an application. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Request for Reconsideration  
from Joan and Harrison Wehner, VC 97-D-027

Grayson Hanes advised the Board that he had been recently retained by the Wehner's to represent them in this matter. He said he was present in the board room the day this went before the Board. Mr. Hanes said the Wehner's application deals with a definition of what is a hardship and the Fairfax County Zoning Ordinances. He said it appeared to him that there was several things that should have been said and dealt with that were not. He referred to those issues as stated in his letter before the Board.

Mr. Pammel asked Mr. Hanes if this property can be subdivided under the current Subdivision code of the Zoning Ordinance. Mr. Hanes responded affirmatively, stating that it can be subdivided into four lots under the Subdivision Code.

Mr. Ribble noted that he had questions regarding self-created hardships; in particular, the acquisition of a parcel, then selling off parts of that parcel in order to obtain an irregular shaped lot.

Mr. Ribble moved to grant the request for reconsideration. Mr. McPherson seconded the motion which carried by a vote of 5-1, with Mr. Pammel voting nay. Mr. Hammack was absent from the meeting. The hearing was scheduled for September 30, 1997, at 9:00 a.m.

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Approval of Resolutions  
from the June 3, 1997 Meeting

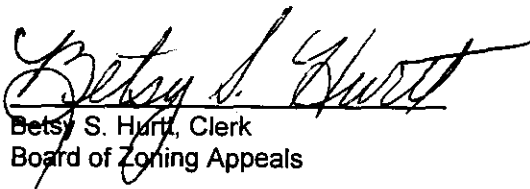
Mr. Pammel moved to approve the Resolutions with the exception of Joan and Harrison Wehner, VC 97-D-027. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Teresa M. Wang

Approved on: November 4, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 17, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:06 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 639 June 17, 1997, (Tape 1), Scheduled case of:

8:00 P.M. DAVID D. & CAROL ANN FLANAGAN, VC 97-D-042, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in the front yard on a lot containing less than 36,000 square feet. Located at 1324 Ballantrae Farm Dr. on approx. 30,309 sq. ft. of land zoned R-1(Cluster). Dranesville District. Tax Map 31-1((20))15. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Flanagan, 1324 Ballantrae Farm Drive, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance in order to construct a swimming pool in the front yard. Ms. Schilling said the Zoning Ordinance states that no accessory structure except a statute, basketball standard, or flag pole be located in the front yard of a lot with less than 36,000 square feet. Since the subject property is a through lot, the proposed swimming pool would be located in the front yard for West Langley Lane.

Mr. Flanagan said they had applied for and received a building permit in the second week of March but the violation was discovered a couple of days later and a stop work order was issued for the pool. He said there are four lots total in the neighborhood with a similar situation and the other three lots already have pools. Mr. Flanagan said they have no access to West Langley Lane and pointed out that there is a row of tall pine trees, a wrought iron fence, and two rows of shrubs on both lot lines which would make the pool virtually invisible to vehicles passing by on West Langley Lane. He said they would like to construct the pool in the most centralized location in the yard and to construct the pool within the setbacks would require that the pool be wedged into a small area in the yard. Mr. Flanagan requested that the eight day waiting period be waived.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 97-D-042 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 10, 1997. The Board waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-042 by DAVID D. AND CAROL ANN FLANAGAN, under Section 18-401 of the Zoning Ordinance to permit an accessory structure in the front yard on a lot containing less than 36,000 square feet, on property located at 1324 Ballantrae Farm Drive, Tax Map Reference 31-1((20))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 June 17, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

2. The present zoning is R-1(Cluster).
3. The area of the lot is 30,309 square feet.
4. The applicant's property has the condition of having double front yard requirements.
5. The front yard where the applicant would like to construct the swimming pool is functionally a rear yard with no access to the street as it is surrounded by a fence and screening.
6. The applicant has satisfied the nine required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an accessory structure (swimming pool) shown on the plat prepared by Charles P. Johnson and Associates, Inc., dated April 17, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 641, June 17, 1997, (Tape 1), DAVID D. & CAROL ANN FLANAGAN, VC 97-D-042, continued from Page 640

Mr. McPherson and Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 641, June 17, 1997, (Tape 1), Scheduled case of:

8:00 P.M. THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, SPA 90-M-090, Appl. under Sect(s) 3-203 of the Zoning Ordinance to amend SP 90-M-090 for church and related facilities to permit building expansion. Located at 6901 Columbia Pi. on approx. 1.23 ac. of land zoned R-2, HC. Mason District. Tax Map 60-4((1))23. (MOVED FROM 3/18/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate.

Julie Schilling, Staff Coordinator, called the Board's attention to the affidavit dated October 23, 1996.

The applicant's agent, Mark Mittereder, AIA, Agent, 7360 McWhorter Place, Suite 200, Annandale, Virginia, reaffirmed the affidavit.

Ms. Schilling made staff's presentation as outlined in the staff report. The applicant requested an amendment to SP 90-M-090 for a church and related facilities in order to permit the addition of 1,000 square foot mezzanine within the church for Bible study and small group meetings and to allow existing outdoor air conditioning within the transitional screening yard. Ms. Schilling said there are no proposed changes to the number of seats permitted within the church or the hours of operation. She said a reaffirmation of a modification to the transitional screening was requested along with an additional modification to allow the encroachment of the existing air conditioning units. Staff believed that the request to allow the air conditioning units to remain was warranted with the adoption of the development conditions that provide for additional landscaping to shield the fence and wall around the units from the view of the adjacent residences. Staff did not support the addition of the mezzanine to the church since the increase in square footage would further generate a greater intensity in the activities associated with the church. Ms. Schilling referenced the transportation comments contained in the staff report which required an interparcel access easement and noted that staff believed this would be better addressed at time of site plan review; therefore, the condition was not included in the development conditions contained in the staff report. Staff supported the request for the encroachment of the air conditioning units into the transitional screening yard, but could not support the increase in the gross floor area to allow the mezzanine addition therefore staff recommended approval in part.

Mr. Hammack asked staff to clarify the construction involved in the proposed mezzanine. Ms. Schilling explained that it was her understanding that the mezzanine was under construction but was stopped at a point where access could not be supplied to the mezzanine because the area was not included in the previous special permit approval. She added that part of this amendment was to include the 1,000 square feet that had been omitted from that approval. Mr. Hammack questioned why staff was requesting plantings and a brick wall around the air conditioning units in addition to the existing barrier. Ms. Schilling explained that the brick wall was proposed by the applicant based on an acoustical study for noise attenuation. She added that it was staff's intent to provide plantings to replace those that were lost with the encroachment into the transitional space to lessen the visual impact on the adjacent neighbors.

Mr. Mittereder displayed a floor plan of the main level of the church as it currently exists on the view graph pointing out the location of the seating and the altar area. He explained that during the construction of the church they used a scissors- type truss for the roof which allows a higher sloped ceiling in the sanctuary area and pointed out the location of the proposed mezzanine area. Mr. Mittereder explained that in this area where the offices are located is a dropped ceiling of 8 feet with dead space above the area that could be used for floor space. During construction, the decision had to be made with regard to future plans to use the area

for future floor space thus the church decided to have the structural joist installed. Mr. Mittereder displayed a floor plan depicting the completed mezzanine which will only be 554 square feet, the access stairs will be 159 square feet, with the remainder of the space being used for storage for a total area of 994 square feet. He displayed a floor plan of the basement area of the church and explained that this area is too small to accommodate the classes for the various age groups and the proposed mezzanine will help to alleviate the overcrowding.

Chairman DiGiulian asked the speaker to address the Development Conditions. Mr. Mittereder said the Conditions were basically the same with a few modifications to the landscaping. He added that the church had no objections to supplementing the existing plantings since some were removed in order to install the air conditioning units.

Mr. McPherson noted that the mezzanine was not shown on the special permit plan. Ms. Schilling explained that it was within the existing space on the footprint. Mr. Mittereder said the mezzanine would not necessarily be shown on the plat since the use of the existing building was not be expanded. Mr. McPherson said he believed it would be appropriate to denote the change on the special permit plat.

Mr. Ribble asked if the speaker would submit copies of the floor plan depicting the mezzanine into the record. Mr. Mittereder did so.

Chairman DiGiulian called for speakers in support of the request.

Joseph Chang, 8211 Fort Hunt Road, Fort Washington, Maryland, stressed that the mezzanine would be used only for classroom space, an area to place a spot light during plays, and possibly for a musical instrument during special occasions. He said there is approximately 120 attendees and the church population will not increase.

There was no speakers in opposition to the request and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant SPA 90-M-090 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with Condition Number 6 stating "8,000 square feet".

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 90-M-090 by THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 90-M-090 for church and related facilities to permit building expansion, on property located at 6901 Columbia Pike, Tax Map Reference 60-4((1))23, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2, HC.
3. The area of the lot is 1.23 acres.
4. The request is very reasonable and the modification they are proposing to make to the existing structure is appropriate and meritorious as far as a sound plan for the church.
5. The resolution should incorporate the facts represented in the staff report as well as the comments presented by the applicant's agent at the public hearing.

6. The applicant submitted copies of the diagrams depicting the church as it now exists and with the proposed changes into the record.
7. The applicant has satisfied 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. 8-301 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6901 Columbia Pike, 1.23 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 Archgroup, dated April 25, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for the church sanctuary shall be limited to a total of 160 seats.
6. The total gross floor area permitted on the site shall not exceed 8,000 square feet. (NOTE: Attachments A and B)
7. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 44 spaces. All parking associated with this use shall be conducted on site; however, the applicant shall not be precluded from obtaining a shared parking agreement with the Masonic Temple or the adjacent property. No parking on adjacent residential streets shall be permitted at any time by church congregation members or other persons using the facility.
8. Transitional screening and barriers shall be provided around the four sides of the subject property, in accordance with the special permit plat. All barriers shall be placed near the top of the berm if one is so indicated within the screen yard. Existing vegetation may be used to partially satisfy these transitional screening requirements provided it is supplemented to meet the Zoning Ordinance requirements to the satisfaction of the Urban Forestry Branch/DEM.

Southern Lot Line

Transitional Screening 2 (35 feet) and Barrier F (6 foot high wood fence) shall be provided along the southern lot line.

Eastern Lot Line

Transitional screening varying from 30 feet to 35 feet in width and to an intensity comparable to Transitional Screening 2, as determined by the Urban Forestry Branch/DEM, and Barrier F (6 foot high wood fence) on an earthen berm shall be provided along the eastern lot line, with the exception

of the area immediately adjacent to the air conditioning units. Transitional Screening around the air conditioning units shall be generally as shown on the special permit plat and shall be supplemented with additional landscaping including the use of vine plantings to screen the walls surrounding the air conditioning units from the view of adjacent residences. The number, type and size of landscape materials shall be determined by the Urban Forestry Branch/DEM.

Northern Lot Line

Transitional Screening varying from 50 feet to 80 feet in width and to an intensity comparable to Transitional Screening 3 (50 feet), as determined by the Urban Forestry Branch/DEM, and an earthen berm, with a minimum height of 4 feet, in lieu of the required barrier, shall be provided along the northern lot line. This screening shall help preserve the residential character of the area as viewed from Columbia Pike and help minimize the visual impacts on the adjacent residential uses.

Western Lot Line

Coniferous landscaping shall be provided along the western lot line to minimize views of the parking lot from the adjacent property, as approved by the Urban Forestry Branch/DEM.

9. Right-of-way to 85 feet from existing centerline of Columbia Pike necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary access easements shall be provided to facilitate these improvements.
10. The applicant shall maintain a service drive along the full frontage of the subject property and the adjacent property to the west (Tax Map Number 60-4 ((1)) 22). The design and construction of the service drive will continue to include a single new off-site entrance aligning with an existing Columbia Pike median break at Rose Lane. These aforementioned improvements will be constructed to Virginia Department of Transportation (VDOT) standards as determined by DEM prior to the issuance of a Non-Residential Use Permit.
11. Any new proposed new lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval\* unless construction has commenced and been diligently prosecuted, and a new Non-Residential Use Permit is obtained. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel 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 June 25, 1997. This date shall be deemed to be the final approval date of this special permit.

Attachments A and B (see file)

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Page 645, June 17, 1997, (Tape 1), Scheduled case of:

8:00 P.M. ST. THOMAS EPISCOPAL CHURCH, SPA 93-D-001, under Section 3-103 of the Zoning Ordinance to permit amend SP 93-D-001 for church and related facilities and nursery school to permit building expansion, increase in enrollment, site modifications and decrease in land area, on property located at 8991 Brook Road, Tax Map Reference 28-2((1))12; 28-2((5))A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Robson, Robson Group Architects, Inc. 5675 Stone Road, Suite 230, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit amendment for building additions, increase in enrollment, change in hours of operation, increase in parking spaces, and deletion of land area. The applicant was requesting that the maximum of daily enrollment for the nursery school increase from 50 students to 99 and the hours of operation increase from the existing 9:00 a.m.-1:00 p.m. to 8:00 a.m.-3:00 p.m., with a morning and afternoon session. Ms. Langdon said the applicant was proposing several additions to be constructed in phases as outlined in the staff report. The applicant was also requesting a reduction in the special permit lot size from the existing 5.38 acres to 4.46 acres to allow the church to subdivide the property into two parcels consisting of Lot 1, 4.46 acres in size which will contain the church use, and Lot B, with a lot size of 40,164 square feet, for a potential residential home site. The existing rectory will remain and will be located 32 feet from the proposed subdivision line. Ms. Langdon said staff had concluded that the proposed application would be in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions; therefore, staff recommended approval subject to the Development Conditions contained in the staff report. She added that the applicant had submitted proposed modification to those Conditions which were distributed to the Board just prior to the public hearing. Ms. Langdon said staff agreed with the proposed modifications to Conditions 10 and 12, but could not concur with Conditions 9 and 11.

Mr. Robson said he believed the application was very straightforward. With the exception of the wording in some of the Development Conditions there were no outstanding issues. He said the church has stayed in constant touch with the surrounding neighborhoods since the filing of the application by holding open houses and through various letters. He referenced the letter from the McLean Citizens Association wherein the Association opposed the request and explained that following a meeting between the applicant and the Association, it was the church's belief that the issues had been addressed and was surprised to see that new issues had now been raised. Mr. Robson called the Board's attention to the letter from the Woodside Estates Citizens Association and one from the Wolf Trap Woods Homes Association in support of the request.

With regard to the Development Conditions, Mr. Robson said the main issue dealt with Condition Number 9 regarding the subdivision. The church would like the option to offset some of the financial burden for the improvements by selling a portion of their land if it becomes necessary and to forgo providing the transitional screening until such time as that occurs. He asked that the Board reduce the amount of dedication to "40 feet" rather than the requested 45 feet.

A discussion took place between Mr. Pammel and the speaker regarding the adequacy of the on site sewage disposal system. Mr. Robson said several meeting have been held with the Health Department and the church has retained a soils engineer and the only concern seemed to be with the Phase 4 expansion which includes an expansion in the seating capacity. Mr. Pammel asked the location of the nearest public sewer.

Mr. Robson said the nearest is in the McLean 100 development across the street and that could be accessible but the church would have to go through the public work process.

Mr. Ribble said he disagreed with the McLean Citizens Association request that additional trees be planted in the parking lot and pointed out the photographs showed a substantial number of trees currently on the lot. Mr. Robson agreed.

Chairman DiGiulian called for speakers in support of the request.

The Rector of the church, John Morris, 12014 Cheviot Drive, Herndon, Virginia, said the church was founded in 1962 and has maintained an open door policy which has allowed many organizations to utilize the church and attend many of the church functions.

There were no speakers in opposition to the request and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPA 93-D-001 for the reasons noted in the Resolution subject to the Development Conditions with the modifications requested by the applicant as reflected in the Resolution. He noted for the record that the Board considered the Condition regarding dedication and chose to delete the Condition in its entirety.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SPA 93-D-001 by ST. THOMAS EPISCOPAL CHURCH, under Section 3-103 of the Zoning Ordinance to permit amend SP 93-D-001 for church and related facilities and nurseby school to permit building expansion, increase in enrollment, site modifications and decrease in land area, on property located at 8991 Braddock Road, Tax Map Reference 28-2((1))12; 28-2((5))A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 17, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 5.38 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8991 Brook Road, and is not transferable to other land.\*
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Robson Group Architects, dated March 17, 1997, revised May 7, 1997, and approved with this application, as qualified by these development conditions, except for Note #11.\*

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The maximum number of seats in the main area of worship shall be 150 until such time as Phase 4 is completed, when the maximum number of seats may be increased to 325.
6. The maximum daily enrollment shall be limited to 50 students until such time as Phase 1 of SPA 93-D-001 is implemented. Once Phase 1 is implemented, the maximum daily enrollment for the nursery school may increase and shall be limited to 99 students during Phases 1, 2 and 3. Notwithstanding the parking tabulations shown on the special permit plat, once Phase 4 is constructed, the maximum daily enrollment shall be limited to 99 students if a shared parking agreement between the church use and the school use is approved by the Department of Environmental Management (DEM). If a shared parking agreement is not approved, the number of seats in the sanctuary and/or the number of students in the nursery school must be reduced to a number that can be supported by the parking spaces provided on site as determined by DEM. A new Non-Residential Permit shall be obtained at that time which reflects the maximum number of students in the nursery school as determined by DEM based on the parking requirements.
7. The hours of operation for the nursery school shall be limited to 8:00 a.m. to 3:00 p.m., Monday through Friday, with a maximum of fifty (50) students in any one session.
8. A minimum of 70 parking spaces shall be provided in conjunction with the Phase 1 development. With the construction of Phase 4, additional parking spaces shall be constructed to a total maximum of 92 parking spaces as depicted on the special permit plat. All parking shall be on site and in the location shown on the special permit plat.
9. The requirement for Transitional Screening 1 along the southern lot line shall be modified to allow existing vegetation and the plantings as depicted on the special permit plat to meet screening requirements.

The requirement for Transitional Screening 1 along the northern lot line shall be modified to allow existing vegetation and the plantings as depicted on the special permit plat to meet screening requirements with supplemental vegetation consisting of two rows of evergreens between the existing shed and arborvitae, and between the arborvitae and existing vegetation to the west along the entry drive.

Transitional Screening 1 shall be provided along the southeastern lot line of proposed Lot A to provide screening for proposed residential Lot B, at such time as the subdivision of Lot B is approved by the County and the lot is sold.

Size, species, and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Environmental Management at the time of site plan review.

10. The barrier requirement shall be waived along all lot lines provided the play area is fenced with a chain-link fence along all sides and except that a six (6) foot board-on-board fence shall be provided along the northeastern side adjacent to Lot 19A, when the play area is relocated during the Phase 4 development.
11. The Lewinsville Road entry may be "gated" only during peak rush hours.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve feet.

Page 648, June 17, 1997, (Tape 1), ST. THOMAS EPISCOPAL CHURCH, SPA 93-D-001, continued from  
Page 647

- ▶ The lights shall be a design which focuses the light directly onto the subject property and does not create a glare or a nuisance off the property.
- ▶ Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the property.

These development conditions incorporate and supersede all previous development conditions. The previous conditions are marked with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\*\* unless construction has commenced and been diligently prosecuted, and a new Non-Residential Use Permit is obtained. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried 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 25, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 648, June 17, 1997, (Tape 1), Action Item:

Out of Turn Hearing Request from  
Claude and Betty Wheeler, VC 97-L-048

Chairman DiGiulian noted that the applicant's request was deferred from June 10th to allow staff to review the contract. Mr. Hammack asked staff what was contained in the contract that would justify the Board granting an out of turn hearing.

Julie Schilling Staff Coordinator, said there are two dates listed in the contract, one referring to settlement on May 30, 1997, and the other refers to settlement on or before June 30, 1997. She explained that currently the case is scheduled for August 12, 1997.

Mr. Hammack questioned the reason for the variance. Ms. Schilling explained the variance request was for a subdivision and staff needed sufficient time to review the application and was working with the applicant's agent on several issues presently.

Mr. Ribble made a motion to deny the applicant's request. Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 648, June 17, 1997, (Tape 1), Action Item:

Out of Turn Hearing Request from  
Hubert Shaw, SP 97-Y-026

Mr. Hammack asked how much a variance the applicant needed and how soon the case could be scheduled. Susan Langdon, Senior Staff Coordinator, explained that the applicant was proposing to construct a deck 8

Page 649, June 17, 1997, (Tape 1), HUBERT SHAW, SP 97-Y-026, continued from Page )

feet from the side lot line in the R-C District. Mr. Kelley asked if this was an addition to a new house. Ms. Langdon said it was an existing house. She suggested that perhaps could be scheduled for August 12, 1997.

Mr. Hammack made a motion to grant the applicant's request and schedule the application for August 12, 1997. Mr. Pammel seconded the motion which carried by a vote of 5-2 with Mr. McPherson and Mr. Ribble voting nay.

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Page 649, June 17, 1997, (Tape 1), Action Item:

Request for Intent to Defer from  
Mount Vernon Presbyterian Church, SP 97-V-006 and VC 97-V-020

Susan Langdon, Senior Staff Coordinator, said the applicant was requesting a deferral to July 29, 1997, at 9:00 a.m. to allow them an opportunity to continue to work with staff and adjacent neighbors. Mr. Ribble made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 649, June 17, 1997, (Tape 1), Action Item:

Approval of the June 10, 1997 Resolutions

Mr. Ribble made a motion to approve the Resolutions as submitted by staff. Mr. McPherson seconded the motion which carried by a vote of 6-0-1 with Mr. Hammack abstaining.

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Mr. Hammack made a motion that the Board go into Executive Session to discuss legal matters. Mr. Pammel seconded the motion which carried by a vote of 7-0.

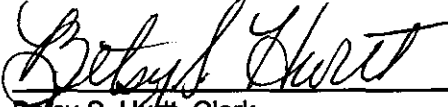
Upon reconvening in the Board Room, Mr. Hammack MOVED THAT THE MEMBERS OF THE BOARD OF ZONING APPEALS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE, ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED BY THE VIRGINIA FREEDOM OF INFORMATION ACT, AND ONLY MATTERS IDENTIFIED IN THE MOTION TO CONVENE EXECUTIVE SESSION WERE HEARD, DISCUSSED, OR CONSIDERED BY THE BOARD OF ZONING APPEALS DURING THE EXECUTIVE SESSION. Mr. 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 9:15 p.m.

Minutes by: Betsy S. Hurtt

Approved on: August 12, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 24, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 661, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CENTRAL FIDELITY NATIONAL BANK, VC 97-V-032, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 32.4 ft. and 19.6 ft. from street lines of a corner lot and parking to remain less than 10.0 ft. from front lot line. Located at 6717 Richmond Hwy. on approx. 37,105 sq. ft. of land zoned C-8, HC. Mount Vernon District. Tax Map 93-1((17))501A, 502. (In Association with SE 97-V-003)

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, with the firm of Fagelson, Schonberger, Payne, & Deichmeister, P.C., 11320 Random Hills Road, Suite 690, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator with the Rezoning and Special Exception Branch, made staff's presentation as outlined in the staff report. The applicant requested variances to permit the existing building to remain 32.4 feet and 19.6 feet from the street lines of a corner lot line and to allow parking to remain less than 10 feet from the front lot line. Variances of 7.6 feet and 20.4 feet were requested for the building and a variance of 2 feet was requested for the parking lot.

Mr. Thomas explained that the bank has been in existence for a number of years and noted that a special exception application was approved by the Board of Supervisors on June 23, 1997, allowing the applicant to construct a 420 square foot addition on the rear of the building. He added that over the years changes have altered the configuration of the subject property bringing the road closer to the building. Mr. Thomas said the parking in the 10 foot setback has been reconfigured to align in a different angle so the area of the variance is actually lessened, but noted that the parking cannot be moved completely out of the setback.

Chairman DiGiulian called for speakers either in support or in opposition to the application, and hearing no reply he closed the public hearing.

Mr. Ribble made a motion to grant VC 97-V-032 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 29, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-V-032 by CENTRAL FIDELITY NATIONAL BANK, under Section 18-401 of the Zoning Ordinance to permit existing building to remain 32.4 ft. and 19.6 ft. from street lines of a corner lot and parking to remain less than 10.0 ft. from front lot line, on property located at 6717 Richmond Highway, Tax Map Reference 93-1((17))501A and 502, 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 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-8, HC.
3. The area of the lot is 37,105 sq. ft.
4. The applicant presented testimony meeting the nine required standards.
5. The building has been on the site for a long time and the road in essence came to the building, not the other way around.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the existing building shown on the plat prepared by Huntley, Nyce & Associates, Ltd, and dated November 8, 1996 and revised through March 18, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this variance.



9:00 A.M. MALEKA QAMRUDDIN, VC 97-L-039, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6000 Walhaven Dr. on approx. 30,072 sq. ft. of land zoned R-2. Lee District. Tax Map 91-2((20))1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's brother, Nazir Bhagat, 3411 Fiddlers Green, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to allow an accessory structure, an existing smokehouse, to remain 4.5 feet from the front yard of a lot with less than 36,000 square feet. The Zoning Ordinance states that no accessory structure other than a statute, basketball standard, or flag pole can be located in a front yard less than 36,000 square feet.

Mr. Bhagat agreed with the staff report and stated that the structure is 300 years old and the applicant would like to preserve the site as it currently exists. He added that the Heritage Foundation has visited the house and indicated that there are parts of the house that are 300 years old making it one of the oldest in Springfield. Mr. Bhagat said the neighbors support the applicant's request.

Chairman DiGiulian called for speakers either in support or in opposition to the request, hearing no reply he closed the public hearing.

Mr. Hammack made a motion to grant VC 97-L-039 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 17, 1997.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-L-039 by MALEKA QAMRUDDIN, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft., on property located at 6000 Walhaven Drive, Tax Map Reference 91-2((20))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 30,072 sq. ft.
4. This structure is the subject of a rezoning by the County and is a historical residence and the smoke house in question predates the Ordinance by quite some time and really deserves to be preserved.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;

- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of an accessory structure (smokehouse) shown on the plat prepared by Design Management Group, Zia Hassan, dated May 24, 1996, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROBERT E. LEE (FORMERLY HERITAGE ACADEMY & CHILD CARE CENTERS), VC 97-L-040, Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from side lot line. Located at 6304 Steinway St. on approx. 22,880 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3((8))9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, with the firm of Walsh, Colucci Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was. Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance of 2.8 feet to permit a garage by enclosing a carport located 17.2 feet from the side lot line.

Ms. Strobel said the location of the carport was selected when the house was constructed to preserve existing mature trees that are located on the lot as shown in photographs submitted with the application. She explained that the surrounding neighborhood is comprised of houses built in a variety of styles, many of which have garages. Ms. Strobel said the applicant's request would be in keeping with the character and style of the area and noted that the 6 foot solid wooden fence located on the western lot line will adequately screen the garage from the adjacent property owner. She then proceeded to address each of the nine standards.

Chairman DiGiulian called for speakers either in support or in opposition to the request, hearing no reply he closed the public hearing.

Mr. Pammel made a motion to grant VC 97-L-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 17, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-L-040 by ROBERT E. LEE (FORMERLY HERITAGE ACADEMY & CHILD CARE CENTERS), under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from side lot line, on property located at 6304 Steinway Street, Tax Map Reference 91-3((8))9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,880 sq. ft.
4. The applicant presented testimony that they comply with the prescribed criteria for the granting of a variance, specifically the narrowness of the lot.
5. The fact that the request is for an enclosure of an existing carport .
6. The encroachment is minor being only 2.8 feet with a remaining side yard of 17.2 feet, which is adequate.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by K.D. Thomas, dated March 18, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 656, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES A., JR., AND CYNTHIA G. FOX, VC 97-M-041, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 37.4 ft. from front lot line and 19.6 ft. from side lot line. Located at 3014 Sylvan Dr. on approx. 25,592 sq. ft. of land zoned R-1, HC. Mason District. Tax Map 50-4((21))57. (Concurrent with SP 97-M-016)

9:00 A.M. CHARLES A., JR., AND CYNTHIA G. FOX, SP 97-M-016, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 11.3 ft. from side lot line and accessory structure to remain 1.2 ft. from side lot line. Located at 3014 Sylvan Dr. on approx. 25,592 sq. ft. of land zoned R-1, HC. Mason District. Tax Map 50-4((21))57. (Concurrent with VC 97-M-041)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Robert Gallagher, 74 Spruce Road, Front Royal, Virginia, with Sun Design Remodeling Specialists, Inc., replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant was requesting approval of both a special permit and a variance. The special permit request was to allow a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 11.3 from side lot line and to permit an accessory storage structure to remain 1.2 feet from the side lot line. A minimum side yard of 20 feet is required in the R-1 District; therefore, a modification of 8.7 feet was requested for the deck and a modification of 18.8 feet was requested for the storage structure. Ms. Langdon said the variance request was to permit construction of two additions requiring a 2.6 foot variance for a covered entry way and a .4 foot variance for a screened porch.

Mr. Gallagher said the applicant acted in good faith and noted that the shed was on the property when the applicant purchased the property. He said he believed the previous homeowner was trying to locate the shed in an area that would not disturb the 100-year old hickory trees and other natural vegetation on the site. Mr. Gallagher noted the irregular shape of the lot and fact that the lot has two front lot lines and proceeded to explain the applicant's request.

Chairman DiGiulian called for speakers either in support or in opposition to the request, hearing no reply he closed the public hearing.

Mr. Kelley made a motion to grant VC 97-M-011 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 17, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-M-041 by CHARLES A., JR., AND CYNTHIA G. FOX, under Section 18-401 of the Zoning Ordinance to permit construction of additions 37.4 ft. from front lot line and 19.6 ft. from side lot line, on property located at 3014 Sylvan Drive, Tax Map Reference 50-4((21))57, 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 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1, HC.
3. The area of the lot is 25,592 sq. ft.
4. The applicant has met the nine required standards for the granting of a variance, in particular the exceptional shape of the lot.
5. If the dwelling had been sited differently on the lot, there would be no need for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately

adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the covered entryway and screen porch additions shown on the plat prepared by Alexandria Surveys, Inc., dated January 9, 1997, revised March 13, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley made a motion to grant SP 97-M-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 17, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 97-M-016 by CHARLES A., JR., AND CYNTHIA G. FOX, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 11.3 ft. from side lot line and accessory structure to remain 1.2 ft. from side lot line, on property located at 3014 Sylvan Drive, Tax Map Reference 50-4((21))57, 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 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- H. The applicant has met all the required standards.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the deck and accessory storage structure shown on the plat prepared by Alexandria Surveys, Inc., dated January 9, 1997, and revised March 13, 1997, submitted with this application and is not transferable to other land.

Page 660, June 24, 1997, (Tape 1), CHARLES A., JR., AND CYNTHIA G. FOX, VC 97-M-041 and SP 97-M-016)

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. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 660, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BOARD OF MISSIONS OF MOUNT VERNON BAPTIST ASSOCIATION, LTD., SP 97-Y-012, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 10.10 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 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. Tracy L. Steele, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit for a church and related facilities which would entail that the church and parking areas be built in three phases as outlined in the staff report. She noted that the special permit plat also identified a 7,000 square foot soccer field located along the western portion of the site which will also encompass the overflow parking area. The applicant also requested a modification of transitional screening along the western, northern, and southern lot lines and a waiver of barrier requirements along all lot lines. Ms. Langdon discussed staff's position contained in the staff report regarding the General Standards for Special Permits that the application must meet and added that although staff generally supported the proposed development, staff believed that the inclusion of the proposed soccer field was not consistent with the land use and environmental policies of the R-C District. In closing, Ms. Langdon said staff recommended approval in part subject to the Revised Proposed Development Conditions dated June 23, 1997.

Ms. Langdon called the Board's attention to two other special permit applications for churches scheduled for public hearing. She explained that SP 97-Y-013 involved the northern part of the subject property in this application and SP 97-Y-022 was proposed for Tax Map Parcel 33-4((1))1, which is located to the south directly adjacent to Lot 10. Ms. Langdon briefly outlined what each application involved. She said the applicant had submitted revisions just prior to the public hearing and staff had not an opportunity to review those revisions, therefore the Board might wish to consider deferring their decision on the application to allow staff to do so. Ms. Langdon informed the Board that Noel Kaplan, with the Environment and Development Review Branch, OCP, was present to respond any environmental questions the Board may have.

In response to questions from the Board, Ms. Langdon said it would be at the Board's discretion as to whether the public hearing should be deferred or defer for decision only. She added that the Office of Transportation has indicated that the Comprehensive Plan shows a widening of Pleasant Valley Road to four lanes divided. Staff did not include development conditions to address that issue since the Department of Environmental Management will consider that issue during site plan review.

Chairman DiGiulian suggested that the Board proceed with the public hearing and then make a decision as to deferring for decision.

Ms. Steele said the subject property is part of a larger parcel that will be subdivided pending approval of this application and a similar application scheduled for public hearing this date. She said the Mount Vernon Baptist Association was founded in 1952 and is a family of churches in Northern Virginia with a common mission of establishing churches and currently consists of over 110 congregations. She explained that the applicant would like to construct a church on 10.1 acres with a resulting FAR (Floor Area Ratio) of .08 with a membership predominately of Western Fairfax County. Ms. Steele outlined the three phase plan proposed by



the church and added that the access will be from Pleasant Valley Road with adequate parking for each phase. In order to mitigate any impact on the adjacent residential development and on the road network, the applicant has shown full transitional screening required to the east of the property as well as the addition of a 3 foot berm. The applicant has also shown a dedication of right-of-way 45 feet from centerline along the property frontage to facilitate the ultimate widening of Pleasant Valley Road to a four lane divided facility. Ms. Steele said the applicant has worked with the Environmental Branch of OCP in order to preserve the EQC (Environmental Quality Corridor) and the application has demonstrated 60 percent open space. The applicant was proposing a soccer area at the southwest corner of the application property and noted that the plat language states that there will be no use of fertilizers or grading and shall be limited to grass cutting only. She added that the field will be used only by the church, but the West Fairfax County Citizens Association Land Use Committee has requested that field be made available to the Southwestern Youth Association at the discretion of the church. Supervisor Frey wholeheartedly supports the provision of a soccer field on the church property due to the lack of adequate playing fields to serve the needs of the County. Ms. Steele said staff has requested that the applicant provide 50 percent undisturbed open space, but this is based on a "rule of thumb" and is not based upon text contained in the Comprehensive Plan, the Public Facilities Manual, or the Zoning Ordinance. She said staff has requested interparcel access through the site to the south but the applicant would prefer direct access to Pleasant Valley Road but would proceed with interparcel access if the Board so required.

Ms. Steele called the Board's attention to the suggested revisions to the Development Conditions and apologized to staff for not submitting the revisions earlier and proceeded to explain the revisions to the Board. Ms. Steele thanked Susan Langdon and Noel Kaplan for their assistance during the application process.

A discussion took place between Mr. Hammack and Ms. Steele with respect to the soccer field. Mr. Hammack said he did not understand how the church could maintain the field without using fertilizers. He expressed concern with the applicant coming in with one institutional use and "piggy backing" another intense well developed soccer use on top of it. Ms. Steele said the soccer field was intended for the congregation and the church agreed to perhaps open the field to the community at its discretion, but the applicant would be willing to live with a limitation on the number of times the field could be used by the community.

Randall Rubin, with Robson Group Architects, 5675 Stone Road, Suite 230, Centreville, Virginia, came forward and read a letter into the record from William Robson, architect for the church. Mr. Robson addressed the Development Conditions and asked that Condition Number 14 be deleted. Chairman DiGiulian called for speakers in support of the application, hearing no reply he called for speakers in opposition to the request.

Dennis Smith, 13159 Apple Grove Herndon, Virginia, Administrator for Chantilly Bible Church, came forward and said his church had a pending contract on a parcel of land bordering the subject property to the south. He said his church supported the applicant's request, but would like to request the deletion of Development Condition Number 12 which requires an interparcel connection with the parcel belonging to Chantilly Bible Church when Pleasant Valley Road is widened to four lanes. Mr. Smith expressed concern with what he perceived to be a lack of adequate parking in the Mount Vernon Baptist Association's proposal. He said Chantilly Bible has worked very diligently to provide adequate parking on site for its congregation and an interparcel connector would encourage over flow parking from the Mount Vernon Baptist Association's site. (Mr. Smith displayed a graph for the Board's purview depicting a parking tabulation.) He said his church experiences insufficient parking at its West Ox Road site and planned the new site to alleviate this problem.

Mr. Ribble asked the speaker if Chantilly Bible Church would be providing more than the 4 to 1 ratio. Mr. Smith said they were requesting 600 parking spaces in order to keep the building occupancy and the parking in balance.

In rebuttal, Ms. Steele said the church would prefer to have access from Pleasant Valley Road but the applicant would be willing to provide interparcel access if the Board required.

Chairman DiGiulian closed the public hearing.

Page 662, June 24, 1997, (Tape 1), BOARD OF MISSIONS OF MOUNT VERNON BAPTIST ASSOCIATION, LTD., SP 97-Y-012, continued from Page 661 )

Mr. Hammack said in view of the request for changes to the Proposed Development Conditions and in view of the fact that the Board was going to hear a related application this date and another large institutional church use on August 12th, all three within close proximity to each other, he would make a motion to defer the decision on this application until August 12th. He said the Board could address all the issues involved in all three applications at one time rather than dealing with each one independently. Mr. Pammel seconded the motion.

Mr. Dively agreed with the motion and requested that any issues that could be narrowed prior to that time should be done, particularly the issue dealing with the soccer field. Mr. Hammack agreed. The motion carried by a vote of 6-0.

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Page 662, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. VICTORY CHRISTIAN CHURCH, SP 97-Y-013, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 9.19 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 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. Tracy L. Steele, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit for a church and related facilities with the church and parking areas being built in four phases as outlined in the staff report. The applicant also requested a modification of transitional screening and waiver of barrier requirements along all lot lines as depicted on the special permit plat. Staff concluded that with the implementation of the Proposed Development Conditions, the subject application would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval only subject to the Proposed Development Conditions. Ms. Langdon said Noel Kaplan, with the Environment and Development Review Branch of OCP, was present to respond to any environmental questions the Board may have.

Ms. Steele said the church was currently leasing space for its 225 member congregation at Sullyfield Circle and is the contract purchaser of the application property. The applicant was proposing to construct a community church with a 800 seat sanctuary and an accessory rectory house resulting in a FAR (Floor Area Ratio) of .076 with parking provided to accommodate each phase. She said the project will include a quality architectural style and treatment that will be compatible with the surrounding neighborhood. Ms. Steele said the church will serve parishioners predominately from Western Fairfax County with access to the site on to Old Pleasant Valley Road near the intersection with Pleasant Valley Road. The applicant will provide road dedication for improvement of Old Pleasant Valley Road and Pleasant Valley Road along the frontages of the subject property. A religious school, court yard, and gymnasium is part of the application and no nursery school or child care facility was requested. Ms. Steele said the applicant will provide for both preservation of EQC (Environmental Quality Corridor) and RPA on the application property with 73 percent open space. The applicant will work with other churches in order to stagger service times in order to mitigate any impacts on the surrounding residential neighborhood and the road work. She said the applicant was requesting a modification of the transitional screening and barrier requirement along the western and southern lot lines in favor of existing conditions and the applicant will provide the full 25 foot transitional screening required along the eastern lot line. Ms. Steele called the Board's attention to suggested changes to the Proposed Development Conditions and again apologized to staff for not getting the changes to them earlier. She thanked Susan Langdon and Noel Kaplan for their assistance during the public hearing process. In closing, she noted for the record that Randall Rubin was present on behalf of William Robson, with Robson Group Architects, with a prepared statement that he would forgo reading as it was very similar to the comments he made during the Board of Missions of Mount Vernon Baptist Association, Ltd., SP 97-Y-012, heard just prior to this public hearing.

Page 663, June 24, 1997, (Tape 1), VICTORY CHRISTIAN CHURCH, SP 97-Y-013, continued from Page 662

Chairman DiGiulian called for speakers either in support or in opposition to the application, and hearing no reply he closed the public hearing.

Mr. Pammel made a motion to defer this application to August 12, 1997, to allow the Board to hear this application with two other church applications that will be located in close proximity to each other. Mr. Dively seconded the motion which carried by a vote of 6-0.

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Mr. Kelley asked staff how many cases were not scheduled for the August 12th public hearing. Susan Langdon, Senior Staff Coordinator, replied ten cases including the two the Board just deferred.

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Page 663, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. AEGIS IRONWOOD PARTNERS, L.L.C., SP 94-V-024 Appl. under Sect(s). 3-103 and 5-603 of the Zoning Ordinance to permit a golf driving range, miniature golf courses, baseball hitting range, skating rinks, tennis courts and commercial recreation park. Located on the S. side of Cinder Bed Rd., approx. 500 ft. W. of Backlick Rd. on approx. 57.26 ac. of land zoned R-1 and I-6. Mt. Vernon District. Tax Map 108-1 ((12)) pt. 7. (PREVIOUSLY DEFERRED INDEFINITELY). (MOVED FROM 3/4/97) (DEF. FROM 4/1/97)

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 Gaffey, Managing Member of Aegis Ironwood Partners, 3554 Chainbridge Road, #100, Fairfax, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as outlined in the staff report. She said the only structures existing on the property are a blower and collection wells for methane gas and leachate associated with the closure of the landfill, which was approved under SE-164 by the Board of Supervisors in October of 1977 and operated until 1985 when the landfill operator, Browning-Ferris, Inc. started closure procedures. The applicant requested approval of a special permit for a sports park, with construction proposed in two phases as outlined in the staff report. Ms. Langdon said the application was originally submitted in 1994 and many issues and concerns were identified by staff over the course of the review of the application. In response to those issues and concerns, the applicant has submitted a geotechnical report, a landfill gas investigation report, and a proposed agreement outlining the parties responsibilities for the site. Based on staff's review and the information submitted by the applicant, Proposed Development Conditions were included which staff believed addressed all identified issues. Based on Sect. 9-205 of the Zoning Ordinance which stipulates that no improvements shall be constructed in or upon any landfill for a period of 20 years after the termination of the landfill operation without the approval of the Board of Supervisors, staff is preparing the appropriate documentation for submission to the Board of Supervisors. In closing, Ms. Langdon said staff recommended approval of SP 94-V-024. She introduced Noel Kaplan, with the Environment and Development Review Branch, OCP, and Wally Ayodeji, with the Special Projects Branch, DEM, who were present to respond to any environmental questions the Board may have.

A discussion took place between the Board and staff regarding the noise impact on the surrounding residential neighborhood from the rally track. Ms. Langdon said to her knowledge no noise studies had been done and pointed out that although there is R-1 property to the southwest it is all floodplain and there are no houses in the immediate vicinity. She said the remainder of the surrounding property is zoned I-6 and to the east is the Fairfax County Parkway, under construction. Barbara Byron, Director, Zoning Evaluation Division, OCP, provided the Board with a copy of the tax map that showed the area on a larger scale.

Mr. Gaffey came forward and said he had no further comments other than those presented by staff. He said staff had thoroughly reviewed the application, which was beneficial to the project, and he believed this would be a good use of the site.

Chairman DiGiulian asked the speaker if he agreed with all the development conditions and Mr. Gaffey replied in the affirmative.

The Chairman called for speakers either in support or in opposition to the application, and no one came forward.

After reviewing the tax map sheets, Mr. Hammack asked staff if the Gateway Office Complex had been constructed. Ms. Langdon explained that it was an industrial park with several different uses in the area. She pointed out that the race tracks will be located on the other side of the property away from the office complex.

A discussion took place among the Board members with regard to the hours of operation and the noise impact from the race track on the surrounding neighborhoods. Mr. Dively asked if a study had been conducted with regard to the noise impact. Mr. Gaffey said when they first began the project and considered adding the go-karts they had the same concern and they had not intended to operate the race track until 2:00 a.m. He said they would be happy to limit the closing hour to 10:00 p.m. Mr. Pammel suggested limiting the hours for the go-kart track to 10:00 a.m. to 10:00 p.m. Mr. Dively asked if the limitation on the hours was acceptable. Mr. Gaffey said it was agreeable but asked if the hours for holidays could be excluded.

Mr. Hammack asked if the agreement regarding whom would be responsible for the property with respect to the methane had been signed. Ms. Langdon deferred to the applicant. Mr. Gaffey said he had discussed this issue with both BFI and Crestar yesterday and had been told that the agreement would be signed within the next two days. He added that the special permit, if approved, is null and void without the signed agreement.

Following a discussion among the Board members, Ms. Langdon said she believed Condition Numbers 13 and 27 would address Mr. Hammack's concern and staff would not proceed with the Board item until the signed agreement has been submitted.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant SP 94-V-024 for the reasons noted in the Resolution subject to the Revised Development Conditions contained in the staff report dated June 23, 1997 with Condition Number 5 revised as noted in the Resolution.

Mr. Hammack said he could not support the motion as he believed the agreement should be in place prior to the Board approving the use.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-V-024 by AEGIS IRONWOOD PARTNERS, L.L.C., under Section 3-103 and 5-603 of the Zoning Ordinance to permit a golf driving range, miniature golf courses, baseball hitting range, skating rinks, tennis courts and commercial recreation park, on property located on the South side of Cinder Bed Road, approximately 500 ft. West of Backlick Road, Tax Map Reference 108-1((12))pt. 7, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 24, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

Page 665, June 24, 1997, (Tape 1), AEGIS IRONWOOD PARTNERS, L.L.C., SP 94-V-024, continued from Page 664

2. The present zoning is R-1 and I-6.
3. The area of the lot is 57.26 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-503, 8-504, 8-603, 8-604, and 8-607 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, Tax Map 108-1((12))pt. 7, 57.25 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by GJB Engineering, Inc., dated April 28, 1994, revised through March 5, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The hours of operation shall be limited to 7:00 a.m. to 1:00 a.m., Monday through Thursday and 7:00 a.m. to 2:00 a.m., Friday, Saturday and Sunday; however, the hours of operation for the go kart racing shall be limited to 10:00 a.m. to 10:00 p.m., Monday through Friday, and 9:00 a.m. to 10:00 p.m., Saturday and Sunday, and State holidays.
6. A minimum of one-hundred ten (110) parking spaces shall be provided in conjunction with the Phase I development. With the construction of Phase II, additional parking spaces shall be constructed to total a minimum of 215 spaces on site as depicted on the special permit plat. All parking shall be on site.
7. There shall be a maximum of 120 tees for the driving range, with a maximum of 60 tees covered. There shall be a maximum of 60 cars total between the two race tracks.
8. Notwithstanding any notes on the approved special permit plat, the accessory activities and operations in the clubhouse facilities shall be limited to the following: administrative office use, pro shop, equipment rental, golf repair shop, sandwich and snack bar concessions, sale of golf-related accessories that are directly related to the driving range, game arcade.
9. Limits of clearing and grading shall be as shown on the special permit plat.
10. Consistent with the recommendations of the geotechnical engineering study, the applicant shall ensure, to the satisfaction of the Special Projects Branch, DEM, that no portion of the clay landfill cap will be removed, excavated, or penetrated as a result of the proposed development.
11. If determined necessary by the Department of Environmental Management (DEM), a sidewalk shall be provided from the site entrance to Backlick Road.

12. Prior to site plan approval, the applicant shall address all issues relating to methane safety inspection and monitoring and shall prepare an action plan as described below. Particularly, the applicant shall address issues including no smoking areas, monitoring intervals, monitoring locations, monitoring staffing, training and quality control and actions at the time of threshold detection. This information and any additional information deemed necessary, shall be provided, and any issues resolved, to the satisfaction of the Hazardous Material and Investigative Services Section of the Fire and Rescue Department prior to approval of the site plan for the subject property. Resolution of any issues that are related specifically to buildings may be deferred until the issuance of the building permits. In no event shall any building permit be issued without preparation and approval of this action plan.
13. Prior to site plan approval, an agreement signed by all parties responsible for the site, shall be submitted to the Special Projects Branch, DEM which defines the liabilities of the parties responsible for the site. These parties shall include the site owner, landfill operator and the applicant. This agreement shall delineate responsibility for the maintenance of any environmental issues on site, including but not exclusive to, monitoring of settlement if so requested by DEM and remediation as required by DEM, hazardous materials stored above ground, groundwater contamination monitoring and remediation, ponding of water, erosion, methane gas collection and control system and remediation activities. This agreement shall be reviewed and the maintenance procedures approved by the Department of Environmental Management prior to site plan approval.
14. Prior to site plan approval, the applicant shall obtain documentation from Browning-Ferris, Inc. (BFI) establishing the following:
  - ▶ That the proposed development will not conflict with or hinder any groundwater monitoring or remediation efforts under DEQ's jurisdiction that are either currently underway or anticipated; and
  - ▶ That the proposed development will not, either directly or indirectly, adversely affect the landfill cap.
15. The site shall be designed such that storm drainage will be conveyed off of the landfill surface without ponding, and that, should short-term or long-term differential settlement result in the creation of depressional areas, corrective actions will be taken to avoid such ponding.
16. There shall be no underground storage of petroleum products and/or hazardous materials on site.
17. An integrated fertilizer, herbicide and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in Accotink Creek shall be implemented for this use. This program and plan shall include maintenance of the driving range and other lawn areas on the site and shall provide for periodic monitoring and adjustment that demonstrates an intent to reduce amounts of fertilizers, herbicides and pesticides applied to the property over time. In addition, this plan shall include a strategy to minimize the application of water to lawn areas on the site. The design of this program and all monitored parameters shall be consistent with the most current Virginia Cooperative Extension Pest Management Guide and be reviewed by Virginia Cooperative Extension, Fairfax County Office, as determined by DEM prior to site plan approval. Following site plan review, a copy of the approved management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept and shall be made available to county staff on demand.
18. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Environmental Management. Any on-site stormwater detention facility that is constructed within the landfill area shall be provided with an impervious liner or be constructed of otherwise impermeable materials. Plans for such facilities shall be reviewed and approved by the Fire and Rescue Department to ensure that methane buildup below the facilities will not be of concern. The development and storm drainage systems shall be designed such that storm drainage will be conveyed from the landfill area without uncontrolled ponding (i.e. ponding beyond that associated with stormwater management facilities identified on the site plan) as determined by the Special Projects Branch, DEM.

Page 667, June 24, 1997, (Tape 1), AEGIS IRONWOOD PARTNERS, L.L.C., SP 94-V-024, continued from Page 666

19. Prior to site plan approval, the applicant shall provide documentation to DEM from Davison Army Airfield stating that the proposed development and lighting are consistent with the following Davison Army Airfield recommendations and that:
  - ▶ No buildings are constructed within 500 feet of the extended centerline of the aviation easement, and
  - ▶ No fixtures exceed thirty-two feet above ground level; and
  - ▶ All lighting is angled at a degree to provide no interference with pilots' vision.
20. If, at any time in the future, the applicant purchases the subject property, the applicant shall:
  - ▶ Dedicate the 100 year floodplain of Accotink Creek to the Board of Supervisors in fee simple for park purposes, as per the Fairfax County Park Authority's (FCPA) approved Stream Valley Policy, if the Park Authority deems dedication is desirable, and
  - ▶ Provide a 12 foot wide access for the public and maintenance purposes to the 100 year floodplain from Cinder Bed Road if the 100 year floodplain is dedicated.
21. Transitional screening and barrier requirements shall be waived.
22. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
23. No buildings shall be located within 100 feet of any adjoining property which is in an R District.
24. Illumination of the site shall consist of no more lights than depicted on the special permit plat (approximately 73), such lights shall be no greater than 32 feet in height. Parking lot lighting shall be in addition to the 73 lights noted above but shall be no more than twelve (12) feet in height and shall be directed onto the parking lot. All lights shall be equipped with shields to assure that glare and nuisance light do not impact adjoining properties.
25. A sign permit shall be obtained for any sign proposed for this site.
26. This use shall be approved for five (5) years from the date of issuance of the first Non-Residential Use Permit allowed under this special permit .
27. This Special Permit shall be null and void unless the Board of Supervisors approves construction on the site prior to the termination of the twenty (20) year wait period for construction on a landfill in conformance with Sect. 9-205 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 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 5-1 with Mr. Hammack voting nay. Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 668, June 24, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking to remain less than 10.0 ft. from front lot line. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with SP 97-V-006). (DEF. FROM 5/6/97)

9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, SP 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and a child care center. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with VC 97-V-020). (DEF. FROM 5/6/97)

Chairman DiGiulian noted for the record that the Board had issued an intent to defer these applications to July 29, 1997, at its June 17th public hearing. Mr. Ribble so moved. Hearing no objections, the Chairman called for a vote and the motion carried by a vote of 6-0

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Page 668, June 24, 1997, (Tape 1), Scheduled case of:

9:30 A.M. MAO, INC., A 1997-MV-010, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a medical office is operating in the R-2 District by non-resident practitioners in violation of Zoning Ordinance provisions. Located at 2218 Sherwood Hall La. on approx. 39,822 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1((30))9.

William Dempsey came forward and asked the Board for permission to speak to Mr. Dively before he addressed the Board. The Board granted the request.

Chairman DiGiulian noted for the record that the Board had received a request for a deferral and asked staff to comment on the request.

William Shoup, Deputy Zoning Administrator, said staff did not support the request. He noted that the appeal was filed in early April and was an appeal of a March 10th Notice of Violation and it was staff's judgment that the appellant has had sufficient time to obtain an experienced attorney. Mr. Shoup believed the appeal was straightforward and pointed out that the facts and circumstances of the appeal were actually not in dispute. He said in view of that fact and in consideration of the numerous letters that indicates strong citizen opposition to the appellant's use of the property, staff would recommend that the deferral request be denied. Mr. Shoup pointed out there were a number of citizens present who wished to address the deferral request.

Mr. Dively said he would refrain from participating in the proceedings as he had been unaware that his firm had represented the appellants in another matter.

Chairman DiGiulian asked Mr. Dempsey to expand upon the deferral request.

Mr. Dempsey said he was primarily a tax attorney and had requested that the appellant retain other counsel. He said the appellant's husband passed away in October 1996 and pointed out that the appellant was delayed from finalizing several matters due to the death her husband. Mr. Dempsey said he was on vacation from June 10th to June 17th and had believed that the appellant would have taken his advice and retained other counsel, but she did not.

Mr. Kelley asked the speaker if he was aware of other properties in the immediate neighborhood that had been subject to this type of complaint. Mr. Dempsey said he was aware of a complaint filed against the owner of 2212 Sherwood Hall Lane regarding a dental office.

Mr. Ribble asked the speaker when the appellant retained his services. Mr. Dempsey said he had been counsel for the Odonez's since the '70's and he had been made aware of the appeal probably four days prior to the time he submitted the appeal.

Chairman DiGiulian asked if there was anyone in the audience who would like to speak to the issue of deferral.



Page 669, June 24, 1997, (Tape 1), MAO, INC., A 1997-MV-010, continued from Page 668

The following came forward: Christopher Granger, 1901 Sherwood Hall Lane, Alexandria, Virginia, President of the Sherwood Estates Citizens Association; Wayne Holtzman, 2315 Wilkinson Place, Alexandria, Virginia; Jim Baisden, 7729 Wellington Road, Alexandria, Virginia; Judith Holly, the next door neighbor (no address given); and, Eloise Collins, 2214 Sherwood Hall Lane, Alexandria, Virginia. The speakers addressed the deferral request and said they believed the violation had gone on much too long and they would like to bring the matter to closure today.

Mr. Kelley called the Board's attention to a letter dated April 4th contained in the staff report from Mr. Dempsey to staff which states nothing about the quality of representation that might be received. He agreed with the speakers that this was clearly just an attempt to delay the proceedings.

Chairman DiGiulian said there was one more speaker.

Dorothy Johnson, (no address given), agreed with the other speakers comments and asked the Board to proceed with the public hearing.

Mr. Kelley apologized to Mrs. Johnson and made a motion to proceed with the public hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0.

Chairman DiGiulian called for staff's presentation.

William Shoup, Deputy Zoning Administrator, said at issue was a medical practice that is operating out of the dwelling on the subject property. He noted the history of a home professional office being operated at the site by Mr. Mario Ordonez as far back as 1967 which was permitted by right at that time subject to certain criteria. Mr. Shoup said under current Zoning Ordinance provisions a home professional office is now a special permit use, but any pre-existing lawful home professional office use may continue in accordance with the previous criteria. However, upon the death of Mr. Mario Ordonez in October 1996, Dr. Pole and Dr. Hyderian operating as Potomac Primary Care Associates, assumed Dr. Ordonez's practice and they operate a medical office from the property. Since neither practitioner lives on the property the use is no longer operating as a home professional office and instead is a full scale medical office which is not permitted on the subject property. Therefore, it was staff's judgment that the appellant is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance.

Mr. Dempsey said he had participated in the preparation of the lease to Potomac Primary Care and at that time he questioned if there would be a restriction on the use of the property and made the appellant aware of his concerns. He said to address this concern he added a stipulation to the lease which stated in the event of a violation the present tenant must be notified and the tenant would be removed from the property. Mr. Dempsey said he was advised that in order to have a physician's office in a residential area, the physician must occupy or own the property and reside on a portion of the property. He explained the history of the site and the use to the Board and said although the appellant owned property in different locations, the appellant and her husband had resided on the property at various times and there were no other doctors participating in the practice. Mr. Dempsey explained what occurs when a medical practice must undergo a major transition and the process involved when the patients are under Medicare and various insurance programs. He asked the Board to allow the practice to continue until November 30th to allow the physicians an opportunity to relocate the practice to another site.

A discussion took place between the Board and Mr. Dempsey with regard to what steps the appellant has taken towards relocating the office and how much additional time might be needed.

Chairman DiGiulian called for speakers who would like to address the appeal.

Christopher Granger, 1901 Sherwood Hall Lane, Alexandria, Virginia, President of the Sherwood Estates Citizens Association; Eloise Collins, 2214 Sherwood Hall Lane, Alexandria, Virginia; Wayne Holtzman, 2315 Wilkinson Place, Alexandria, Virginia; Judy Pardue, 2307 Sherwood Hall Lane, Alexandria, Virginia; Judith Holly, 2300 Sherwood Hall Lane, Alexandria, Virginia; Dorothy Johnson, 7816 Albany Road, Alexandria, Virginia; and, Jim Baisden 7729 Wellington Road, Alexandria, Virginia, came forward.

The citizens expressed concern with the impact of "commercial creep" occurring in the neighborhood and the impact from increased traffic. They believed the use had been ongoing much longer than necessary. The speakers called the Board's attention to a petition signed by the neighbors who opposed the continuation of the medical clinic with a non-resident practitioner and asked the Board to take immediate action.

Jean Green, Office Manager for Potomac Primary Care, came forward and said they were unaware of any zoning problem until the sign was posted on the property and said they were currently looking for new office space. She assured the Board that they would abide by whatever the Board ruled.

Chairman DiGiulian asked if staff had any further comments and Mr. Shoup did not.

In rebuttal, Mr. Dempsey said MAO, Inc. is a corporation that was formed approximately 4 to 5 years ago for tax purposes by the appellant and her deceased husband and noted that most professionals do not practice under their own names.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to uphold the Zoning Administrator as he believed this was a clear violation that has been ongoing for some time. Mr. Kelley seconded the motion. He added that under some circumstances he would be willing to defer the decision but this violation has been going on for an awfully long time. The motion carried by a vote of 5-0-1 with Mr. Dively abstaining. This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997.

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Page 670, June 24, 1997, (Tape 1), Scheduled case of:

9:30 A.M. FAIRFAX-BREWSTER SCHOOL, Appeal A 96-M-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the addition of 2 trailers to the site is not in substantial conformance with the special permit plat for SP 24200, and constitutes an expansion of the school use in violation of Par. 1 of Sect. 2-304 of the Zoning Ordinance. Located at 5860 Glen Forest Dr. on approx. 2.22 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 26. (MOVED FROM 6/11/96 TO ALLOW APPLICANT TO FILE SPECIAL EXCEPTION. MOVED FROM 8/13/96, 1/7/97, AND 4/22/97)

William Shoup, Deputy Zoning Administrator, said at issue in the appeal are two trailers that are located on the subject property and used the view graph to show their location on the property. The appellant has indicated that one trailer is used for shelter for the students during inclement weather and the other is used as a computer classroom. Mr. Shoup said as noted in the staff report, the school is at the site by virtue of several Board of Zoning Appeals special permit approvals in the 1950's and 1960's and the ruling special permit, 24200, was approved on May 26, 1964. The plat in conjunction with that approval does not depict the two trailers; therefore, at issue is whether the trailers are in substantial conformance with that special permit approval. Mr. Shoup said it was staff's judgment that the trailers are structures that function as an integral part of the school use since they add a combined gross floor area of over 1,200 square feet and do not meet the criteria to be considered a permissible, minor modification to the special permit; therefore, the two trailers are not in substantial conformance with the approved special permit and constitute an expansion or enlargement of the school use. Based on the size of the school's enrollment, the school is designated as a special exception use under current Zoning Ordinance provisions consequently special exception approval is needed to legitimize the expanded use.

The appellant's attorney, John B. Connor, 1033 N. Fairfax Street, Suite 310, Alexandria, Virginia, said the facts in the staff report are correct with the exception of the filing date of the special exception application. He said the first trailer was put on the site in 1990 and the second in 1993 and the trailers are used principally for computer training and they are clearly visible on site. Mr. Connor said the school has existed since 1955 with appropriate permits and the permit in 1961 allowed for 210 students. He disagreed with the Zoning Administrator's determination that the trailers are an expansion of the approved use and pointed out that the school in 1964 had no need for a computer room since computers did not exist. Mr. Connor believed the applicable standard of review for the Board would be to look at the use that is ongoing and keep in mind that

Page 671, June 24, 1997, (Tape 1), FAIRFAX-BREWSTER SCHOOL, Appeal A 96-M-008, continued from Page 670

the issue does not involve an increase in the number of students, an increase in traffic, nor an intensification of the use. He said the issue did involve whether this school, that has been operating for over 30 years under a special permit, must remain a static use or keep up with the times. Mr. Connor referenced the *Virginia Supreme Court case Browning Farris*, which was a case dealing with a nonconforming use, and the Court's logic regarding a use as time goes on and read excerpts from the documentation relating to that case. He noted that the School Board adds trailers to their sites to accommodate the increase in the number of students, but that is not the case on the appellant's site.

Mr. Hammack asked the speaker if it was his belief that the school could add any number of trailers to the site as long as the number of students did not increase. Mr. Connor said if trailers were added for classrooms he believed that would be "crossing the line". Mr. Hammack noted for the record that other similar uses that wished to add trailers to their sites are required to come to the Board and amend their special permits.

Chairman DiGiulian polled the audience to determine if there was anyone present to speak to the appeal.

Winiford Clore, 5847 Glen Forest Drive, Falls Church, Virginia; Karen Michalowicz, 5855 Glen Forest Drive, Falls Church; and, Jean Eller, next door neighbor to the school, addressed the Board. The speakers were opposed to the length of time the trailers have been on site without the proper permits and believed the computers should be relocated to a central location in the school building for the children's safety. They also expressed concern with the noise that is generated from the site in particular the area where the basketball hoop is located and asked that the site be brought into compliance immediately.

In closing, Mr. Shoup said there are no records of building permits being issued for the trailers and the Department of Environmental Management has indicated that building permits would have been required. He noted that the need for computer instruction might not have been envisioned in 1964, but that does not mean the addition of that component to the school curriculum is not subject to regulation. The fact is, the character of the use has changed with the addition of structures to the site and whether it is for an increase in the number of students, which in this case it is not, or for a change in the type of instruction, which this is, the addition of the trailers to the site is an expansion of the use. As noted by Mr. Hammack, Mr. Shoup said staff has consistently required churches, schools, and other types of uses wanting to add temporary trailers to their sites for various reasons to come to the Board for additional approval and this use is no different.

In rebuttal, Mr. Connor said when the trailers were installed they were installed by the owner of the trailers as shown in the staff report and the electrical wiring for the computers was installed by the Virginia Power Company. Since the special exception application was filed two months ago, the owner of the school has seen a lot of County inspectors and the building permit question is in dispute between Virginia Power and the County. Mr. Connor stated that the character of the use has not changed and the use is proper as it exists.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination that the addition of two trailers on the school property is not in conformance with the special permit plat for SP 24200 and constitutes an expansion of the use in violation of the Zoning Ordinance provisions. He believed that the appellant's attorney made some interesting remarks, but the Board has consistently taken the position that the addition of trailers on sites such as this is an expansion.

Mr. Pammel seconded the motion. He said clearly in his mind these trailers are structures and are defined as such in the Building Code; therefore, they should have had all the proper County inspections and permits before they were placed on the site.

The motion carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1997.

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Page 472 June 24, 1997, (Tape 1), Action Item:

Request for Additional Time from  
Janet and Arthur Koenig, VC 92-B-113

Mr. Dively made a motion to grant the applicant's request. Hearing no objection, the Chairman called for the vote. The motion carried by 4-0 with Mr. Kelley and Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting. The new expiration date recommended is June 18, 1999.

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Page 472 June 24, 1997, (Tape 1), Action Item:

Intent to Defer Request regarding John O. Duncan Appeal, A 1997-SU-008

Mr. Pammel made a motion to reschedule the appeal to the morning of July 22, 1997. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 472 June 24, 1997, (Tape 1), Action Item:

Approval of April 15, 1997 Minutes.

Mr. Pammel made a motion to approve the Minutes as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 472 June 24, 1997, (Tape 1), Action Item:

Approval of June 17, 1997, Resolutions

Mr. Pammel made a motion to approve the Minutes as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 472 June 24, 1997, (Tape 1), Action Item:

Board of Zoning Appeals meeting with Staff RE: Resolution Format

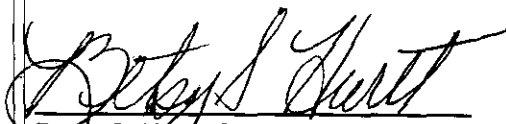
The Board deferred discussion on this item until the morning of July 8, 1997.


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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: Betsy S. Hurtt

Approved on: August 5, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 8, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:13 a.m.

Before the first Agenda item of the regularly scheduled Board of Zoning Appeals meeting was called, Jane Kelsey, Chief, Special Permit and Variance Branch, said that the Board had indicated its desire that prior to adjournment, the Board would recess to Executive Session for the purpose of considering staff's proposed language to clarify and simplify Resolutions. She noted that this presentation was in response to the BZA's request that staff address issues regarding the Resolutions adding that the County Attorney would also attend.

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Referencing the June 19, 1997 letter from Tom V. Richardson, Mr. Ribble requested an update on the apparent miscommunication on the part of Mr. Richardson with action taken by the BZA. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that further research was necessary but, as she understood it, during the May 13, 1997 BZA meeting, the Board of Zoning Appeals granted an 18-month additional time for Mr. Richardson's special permit amendment application, SPA 91-Y-035-1, and at that time, Mr. Richardson assumed that the BZA had within its purview to waive a land dedication requirement for the Tri-County Connector mandated by the Department of Environmental Management. Ms. Kelsey stated that, subsequent to learning of DEM's dedication requirement, Mr. Richardson had mentioned filing an appeal and the nature and substance of this appeal were the issues being researched. Ms. Kelsey noted that she would confer with William Shoup, Deputy Zoning Administrator, on the disposition of Mr. Richardson's appeal and would advise the BZA accordingly.

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Page 613, July 8, 1997 (Tape 1), Scheduled case of:

9:00 A.M. EILEEN B. WHITE, VC 97-D-046, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.1 ft. from side lot line such that side yards total 19.3 ft. Located at 1713 Chesterford Way. On approx. 11,213 sq. ft. of land zoned R-2(Cluster). Dranesville District. Tax Map 31-3((29))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. Eileen B. White, 1713 Chesterford Way, McLean, Virginia, replied that it was.

Brian Davis, Staff Coordinator, presented the staff report. He stated that a variance of 4.7 feet was being requested.

Eileen White clarified that enclosing her existing carport would not bring the structure any closer to the property line. She stated that her neighbors had no objection. She requested that the eight-day waiting period be waived if the Board granted her variance.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Mr. Hammack moved to grant VC 97-D-046 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 1, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 97-D-046 by EILEEN B. WHITE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.1 feet from side lot line such that side yards total 19.3 feet, on property located at 1713 Chesterford Way, Tax Map Reference 31-3((29))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 July 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 11,213 square feet.
4. Only the rear corner of the proposed enclosure requires a variance, which is minimal.
5. This variance will not be detrimental to the community in any way.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a 2-car attached garage shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated April 30, 1997, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Messieurs Pammel and Ribble each seconded the motion which carried unanimously by a vote of 5-0 with Mr. Kelley not present for the vote; Mr. McPherson was absent from the meeting.

The Board waived the eight-day waiting period.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 675, July 8, 1997 (Tape 1), Scheduled case of:

9:00 A.M. KINDERCARE LEARNING CENTER AND WESTERRA RESTON L.L.C., VC 97-H-045, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six foot high fence in a front yard. Located S.E. intersection of Old Reston Ave. and Temporary Rd. on approx. 3.18 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2((1))pt. of 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. Meaghan S. Kiefer, agent for the applicant, with the firm of William H. Gordon Associates, replied that it was with one minor modification; the deletion of a former agent, R. Bruce Kidwell, with the installation of Gray W. Greiner.

Brian Davis, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a two-foot variance.

Meaghan Kiefer pointed out that, with the site's exceptional topography, the fence would be only slightly visible because of the severe slope of its frontage. She stated that the applicant has worked with Reston's Planning and Zoning Committee, the Reston Town Centre Design Review Board and staff to incorporate additional landscaping along the proposed fence.

Chairman DiGiulian called for speakers either in support or opposition and receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 97-H-045 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 1, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-H-045 by KINDERCARE LEARNING CENTER AND WESTERRA RESTON L.L.C., under Section 18-401 of the Zoning Ordinance to permit six-foot high fence in a front yard, on property located at S.E. intersection of Old Reston Avenue and Temporary Road, Tax Map Reference 17-2((1)) pt. of 11, 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 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The co-applicant, Kindercare Learning Center, is the Contract Purchaser of the land and the co-applicant, Westerra Reston, L.L.C., is the Land Owner.
2. The present zoning is PRC.
3. The area of the lot is 3.18 acres.
4. In May, 1997, the Planning Commission reviewed and approved the applicant's conceptual plan which indicated a six-foot high 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of a six-foot high board on board wood fence in the front yard shown on the plat prepared by Urban Engineering and Associates Inc., dated February 28, 1997 and revised through May 29, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.



Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 unanimous vote of 5-0 with Mr. Kelley not present for the vote; Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 677, July 8, 1997 (Tape 1), Scheduled case of:

9:00 A.M. ABNER LOUIS NOTKINS, VC 97-D-043, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.0 ft. from front lot line and 18.6 ft. 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's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Woodward Notkins, 1179 Crest Lane, McLean, Virginia, wife and agent for the applicant replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that a thirteen-foot variance for the front yard and a variance of 1.4 feet for the side yard was requested. Ms. Langdon pointed out that a revised affidavit dated June 23, 1997 was distributed to the Board that morning.

Susan Notkins explained that the proposed addition would be constructed onto a house which was built in the 1950s and which was non-conforming because the lot was substandard. She noted that the house would be screened from the sole neighbor because of substantial vegetation.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Ribble moved to grant VC 97-D-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 1, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 97-D-043 by ABNER LOUIS NOTKINS, under Section 18-401 of the Zoning Ordinance to permit construction of additions 27.0 feet from front lot line and 18.6 feet from side lot line, on property located at 1179 Crest Lane, Tax Map Reference 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 July 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R -1.
3. The area of the lot is 38,585 square feet.
4. The property has an exceptional shape with its narrowness and topography.
5. The house's placement on the lot precludes where an addition can be placed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the two-story addition shown on the plat prepared by Susan Woodward Notkins, dated March 11, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 679, July 8, 1997 (Tape 1), ABNER LOUIS NOTKINS, VC 97-D-043, continued from Page 678

Mr. Pammel seconded the motion which carried by a unanimous vote of 6-0 with Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 679, July 8, 1997 (Tape 1), Scheduled case of:

9:00 A.M. AJEY BARGOTI, SP 97-Y-014, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 6800 Old Centreville Rd. on approx. 1.37 ac. of land zoned R-1, WS. Sully District. Tax Map 65-3((1))24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ajey Bargoti, 5535 Buggy Whip Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that staff recommended approval of the proposed child care center.

Mrs. Bargoti introduced herself as the wife the applicant and as a registered and experienced day care provider. She stated that she and her husband sought this opportunity to open their own day care center in order to serve the Centreville area on a larger scale.

Chairman DiGiulian called for speakers either in support or in opposition to the application.

Eddie Sutton, 6761 Rockledge Place, Centreville, Virginia, voiced his opposition to the proposal. He cited serious traffic congestion and safety concerns. He pointed out that there is already a speeding problem as well as an ingress and egress problem on Old Centreville Road. Mr. Sutton suggested that a four-way stop sign be installed at the entrance of the day care facility at Flamborough Road and Old Centreville Road.

Mr. Pammel advised Mr. Sutton that the Board was unable to make such a condition. He suggested that Mr. Sutton or his community submit a request to address the traffic and safety problems through their Supervisor. However, Mr. Pammel subsequently made a motion which passed unanimously to ask VDOT to look into this problem.

Allison Cox, 6802 Centreville Road, Centreville, Virginia, pointed out the traffic problems. She clarified that she had no objection to the day care center but was worried about the increased traffic generated by the day care center compounding the existing problems.

Stephen H. Culver, 6825 Malton Court, Centreville, Virginia, identified himself as the President of the Crofton Commons Homeowners Association. He welcomed the day care center to their community but reiterated the three concerns which needed addressing: safety of parents and children ingress and egress; the exiting problems of the neighboring community residents via Flamborough Road; and the concern of vandalism after dark because of no street lighting.

Tony Brakewell, 6811 Malton Court, Centreville, Virginia, called the Board's attention to the severe safety concerns at the proposed entrance of the day care facility with the danger of vehicles speeding or not paying proper attention.

In rebuttal, Mrs. Bargoti explained that consultation with the Department of Transportation had assured them that there would be no problems with traffic if the exit on Route 28 is closed. She pointed out that the traffic problems would only be at certain times and would be generated from people within the neighboring communities whose children would attend the day care facility.

There being no more speakers and no more questions or comments from the Board, Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 97-Y-014 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 1, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 97-Y-014 by AJEY BARGOTI, under Section 3-103 of the Zoning Ordinance to permit a child care center, on property located at 6800 Centreville Road, Tax Map Reference 65-3((1))24, 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 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
2. The present zoning is R-1, WS.
3. The area of the lot is 1.37 acres.
4. The applicant has sought remedies to mitigate the existing traffic congestion/problems.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6800 Centreville Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc. dated September 3, 1996, revised June 17, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment shall be limited to ninety-nine (99) children.
6. The hours of operation shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.
7. There shall be twenty-eight (28) parking spaces provided. All parking shall be on site as shown on the special permit plat and shall be provided in conjunction with Phase 1.

- 8. Existing vegetation along the northern lot line shall be preserved and maintained as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1.

Transitional Screening 1 shall be provided along the western and southern lot lines as depicted on the special permit plat.

A staggered row of evergreen trees shall be provided along the eastern lot line as depicted on the special permit plat and shall satisfy the requirements of Transitional Screening 1.

Size, species and number of the plantings shall be determined by the Urban Forestry Branch, DEM at the time of site plan review. All screening shall be provided in conjunction with Phase 1.

- 9. Barriers shall be provided as depicted on the special permit plat in conjunction with Phase 1.
- 10. The existing well shall be capped and sealed in conformance with Health Department guidelines.
- 11. The proposed wall along the eastern side of the play area shall be a solid brick, block or masonry wall, six (6) feet in height and provided in conjunction with Phase 1.
- 12. Notwithstanding Note #5 on the special permit plat, the existing one-story block building shall be removed.
- 13. A sign permit shall be obtained for any sign proposed for this site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless 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 unanimous vote of 5-0 with Mr. Hammack not present for the vote; Mr. McPherson absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel further moved that the Board entertain suggestions for resolution of the traffic problems at Flamborough Road and Centreville Road and to determine what signalization may be appropriate at that intersection.

Mr. Kelley seconded the motion which carried unanimously by a vote of 5-0 with Mr. Hammack not present for the vote; Mr. McPherson absent from the meeting.

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Page 682, July 8, 1997 (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL P. AND JERRYLE-ANN P. MCBEE, SP 97-P-017, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals. Located at 3320 Fallowfield Dr. on approx. 11,256 sq. ft. of land zoned R-4. Providence District. Tax Map 60-1((16))128A.

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 P. McBee, 3320 Fallowfield Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She explained that the applicants were requesting a modification to the limitations on the keeping of animals so that they would be permitted to keep their four chow dogs on their lot. She noted that the lot has less than 12,500 square feet.

Michael McBee informed the Board that all the violations cited by the Senior Zoning Inspector, Ms. Christina Sadar, had been corrected within a timely manner and that his only request was to be allowed to keep four dogs on their property, which was their only violation. He pointed out that they intended to sell the house in the fall and were only seeking this special permit until then. He stated that the dogs were not dangerous and had regular veterinarian treatment; that they were in good health and had good dispositions. Mr. McBee submitted a petition from his neighbors and a nearby school attesting to the fact that the dogs were friendly and not a nuisance.

Chairman DiGiulian called for speakers either in support or in opposition.

Greg Gorham, President of the Raymondale Civic Association, voiced his opposition to the special permit. He cited the establishment of an alarming precedent of allowing too many animals on too small of lots in a residential neighborhood; the fact that there is at least one neighbor who is directly impacted by this request, and who is very opposed and who wants their wishes considered, and, that there has not been sufficient justification to warrant this waiver. Mr. Gorham requested that the Raymondale Civic Association be notified of future waiver requests so as to allow them the opportunity to become involved with such issues.

Nancy Feeney, 7509 Brad Street, Falls Church, Virginia, voiced her opposition to the keeping of four dogs on their neighbor's property. She believed that the chow dogs were a danger to children, were not well-kept and had many diseases such as mange and fleas. Ms. Feeney asked that the McBees not be granted a special waiver since they have consistently been in violation of the law that the rest of their neighbors abide by.

Kevin Feeney, 7509 Brad Street, Falls Church, Virginia, stated that one chow dog had crashed through a plate glass window to attack him; that the dogs were not mild-mannered but attack animals. He pointed out that children from the day care center have been chased and he expressed his concern about the safety of the neighbors and its children.

In rebuttal, Mr. McBee explained that the window Mr. Feeney had referenced had been replaced with a superior material which is stronger than glass. He clarified that chow dogs twice yearly shed their coats which may give the appearance of mange to a person who doesn't know the breed. He stated that only biodegradable chemicals are used to treat their grounds; that no harmful chemicals are used and all treatments, both to animals and to the grounds are environmentally safe. Mr. McBee maintained that the dogs are bathed regularly, taken to the vet, obedience trained, very well-treated, and have never jumped out of the yard to chase children.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant SP 97-P-017 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 1, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Page 683, July 8, 1997 (Tape 1), MICHAEL P. AND JERRYLE-ANN P. MCBEE, SP 97-P-017, continued from Page 682

In Special Permit Application SP 97-P-017 by MICHAEL P. AND JERRYLE-ANN P. MCBEE, under Section 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals, on property located at 3320 Fallowfield Drive, Tax Map Reference 60-1((16))128A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 8, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,256 square feet.
4. The granting of this special permit is contingent upon the strict application of the six development conditions as they are noted below.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This Special Permit is granted to the applicant only and is not transferrable without further action of this Board and is for the location indicated in the application and is not transferrable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicants' existing four dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used to exercise the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.
5. The dogs shall not remain in the yard unsupervised.
6. This Special Permit shall terminate one and a half years after the final approval date.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Kelley seconded the motion which carried by a vote of 5-0-1 with Mr. Hammack abstaining; Mr. McPherson was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. KATHERINE V. COUNTS, TRUSTEE, Appeal A 1997-PR-002, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 2841 Hunter Rd. on approx. 1.01 ac. of land zoned R-1. Providence District. Tax Map 48-2 ((1)) 7. (MOVED FROM 5/6/97)

Jane Gwinn, Zoning Administrator, presented the position of William E. Shoup, Deputy Zoning Administrator, as set forth in his July 1, 1997 memorandum. In summary, she stated that the issue in this appeal was that, in staff's opinion, the appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance.

Ms. Gwinn responded to Chairman DiGiulian's and Mr. Hammack's questions regarding circumstances, documents or information that staff would accept from an appellant to prove that a dwelling unit was a nonconforming building or use established prior to the regulations of the current Zoning Ordinance.

Sara E. Hall, Esquire, with the law firm of Blankingship & Keith, representing the appellant, briefly explained the subject property's history, its listing agreement, the buildings which existed on-site, and a description of a small house. She pointed out that there were two houses and both have been continuously occupied since the property's purchase in 1978. Ms. Hall noted that the January 15, 1997 letter from Zoning Enforcement was the first notice that the appellant had which evidenced a problem with the occupancy of both houses. She stated that the appellant's position is that both houses are nonconforming and were built before 1941.

Chairman DiGiulian called for speakers either in support in opposition to the appeal and receiving no response, called upon Ms. Gwinn for any closing staff comments.

Ms. Gwinn did not agree with Ms. Hall's view that because the structures have existed for such a long time and there have been no complaints that there must not have been a zoning violation because the use must have been pre-existing. She noted that the 1984 building permit showed only one house when the porch addition was approved and that staff was unaware that the addition was to expand a second dwelling unit.

Chairman DiGiulian closed the public hearing.

Mr. Pammel noted that Lot 8, also owned by the appellant, was vacant and he suggested that a subdivision process could be undertaken to establish a legal situation which places the tenant house on its own lot. He stated that, in his opinion, there had been insufficient evidence presented to prove that the use was nonconforming and then he moved to uphold the Zoning Administrator's determination.

Mr. Hammack seconded the motion commenting that, although sympathetic with the appellants, the evidence was inconclusive, that there was no proof that the house existed before the Ordinance.

Mr. Kelley stated that he was convinced by the testimony and the evidence presented that the units probably existed before the Ordinance. He disagreed with Mr. Pammel's suggestion that the establishment of Lot 8 was the solution to this appeal's determination. Mr. Kelley stated his opposition to upholding the Zoning Administrator's determination.

Chairman DiGiulian stated his opposition to the motion explaining his disagreement with staff's position that the appellant must prove the early existence of the house while the County is unable to prove otherwise.

The motion to **uphold** the Zoning Administrator's determination carried by a vote of 3-3 with Messieurs DiGiulian, Kelley, and Ribble opposed; Mr. McPherson was absent from the meeting.

Chairman DiGiulian clarified that four votes would be required to overrule the Zoning Administrator's determination and this vote was a tie at three to three.

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Page 685, July 8, 1997 (Tape 1), Action Item:

9:30 A.M. JOHN O. DUNCAN, TRUSTEE, A 1997-SU-008, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant's property cannot be developed separately as two lots under the provisions of Sect. 2-405 of the Zoning Ordinance. Located at the Neverlett Property on approx. 5.0275 ac. zoned R-C. Sully District. Tax Map 65-3((1))71.

Chairman DiGiulian announced that the Board had issued an intent to defer the public hearing on this appeal to 9:30 a.m., July 22, 1997. There being no objection, Mr. Pammel so moved which was seconded by Mr. Ribble and carried unanimously with Mr. McPherson absent from the meeting.

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Page 685, July 8, 1997 (Tape 1), After Agenda Item:

Request for Additional Time  
Sang Oh & Company, SPA 85-S-059

Mr. Hammack moved to **grant** the request for additional time to the recommended date of January 8, 1999 which was seconded by Mr. Pammel and carried unanimously with Mr. McPherson absent from the meeting.

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Page 685, July 8, 1997 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request  
Cub Run Baptist Church, SP 97-Y-029 & VC 97-Y-058

Mr. Pammel commented that this situation warranted an out-of-turn hearing and he then so moved that the Out-of-Turn Hearing request be **granted** for SP 97-Y-029 and VC 97-Y-058 to the rescheduled date of August 12, 1997 at 9:00 a.m. The motion was unanimous with Mr. McPherson absent from the meeting.

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Page 685, July 8, 1997 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request  
Richard & Virginia Wagner, VC 97-D-064

Jane Kelsey, Chief, Special Permit and Variance Branch, explained the variance the Wagners were requesting. Discussion followed among the Board members concerning the time which may be required for the completion of the proposed construction. Mr. Pammel moved to **deny** the request for an out-of-turn hearing which was seconded by Mr. Ribble and carried unanimously with Mr. McPherson absent from the meeting.

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Page 685, July 8, 1997 (Tape 1), After Agenda Item:

Approval of Resolutions  
Board of Zoning Appeals Meeting of June 24, 1997

There being no objections, Mr. Pammel moved to **approve** the June 24, 1997 BZA resolutions which was seconded by Mr. Kelley and carried unanimously with Mr. McPherson absent from the meeting.

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At the conclusion of the last July 8, 1997 After Agenda Item, Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that there was no BZA meeting July 15, 1997. She further clarified that the Board's decisions made today, July 8th, would be final July 23, 1997.

Mr. Hammack moved that the Board recess to go into Executive Session for consultation with legal counsel and briefings by staff members, consultants, and attorneys, pertaining to legal matters and requiring the provision of legal advice by counsel pursuant to Virginia Code Sect. 2.1-344 (A)(7). The motion was seconded by Mr. Ribble and carried unanimously by a 6-0 with Mr. McPherson absent from the meeting.

The Board Recessed at 10:30 a.m. and reconvened at 11:30 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.

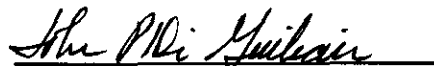
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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Paula A. McFarland

Approved on: September 30, 1997

  
Betsy S. Hunt, 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 July 22, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:06 a.m. Mr. Ribble made a motion to go into Executive Session to discuss legal issues from last week that may have been misunderstood by staff. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Dively was not present for the vote.

Upon reconvening, Mr. Ribble 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.

Chairman DiGiulian called for the first scheduled case.

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Page 687, July 22, 1997, (Tape 1), Scheduled case of:

9:00 A.M. EXXON CORPORATION, VC 97-M-025, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements to permit building to remain 4.0 ft. from rear lot line. Located at 6162 Arlington Blvd. on approx. 21,058 sq. ft. of land zoned C-7, SC. Mason District. Tax Map 51-3((1))24C. (Association w/SE 97-M-014)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Keith Martin, with the firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, replied that it was.

Greg Russ, Staff Coordinator with the Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report dated July 2, 1997. The applicant requested a variance of 16.0 feet for a service station/mini mart to be located 4.0 feet from the rear lot line.

Mr. Martin presented the applicant's request as outlined in the statement of justification submitted with the application. He said this application meets the required standards, in particular an extraordinary situation and clarified that the building has been there for many years. Mr. Martin added that the applicant was only requesting to renovate the interior.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Hammack moved to grant VC 97-M-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

EXXON CORPORATION, VC 97-M-025, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements to permit building to remain 4.0 ft. from rear lot line. Located at 6162 Arlington Blvd. on approx. 21,058 sq. ft. of land zoned C-7, SC. Mason District. Tax Map 51-3((1))24C, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the nine required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the service station/mini-mart building shown on the plat entitled "Special Exception/Variance Plat, Exxon Station 2-2940" prepared by The Plan Source, dated April 7, 1997 as revised through May 27, 1997 submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted.

The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0-1 with Mr. Dively abstaining.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 689 July 22, 1997 (Tape 1), Scheduled case of:

9:00 A.M. GEORGIE C. NANCE, VC 97-D-044, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.7 ft. from side lot line. Located at 1209 Buchanan St. on approx. 9,153 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(A)7B. (CONCURRENT WITH SP 97-D-019)

9:00 A.M. GEORGIE C. NANCE, SP 97-D-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 stoop and steps to remain 4.5 ft. from side lot line. Located at 1209 Buchanan St. on approx. 9,153 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(A)7B. (CONCURRENT WITH VC 97-D-044)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Georgie Nance, 1209 Buchanan Street, replied that it was.

Jane Kelsey, Chief, Special Permits and Variance Branch, made staff's presentation as contained in the staff report dated July 15, 1997 prepared by Julie Schilling, Staff Coordinator. The applicant requested a reduction to the minimum yard requirements to permit a stoop and steps to remain 4.5 feet from the side lot line which resulted in an error of 5.5 feet. The applicant also requested a variance of 11.3 feet for a deck to be located 3.7 feet from the side lot line. Ms. Kelsey submitted a house location plat and building permit to the Board which showed the correct placement of the stoop and steps; however, they were not constructed in accordance with it.

Georgie Nance showed photographs depicting the stoop and steps as they currently exists. She gave a brief history by stating that when she had her property surveyed for the variance application it was discovered that the stoop and steps were in violation. Apparently, the builder had put them in the wrong location and it was not discovered by Fairfax County Inspectors. With regards to the variance request, Ms. Nance addressed the standards for a variance stating that the lot has an unusual shape, that the request does not create an impact on the adjacent property, and the request meets all the required standards. She requested the Board waive the eight-day waiting period if the variance was granted.

Mr. Pammel asked Ms. Nance if she had considered placing the deck in the rear of her property in order to meet the set back requirements. Ms. Nance replied that she had talked to several of her neighbors and they worked out together where each was going to locate their decks in order to maintain the most privacy for each property due to their shallow rear yards.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Pammel made a motion to grant SP 97-D-019 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

GEORGIE C. NANCE, SP 97-D-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 stoop and steps to remain 4.5 ft.

from side lot line. Located at 1209 Buchanan St. on approx. 9,153 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(A)7B, 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 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the stoop and steps shown on the plat prepared by Baldwin and Sampson, Inc. dated April 17, 1996, 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.

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 22, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the eight day waiting period.

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Mr. Pammel made a motion to grant VC 97-D-044 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions as contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

GEORGIE C. NANCE, VC 97-D-044, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.7 ft. from side lot line. Located at 1209 Buchanan St. on approx. 9,153 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(A)7B, 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 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot is narrow and deep and has an unusual configuration.
3. The property is zoned R-2 but has a lot size of what is permitted in an R-4 district; therefore, it creates a situation where the existing zoning of the land and the lot size are not consistent.
4. Based on the applicant's testimony, the location of the deck was done with the whole of the community in mind. The applicant talked with all of the adjacent property owners and what evolved will be consistent with the improvements that are being made to the other properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a deck shown on the plat prepared by Baldwin and Sampson Inc., dated April 17, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried 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 22, 1997. This date shall be deemed to be the final approval date of this variance. The Board waived the 8-day waiting period.

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Page 692 July 22, 1997, (Tape 1 & 2), Scheduled case of:

9:00 A.M. CLIFTON CHILDREN'S ACADEMY, SP 97-S-015, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit child care center and nursery school. Located at 14315 Compton Rd. on approx. 7.49 ac. of land zoned R-C, WS. Springfield District. Tax Map 65-3((1))94A, 57B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Barbara Touchton, 415 Winchester Street, Warrenton, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permits and Variance Branch, made staff's presentation as contained in the staff report dated July 15, 1997. The applicant requested a special permit for a child care center and nursery school for 99 children to be completed in two phases. The first phase would involve the conversion of the existing single family dwelling and existing apartments to a child care center and caretakers apartment. The second phase would include the construction of a second two-story building in the western portion of the property along with a swimming pool. Staff recommended approval of the special permit subject to the Proposed Development Conditions in Appendix 1 of the staff report and noted that the applicant was opposed to Condition Number 8.



Ms. Touchton presented her request as outlined in the statement of justification submitted with the application. She stated that she was Director of the McLean Children's Academy and gave a brief background of her education. Ms. Touchton said the proposed child care center would be an educational school in the morning with extended day care in the afternoon. She said the property has enough acreage to provide the needed improvements in order to address staff's concerns. Ms. Touchton said she wants to save as many trees as possible and noted that Supervisor McConnell was in support of her application. She added that she proposed to dedicate 3/4 of an acre of land to Fairfax County for road improvements.

Mr. McPherson questioned Ms. Touchton on the proposed number of employees. Ms. Touchton responded that she was proposing a total of 18 employees.

Mr. McPherson questioned the access easement on the property and the transportation issues as set forth in the staff report and asked if the 10 foot driveway easement was part of the dedication. Ms. Touchton replied affirmatively, explaining that it runs with the land.

Mr. McPherson wanted Ms. Touchton to comment on the trip generation. She replied that the pre-school will have more cars but the site will have a long driveway and they will create a turn lane off of Compton Road to make the situation safer. She pointed out that not all the parents would arrive at one time since the arrival times are staggered.

Mr. McPherson stated his concern over the time frame of the expansion of the facility; specifically, the situation of Compton Road prior to the road improvements being done. Ms. Touchton said with the installation of the new septic field, she would then be equipped to handle all 99 children. She pointed out that the Office of Transportation said the concerns of trip generation had been addressed.

Mr. Hammack questioned the number of caretakers' apartments in building 2 and 4. Ms. Touchton advised there would be only one caretaker on the site.

Chairman DiGiulian called for speakers in support.

Lee Rosenberg, representing the North Hart Run Home Owners Association, stated that they were not opposed to the day care center but were concerned about the traffic issues of Compton Road. Mr. Ribble questioned when the subdivision was built. Mr. Rosenberg responded that it has been in existence for 5-6 years. Mr. Dively then questioned the speaker if the traffic concern was over safety or volume issues. Mr. Rosenberg responded that they were concerned over both and elaborated by saying that Compton Road has a steep incline and sharp curves that you can not see around and the increased volume would exacerbate the safety issue. He added that some kind of traffic control would mitigate that problem. Mr. Dively asked if accident statistics were available at this location. Neither the speaker nor the staff had any available.

Mr. Hammack questioned whether the subject property would be on sewer or septic. When staff responded that it would be sewer he then questioned staff on their recommendation for approval. Ms. Kelsey responded that the Health Department would review the adequacy of the septic facility and the school could not open until this had been addressed.

Robin Hadsforth, adjacent property owner, also spoke in support of the child care center based on the need for good facilities in the area.

Chairman DiGiulian called for speakers in opposition.

Ken Laub, speaking on behalf of an adjacent property owner, used the view graph to show pictures depicting a steep hill on Compton Road and a sharp curb on the other side to show the hazardous road conditions and said the R-C District is used for residential conservation. He stated that his father-in-law owned part of the property in question and when they had the site surveyed a few years ago they were told the site would not perk; therefore, he questioned the soil quality report. He also stated concerns over protecting his current property from children who could wander over from the center. Mr. Laub said the easement was not addressed in the staff report. His main concerns dealt with traffic flow, dedication of easement, and the issue that they were denied access to public water but the child care center had been granted access. Mr. Laub

elaborated by stating that his father-in-law owned all of the property in question 5 years ago, then had it subdivided selling off part of it. On March 15, 1995, they had a soil test done on the entire parcel of land and was told it would not perk.

In response to a question from Mr. McPherson, Mr. Laub stated that his current property is vacant.

Tony Arken, 14301 Compton Road, referred to his letter previously submitted.

In rebuttal, Ms. Touchton said she has agreed to dedicate land and agreed to road improvements and would be willing to do whatever the County requested.

Mr. Hammack questioned Ms. Touchton about the septic field and she responded that each lot allowed for one four bedroom dwelling. She pointed out that the easement runs with the property and has to be allowed. Ms. Touchton said she would be willing to have a condition that addresses that concern.

Mr. Dively questioned the cost of the road improvements. Ms. Touchton responded approximately \$40,000 for land dedication and the construction of the deceleration lane.

Mr. Ribble again questioned the easement that is to be dedicated. The applicant agreed to relocate and provide access within their property for the adjacent property owner.

Mr. McPherson asked for the adjacent property owner to address the proposed dedication concern.

Mr. Kelley commented that a new plat should be required by Board and then it was up to the County to approve or deny the dedication.

Ms. Kelsey responded that staff believed there is a nexus and that a deceleration lane is needed with use of property for a child care center.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 97-S-015 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

CLIFTON CHILDREN'S ACADEMY, SP 97-S-015, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit child care center and nursery school. Located at 14315 Compton Rd. on approx. 7.49 ac. of land zoned R-C, WS. Springfield District. Tax Map 65-3((1))94A, 57B. Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee and contract purchaser of the land.
2. The findings noted in the staff report are made part of the resolution granting the application as well as the testimony presented by the applicant.
3. The applicant meets the required standards necessary for the issuance of a special permit.
4. The applicant's request is well-founded.

5. The Board had some concerns about transportation issues; however, they felt that will always be a problem and can not be solved "on the spot".
6. The adjoining property owner's testimony raised some bonafide issues between the applicant and other properties but there is a solution those issues.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303 and 8-308 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 14315 Compton Road, 7.49 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Runyon, Dudley, Associates, Inc., dated March 26, 1997, as revised through August 4, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment on the site shall not exceed 99 children.
6. The maximum number of employees on the site shall not exceed 18.
7. A minimum of 21 parking spaces shall be provided on the site. The geometrics of the parking areas shall be approved by DEM. All parking for the use shall be on-site.
8. The landscape island shown within the parking lot containing an existing oak tree shall be expanded to protect the driplines of the oak tree, subject to the review and approval of the Urban Forestry Branch of DEM.
9. One caretakers apartment shall be permitted on the site within the buildings shown on the plat, and shall be limited to use only by the permittee or a bonafide employee of the child care center.
10. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of the tree save areas shown on the special permit plat, as well as existing mature trees present within the vicinity of the eastern property boundary. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utilities or trails that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternative location on the site. If a suitable alternate location cannot be identified on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to the Public Facilities Manual.

11. The barrier requirement for all property boundaries shall be waived. Transitional Screening Type 1 shall be provided as follows:

Northern Lot Line

Transitional Screening Type 1 shall be modified to provide plantings between the proposed access driveway to the child care center and the northwest corner of the site, in order to screen the use from residential neighborhoods on the north side of Compton Road. The exact type, location, size and number of plantings shall be reviewed and approved by the Urban Forestry Branch of DEM.

Western Lot Line

Transitional Screening Type 1 shall be modified to provide screening between the southwest corner of the fenced play area extending to the northwest corner of the site, in order to screen the view of the center from the adjacent residentially zoned property.

Existing vegetation may be substituted for transitional screening where appropriate. The exact type, location, size and number of plantings shall be reviewed and approved by the Urban Forestry Branch of DEM.

Eastern Lot Line

The transitional screening requirement along the eastern property boundary shall be modified so that the existing landscaping shall satisfy the transitional screening requirement. In addition, an evergreen hedge shall be provided around the perimeter of the parking lot to screen the view of the parking lot from adjacent residences.

12. The applicant shall construct a right turn deceleration lane into the site, and shall restripe and construct additional pavement as needed to provide a left turn deceleration lane into the site. The right turn deceleration lane and left turn deceleration lane shall be constructed to VDOT Standards as determined by DEM prior to issuance of a Non Residential Use Permit, or upon demand by the County or VDOT.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been legally established. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. LAWRENCE L. AND FILOMENA S. TRACY, SP 97-V-020, Appl. under Sect.(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.4 ft. from side lot line and 11.1 ft. from rear lot line. Located at 2414 Londonderry Rd. on approx. 14,080 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3((2))(22)35.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Lawrence L. Tracy, 2414 Londonderry Road, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 15, 1997. The applicant requested a special permit for error in building location to permit an accessory structure consisting of a shed to be located 11.6 feet from the side lot line and .3 feet from the rear lot line.

Mr. Tracy said the storage shed was built in 1992 and the contractor advised him that a special permit was not required. In 1996, he had an addition built onto the shed for additional storage space. He showed pictures depicting the shed as it currently exists.

Chairman DiGiulian called for speakers in support, and hearing no reply he called for speakers in opposition.

Marie Bauman, 2412 Londonderry Road, said the shed was over 10 feet in height and an eyesore. She requested that the Board require the applicants to bring it into compliance with the guidelines established in the Zoning Ordinance.

Charlotte Bauman, 2412 Londonderry Road, submitted photograph's of her view of the shed. She also submitted a letter from the civic association and a petition from surrounding neighbors in opposition to the special permit request.

In rebuttal, Mr. Tracy said when the shed was originally constructed, the neighbors had not had a problem.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny SP 97-V-020 for the reasons set forth in the Resolution.

Chairman DiGiulian called for discussion.

Mr. Kelley added that he felt the shed was an eyesore.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

LAWRENCE L. AND FILOMENA S. TRACY, SP 97-V-020, Appl. under Sect.(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.4 ft. from side lot line and 11.1 ft. from rear lot line. Located at 2414 Londonderry Rd. on approx. 14,080 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((2)) (22) 35. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 22, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. This appears to be somewhat of a neighborhood squabble.

Page 698, July 22, 1997, (Tape 2), LAWRENCE L. AND FILOMENA S. TRACY, SP 97-V-020, continued from Page 697

3. If the applicant would have obtained a building permit then the structure would have been placed correctly, this problem would not exist, and the neighbor would not be able to say anything about it; however, this is not the case.
4. The Board felt this request would impair the purpose and intent of this Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-914 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 30, 1997.

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Page 698, July 22, 1997, (Tape 2), Scheduled case of:

9:00 A.M. FAIRFAX CENTRE ALLIANCE CHURCH/MONTESSORI SCHOOL OF OAKTON, SPA 84-C-024-3, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-C-024 for church and related facilities and nursery school to permit church with a private school of general education with an enrollment of 100 or more students daily and amend development conditions. Located at 12113 Vale Rd. on approx. 6.01 ac. of land zoned R-1. Sully District. Tax Map 46-1((1))22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Carolyn Linke, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated July 15, 1997. The applicant requested a special permit amendment to permit a church with a private school of general education with an enrollment of 120 students daily.

Ms. Linke stated that they have reached their maximum daily enrollment and would like to expand. There is no new construction proposed with this amendment.

Chairman DiGiulian called for speakers, either in support or opposition, and hearing no reply he closed the public hearing.

Mr. Kelley moved to grant SPA 84-C-024-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

FAIRFAX CENTRE ALLIANCE CHURCH/MONTESSORI SCHOOL OF OAKTON, SPA 84-C-024-3, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-C-024 for church and related facilities and nursery school to permit church with a private school of general education with an enrollment of 100 or more students daily and amend development conditions. Located at 12113 Vale Rd. on approx. 6.01 ac. of land zoned R-1. Sully District. Tax Map 46-1((1))22, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 699, July 22, 1997, (Tape 2), FAIRFAX CENTRE ALLIANCE CHURCH/MONTESSORI SCHOOL OF OAKTON, SPA 84-C-024-3, continued from Page 698

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1997; 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 Sections 8-303 and 8-308 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 12113 Vale Road and is not transferable to other land.\*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Paculli, Simmons and Associates, Ltd., dated March 31, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The hours of operation for the private school of general education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.
6. The maximum daily enrollment for the private school of general education shall be 120 students.
7. The maximum number of seats in the sanctuary shall be 420.
8. There shall be 125 parking spaces as shown on the special permit plat. All parking shall be on site.
9. Transitional Screening shall be modified and provided as follows:
  - The limits of the existing vegetation shall be as shown on the approved special permit plat. No clearing shall be permitted in conjunction with this special permit approval. All existing vegetation shall be preserved and shall satisfy the requirements of Transitional Screening 1.
  - ▶ On the rear portion of the property where there is no existing vegetation or where such was removed to accommodate the septic field and play area, a 25 foot transitional screening area shall be retained as required in conjunction with the approval of SP 84-C-024. This screening area shall include a combination of white pine and dogwood, redbud or other ornamental deciduous trees. The amount of these plantings shall be equivalent to that which is required in

- ▶ Transitional Screening 1, however, they may be arranged in the form of a natural mass rather than a normal row arrangement. \*
- ▶ On the northern portion of the property, the existing vegetation, including the white pines planted between the church building and the lot lines as required in conjunction with the approval of SP 84-C-024 shall be maintained. The number of plantings and the manner in which they are arranged shall be such that the building is screened from the view of adjacent lot 21A. Low dense evergreen plantings shall be provided along the northern edge of the rear parking lot as determined by the Director DEM to ensure that vehicle headlights will not project onto adjacent properties. \*
- ▶ On the western side of the property, transitional screening shall be modified to allow existing landscaping materials to fulfill all screening requirements. \*

Any dead, dying or hazardous trees shall be removed and replaced as determined necessary by the Urban Forestry Branch, DEM.

10. The barrier requirement shall be waived. \*
11. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from spilling onto adjacent residential properties. The lights shall remain on all night. \*
12. Any sign erected on the property shall conform to Article 12 of the Zoning Ordinance. \*
13. The outdoor play area shall be located east of the existing parking area and shall not be located closer than 25 feet to any lot line as depicted on the special permit plat.
14. At times when the outdoor play area is in use, the gate located at the entrance to the rear portion of the existing parking area shall be closed. \*
15. The nursery school use approved in conjunction with SPA 84-C-024-2 shall cease prior to the issuance of the Non-Residential Use Permit for the private school of general education.

These development conditions incorporate and supersede all previous development conditions. The previously approved conditions are marked with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless 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. McPherson 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 30, 1997.

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Page 701, July 22, 1997, (Tape 2), Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH OF MERRIFIELD, SPA 87-P-073-2, Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-P-073 for church and related facilities and child care center to permit continued use of trailer. Located at 8122 Ransell Rd. on approx. 36,169 sq. ft. of land zoned R-3, HC. Providence District. Tax Map 49-4((1))36 and 49-4((3))8, 8A.

Chairman DiGiulian noted that notices were not in order for this case. Mr. Hammack moved to defer this hearing to September 30, 1997, at 9:00 a.m. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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The Board recessed at 11:23 a.m. and reconvened at 11:41 a.m.

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Page 701, July 22, 1997, (Tape 2), Scheduled case of:

9:00 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal 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)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated May 12, 1997. At issue in the appeal is the plant nursery and whether or not it has been enlarged or expanded. Mr. Shoup gave a brief history of the nursery by stating that it was purchased in 1973 and Mr. Craven grew and sold plants which was allowed by-right at the time. Mr. Shoup showed several additional buildings by using aerial photographs taken in 1978 versus ones taken in 1996 which he felt shows expansion of the business. He noted that the appellant was also cited for selling miscellaneous non-nursery stock items which the BOS could approve under a special exception approval; however, the appellant has not gained that approval.

The appellant's attorney, Grayson Hanes, presented the arguments forming the basis for the appeal. He stated that he would like to have the decision of this case deferred for 30 days so the Board would have time to consider the evidence presented and allow Mr. Ribble time to go over the case so he can be part of the decision also. Mr. Hanes submitted a review of the Zoning Ordinance from 1973 through present plus a petition in favor of the appellant's position. He said the character of the use has always been a nursery and prior to 1978 the entire property has been used consistently with nursery sales. The appellants were willing to stop selling the miscellaneous items that they were cited for. Mr. Hanes noted that the appellants have expanded their vehicles by one however it can not be licensed and is not used. The PA system and outside burglar alarms have been turned off. He said the shed-type structures were actually bins, with some having no walls and others with no roofs and two were removed by the appellant.

The appellant, Paul Craven, spoke in support of his position. He said he did not feel that he has violated any laws. He gave a brief history of his life and how he came to start his business. He had a video shown depicting his property and the violations in question.

The following spoke in support of the appellant's position. Bryan Waites (no address given); an unidentified friend of the Cravens; the general manager of Craven's Nursery; Ann Sullivan (no address given); Michelle Triplett, an employee of Craven's Nursery; Amanda Craven (no address given); Berry Black (no address given); Norman Jefferies, 8705 Parliament Drive; Freda Rolz, 2525; Delman Roly, 2525; Byron Force, a friend of Craven's, (no address given); and, Hoby Mitchell (no address given).

The following spoke in support of the Zoning Administrator's position: the owner of 3165 Meadow Court; David Feahdi, co-chair of community association; and, Tom Haughen, 3126.

Page 702 July 22, 1997, (Tape 2), CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal A 96-P-049, continued from Page 701

Mr. Kelley moved to defer closing remarks on this case and allow a maximum of 20 minutes each for the appellant and Zoning Administrator's staff for closing remarks. Staff suggested October 21, 1997, at 8:00 p.m. and Mr. Kelley concurred. 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 702 July 22, 1997, (Tape 3), Scheduled case of:

9:30 A.M. JOHN O. DUNCAN, TRUSTEE, A 1997-SU-008, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant's property cannot be developed separately as two lots under the provisions of Sect. 2-405 of the Zoning Ordinance. Located at the Neverlett Property on approx. 5.0275 ac. zoned R-C. Sully District. Tax Map 65-3((1))71. (DEF. FROM 6/10/97. DEF. FROM 7/8/97)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated June 2, 1997. At issue in the appeal is the determination that the appellant's property cannot be separately developed as two lots. He said the property was the subject of several severances and takings but it is still recorded as a single lot and no subdivision has been approved which would have legally divided this property into additional buildable lots. Mr. Shoup noted that the County has always treated this property as one lot.

The appellant's attorney, Robert Lawrence, presented the arguments forming the basis for the appeal. He requested that the Board defer this case for 30 days in order for all of the Board members to be present.

Mr. Pammel moved to defer this case for decision only to August 5, 1997, at 9:30 a.m. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 702 July 22, 1997, (Tape 3), Scheduled case of:

Request for Additional Time  
from Laguna and Guzman, Inc./H. Douglas Smith, et. al, VC 94-Y-099

Mr. Dively moved to grant the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date is May 10, 1999.

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Page 702 July 22, 1997, (Tape 3), Scheduled case of:

Approval of Minutes  
from the April 8, 1997 BZA Meeting

Mr. Pammel moved to approve the 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 702 July 22, 1997, (Tape 3), Scheduled case of:

Out of Turn Hearing Request  
for Kingstowne E. & F.L.P., SPA 95-L-072

Mr. Dively moved to deny the out of turn hearing request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Page 703, July 22, 1997, (Tape 3), Scheduled case of:

Request for Reconsideration  
Ajey Bargoti, SP 97-Y-014

Mr. Kelley moved to deny the request. The seconder of the motion could not be identified and the motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 703, July 22, 1997, (Tape 3), Scheduled case of:

Approval of July <sup>8, Lesh</sup> 15, 1997, Resolutions

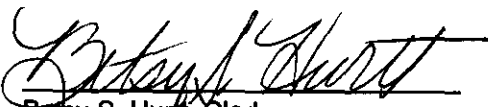
Mr. McPherson moved to defer decision on the resolutions until July 29, 1997, to allow the amendment of some of the resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.


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As there was no other business to come before the Board, the meeting was adjourned at 1:59 p.m.

Minutes by: Teresa M. Wang

Approved on: December 2, 1997

  
Betsy S. Hunt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals  
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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 29, 1997. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 A.M. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 705, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CARMEN E. GUERRERO, SP 97-M-011, Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 3328 Glenmore Dr. on approx. 14,921 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2((8))5.

Chairman DiGiulian informed the Board members that the notices for this case were not in order. Mr. Hammack made a motion to defer SP 97-M-011 to October 14, 1997 as suggested by staff. 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 705, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MICHELE F. DANDREA, SP 97-P-025, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.8 ft. from rear lot line. Located at 2200 Stefan Dr. on approx. 3,120 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4((38))59.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the application had been advertised incorrectly. She explained that the plat submitted with the application showed a deck but because there are walls surrounding deck, the structure is classed as an addition. Ms. Kelsey suggested deferring the application to September 16, 1997, at 9:00 A.M.

Mr. McPherson moved to defer to the date and time suggested by staff. Hearing no objection, the Chair so ordered. Mr. Ribble was not present for the vote.

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Page 705, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. CHILDERS, VC 97-P-049, 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 8719 Litwalton Ct. on approx. 12,243 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3((28))6A. (CONCURRENT WITH SP 97-P-023)

9:00 A.M. JAMES H. CHILDERS, SP 97-P-023, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 7.4 ft. from side lot line. Located at 8719 Litwalton Ct. on approx. 12,243 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3((28))6A. (CONCURRENT WITH VC 97-P-049)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James H. Childers, 8719 Litwalton Court, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a 3.2 foot variance in order to construct a garage.

Mr. Childers explained that they would like to enclose an existing carport into a garage. He explained that the deck was originally built in 1974 and at that time the setbacks were 6 feet which the deck met. The builder

told him there would be no problem with replacing the deck and a permit would not be required. Mr. Childers said the error was detected during the variance review process.

Mr. Hammack made a motion to approve SP 97-P-023 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report July 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JAMES H. CHILDERS, SP 97-P-023, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 7.4 ft. from side lot line. Located at 8719 Litwalton Ct. on approx. 12,243 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3((28))6A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the deck shown on the plat prepared by Richard J. Cronin, IV, dated October 3, 1996, and revised through July 9, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 97-P-049 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report July 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JAMES H. CHILDERS, VC 97-P-049, 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 8719 Litwalton Ct. on approx. 12,243 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3((28))6A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for the granting of a variance, specifically the lot has double front yard requirements.
3. The variance will be a minimal and only to one front yard requirement.
4. The granting of the variance will have no impact on the surrounding community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Richard J. Cronin, IV, dated October 3, 1996, and revised through July 9, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 208, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. TUNG DUC NGUYEN & LOAN THI DANG, VC 97-M-050, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line. Located at 6514 Walter's Woods Dr. on approx. 22,390 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2((19))6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Bao Nguyen, 7418 Add Drive, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested a 9 foot variance in order to construct an one-story greenhouse addition.



Mr. Nguyen said the house was built approximately thirty years ago and the owner would like to expand the master bedroom by adding a greenhouse adjacent to the bedroom which they believe will provide additional privacy. He added that this is the only feasible location for the greenhouse.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 97-M-050 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

TUNG DUC NGUYEN & LOAN THI DANG, VC 97-M-050, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line. Located at 6514 Walter's Woods Dr. on approx. 22,390 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2((19))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 July 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There is no other reasonable location for the greenhouse than that shown by the applicant since all other areas of the structure are occupied.
3. There is a garage to the west side of the house.
4. This is for a one story greenhouse, which is not an intensive activity particularly next to the adjoining adjacent property.
5. The variance is rather minimal, 4.7 feet, leaving a side yard of 10.3 feet.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation

as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of a one-story greenhouse addition shown on the plat prepared by Ashton L. Wood, recertified by Bao T. Nguyen, on April 16, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 710, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. DONALD EDWARD RENIKER, VC 97-B-051, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 4736 Playfield St. on approx. 15,003 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-4((7))(5)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. Donald Edward Reniker, 4736 Playfield Street, Annandale, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested a 6.2 foot variance in order to enclose an existing carport into a garage.

Mr. Reniker said the enclosure of the carport will provide access to their vehicles during inclement weather, will alleviate on-street parking, and will improve the appearance of the property. He explained how he believed the request satisfied the nine required standards for the granting of a variance and cited similar additions in the neighborhood. Mr. Reniker said they have discussed the proposal with their neighbors and have received support from many of their neighbors. He added that he did not understand why the one neighbor was opposed to the request.

There were no speakers in support of the application and Chairman DiGiulian called for speakers in opposition to the request.

Jackie Wilson, 8707 Cross Chase Circle, Fairfax Station, Virginia, spoke in opposition to the request on behalf of his father-in-law, Jack Pink. Mr. Pink believed the addition would be too close the shared lot line.

Mr. McPherson asked if Mr. Pink resided on the property and Mr. Wilson replied that Mr. Pink resided in Florida.

In rebuttal, Mr. Reniker said he did not have any additional comments other than this is his home and that he had tried to keep in mind the welfare of the neighbors when planning the addition.

Mr. McPherson made a motion to grant VC 97-B-051 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DONALD EDWARD RENIKER, VC 97-B-051, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 4736 Playfield St. on approx. 15,003 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-4((7))(5)18. Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The objections raised by one of the neighbors that the requested addition will be unsightly, noisy, and will reduce property values are misguided and should not have any bearing on the Board's decision. Although the granting of the variance will bring the houses closer together, the request will improve the appearance of the property and, based on the applicant's testimony, will probably reduce the noise in the area and increase the property values.
3. The resolution incorporates the facts noted in the staff report and the fact that the applicant has met the nine required standards for the granting of a variance.
4. The request is minimal and is a small expansion of the existing footprint of the existing carport.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by Kenneth W. White, dated May 12, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 6, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 712, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SAMUEL E. NEWMAN, VC 97-Y-052, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.6 ft. from side lot line. Located at 11948 Goodwood Dr. on approx. 31,113 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 56-3((6))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. Samuel E. Newman and his wife, Monica B. Newman, 11948 Goodwood Drive, Fairfax, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a 4.4 foot variance in order to enclose an existing carport into a garage.

Mr. Newman said they had resided on the property for 15 years and when the house was built it was sited irregularly on the lot due to the shape of the lot and carport was added at a later date. He believed the addition of the garage would enhance the property and provide shelter during inclement weather. Mr. Newman pointed out that all other houses in the neighborhood have garages, with the exception of one.

Mr. Ribble asked if the proposed addition would be any closer to the lot line than the existing carport. Mr. Newman replied that it would not.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 97-Y-052 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 22, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

SAMUEL E. NEWMAN, VC 97-Y-052, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.6 ft. from side lot line. Located at 11948 Goodwood Dr. on approx. 31,113 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 56-3((6))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 July 29, 1997; 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 nine required standards for the granting of a variance; in particular the applicant cited the shape of the lot and the location of the house on the lot. The plat clearly shows the house is located in a corner of the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation

as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an attached garage shown on the plat prepared by Thomas W. Kendall, dated January 25, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\*unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 6, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 714, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. DAVID K. & LOU D. SMITH, VC 97-Y-053, Appl. under Sect(s). 18-401 Of the Zoning Ordinance to permit construction of addition 13.7 ft. from rear lot line. Located at 13003 Winter Willow Dr. on approx. 8,258 sq. ft. of land zoned PDH-2, WS. Sully District. Tax Map 55-3((10))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. David K. and Lou D. Smith, 13003 Winter Willow Drive, Fairfax, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a 11.3 foot variance in order to construct a screened porch.

Mr. Smith said they purchased the property approximately one year ago and planned to reside on the property for the foreseeable future. He cited the exceptional shallowness of the lot and noted that the house was constructed with two French doors which presently have no outside access. Mr. Smith said approximately twelve houses in the neighborhood have similar additions and added there are no objections from the neighbors. The applicant asked that the Board waive the eight day waiting period if it was the Board's intent to grant the request.

Mr. Kelley made a motion to grant VC 97-Y-053 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 22, 1997. The Board waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DAVID K. & LOU D. SMITH, VC 97-Y-053, Appl. under Sect(s). 18-401 Of the Zoning Ordinance to permit construction of addition 13.7 ft. from rear lot line. Located at 13003 Winter Willow Dr. on approx. 8,258 sq. ft. of land zoned PDH-2, WS. Sully District. Tax Map 55-3((10))134. 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 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the approval of a variance, in particular the exceptional shape of the lot and the fact that the house is set somewhat back on the lot.
3. The house has a door leading to nowhere.
4. The applicant has obtained signatures supporting the request from all homeowners on the cul-de-sac as well as the owners of the lots which abut 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 **GRANTED** with the following limitations:

1. This variance is approved for the location of a screened porch shown on the plat prepared by Richard J. Cronin, IV, on April 29, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\*unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 29, 1997 based upon the Board waiving the eight-day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 716, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking to remain less than 10.0 ft. from front lot line. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with SP 97-V-006). (DEF. FROM 5/6/97 AND 6/24/97)

9:00 A.M. MOUNT VERNON PRESBYTERIAN CHURCH, SP 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and a child care center. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. (Concurrent with VC 97-V-020). (DEF. FROM 5/6/97 AND 6/24/97)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Van Morrison, a member of the church and Chairman of the Building Steering Committee, 3120 McGeorge Terrace, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a 7 foot variance to allow parking to be less than 10 feet from a lot line with the parking spaces a minimum of 3 feet from the front lot line. Ms. Powell said currently the parking spaces along Sherwood Hall Lane are in the right-of-way and the applicant was proposing to relocate them 3 to 5 feet behind the property line.

The special permit was to allow additions to an existing church and a child care center with a maximum enrollment of 99 children. In the staff report dated April 29, 1997, staff recommended denial of the application. On May 6, 1997, the Board of Zoning Appeals deferred the public hearing for both public hearings in order for the applicant to address concerns raised in the staff report and by citizens. On June 12, 1997, staff received the revised plat which addressed the concerns. Visual and noise impacts will be



mitigated by the reconfiguration of the proposed circular driveway, the applicant has eliminated five proposed parking spaces, and additional landscaping along the western lot line will be provided. The child care center's outdoor play area will be located to the interior of the site between the chapel/classroom and the Fellowship Hall addition and will be screened with evergreen shrubs and a 3 foot high decorative fence. The play area will accommodate one-third of the total daily enrollment at any one time. The traffic impact associated with the child care center will be mitigated by provision of a left-turn deceleration lane at the site's entrance on Sherwood Hall Lane. Current parking problems will be mitigated by an increase in the number of on-site parking spaces from 90 to 102.

The new construction is proposed in two phases. Phase I would consist of a two-story, 8,875 square foot Fellowship Hall addition to the Christian education building and the proposed two-story Fellowship Hall addition near Courtland Street. The Christian education building is proposed for renovation during this Phase. Phase II will consist of a one-story 1,388 square foot office addition, an one-story 1,826 square foot addition to the Fellowship Hall, and a 950 square foot addition to the Christian education building. Eleven parking spaces will be removed to meet current design standards and 27 parking spaces will be added.

All of the issues associated with this application have been addressed by the Revised Proposed Development Conditions dated July 22, 1997, and further revised by changing Condition Number 1 to the standard wording. Therefore, with the implementation of these conditions, the proposed use is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and staff recommended approval.

Ms. Powell said Cathy Spage with the Office of Transportation was present to respond to any questions the Board might have relating to the transportation issues.

A discussion took place between the Board and Ms. Spage relating to a nexus between the left-turn lane and the day care center. Ms. Spage said if the request for the day center was denied then the left-turn lane would not be necessary because the trips would be out of the peak times the traffic will be on the road.

Mr. Pammel asked if the size of the play area had been enlarged. Ms. Powell replied that the play area had been enlarged to accommodate one-third of the children at any one time and was now consistent with staff's original recommendation.

Mr. Kelley asked staff to go point by point through the revisions to the application which had prompted staff to change its recommendation to approval. Ms. Powell called the Board's attention to page 2 of the Addendum to the staff report and reiterated the changes for the benefit of the Board. Mr. Kelley asked if staff was anticipating that a major portion of the traffic will come from Fort Hunt Road. Ms. Spage responded to this question by stating that the left-turn lane was warranted based on the current traffic volume and would provide a safe place for people who wish to make a turn to stop while waiting for the opposing traffic to clear. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant had indicated that the children who would be coming from the Fort Hunt Road area would use the left-turn lane.

A discussion took place between Mr. Kelley and the staff regarding the trail noted on the plat along Courtland Road, which had not been discussed in the Development Conditions. Ms. Kelsey explained that staff was proposing the construction of a sidewalk along the front of the church. She said this item was not recommended in the Conditions as the Board had indicated it believed this should be addressed as part of the Site Review process.

Chairman DiGiulian said he did not believe that interpretation was correct. He said the Board had expressed concern with regard to the Department of Environmental Management's policy of insisting that an applicant provide a trail if it is shown on a plat when an application is approved by the Board of Zoning Appeals. The Board and staff discussed who would use the sidewalk.

Mr. Morrison said the church was founded in the 1950s prior to the construction of the surrounding houses, prior to Sherwood Hall Lane becoming a major thoroughfare, and prior to current County regulations. He used the viewgraph to show photographs of the site and discussed the topography. The church has a membership of 350 and supports many outreach activities in the community. Mr. Morrison said the purpose

of the project will be to provide modern facilities similar to other churches in the area in order to improve the church and the community and to improve the appearance of the property. He outlined the specific details of the proposed renovations and added that the new facility would provide the church with the capability of instituting a day care facility in response to members' request. Mr. Morrison said extensive meetings had been held with the community and although many of the neighbors support the request, the church was unable to satisfy all the concerns and still meet the objectives of the church. He outlined the concessions made by the church in order to obtain a recommendation of approval by staff and called the Board's attention to a petition in support with approximately 200 signatures. Mr. Morrison asked those in the audience who supported the request to stand and many in the audience did so.

A discussion took place between the Board and the speaker with respect to the number of children who might attend the day care center. Mr. Morrison replied that 50 children would be acceptable.

Mr. Kelley said that he had received a telephone call from a constituent indicating that the church had spent \$250,000 in order to bring the church to the point where staff would recommend approval. Mr. Morrison said he did not believe that figure was correct and pointed out that church agreed with the majority of the revisions.

Chairman DiGiulian called for speakers in support of the request and the following came forward: Howard S. Walker, 7815 Yorktown Drive, Alexandria, Virginia; Lyman Herbottle, 1900 Courtland Road, Alexandria, Virginia; Rebecca Adams, 7733 Wellington Road, Alexandria, Virginia; Hazel Anderson, 3207; 19070 Lockheed Boulevard, Alexandria, Virginia; and, Lou D. Smith, 13003 Winter Willow Drive, Fairfax, Virginia.

The speakers said the church provides many activities to the community and believed that the proposed renovations will improve the appearance of the property thereby enhancing the neighborhood.

The Chairman then called for speakers in opposition to the request and the following came forward: Christopher Grainger, 1901 Sherwood Hall Lane, Alexandria, Virginia, President of the Sherwood Estates Citizens Association; Dr. Stephen Glasser, 7839 Midday Lane, Alexandria, Virginia, represented approximately 60 residents of Hollin Brook Park subdivision; Sherry Ellis, 1907 Courtland Road, Alexandria, Virginia, spoke on her behalf as well as neighbors residing at 1909, 1911, 1913, and 1914 Courtland Road; Jonathan Able, 2207 Sherwood Hall Lane, Alexandria, Virginia; Sandy Mejias, 1910 Sherwood Hall Lane, Alexandria, Virginia; Jim Baisden, 7729 Wellington Road, Alexandria, Virginia; Edward Carroll, 1701 Courtland Road, Alexandria, Virginia; Christine Zirps, 1913 Courtland Road, Alexandria, Virginia; Peter Breschi, 2302 Wilkinson Place, Alexandria, Virginia; John Randolph, 2216 Sherwood Hall Lane, Alexandria, Virginia; Gene Schaeffer, 7853 Midday Lane, Alexandria, Virginia; John (Jack) Crawford, 7815 Oaklawn Drive, Alexandria, Virginia; Walter Malzahn, 1704 Courtland Road, Alexandria, Virginia; Jim Evans, 2109 Sherwood Hall Lane, Alexandria, Virginia; Bob Granger, 7822 Friars Court, Alexandria, Virginia; and, Tom Wolfe, 2314 Wilkinson Place, Alexandria, Virginia.

The speakers said the church has basically been a good neighbor over the years but that they could not support the church's request for a day care center as they believed it a commercial venture. The citizens stated that they were trying to halt "commercial creep" in their neighborhood and maintain the residential character of the area. They were concerned with the additional traffic the day care center would bring into the neighborhood and pointed out that the majority of the people who would utilize the center would not be members of the church. The residents of Courtland Road also expressed concern with the adverse impact from runoff that the proposed additions will have on their properties and the many activities currently conducted at the site. Citizens who were opposed to the request present in the audience stood to show their opposition.

In rebuttal, Mr. Morrison responded to some of the concerns raised by the speakers by explaining that the size of the addition was not sized with a day care center in mind. He added the Spanish church currently using the Fellowship Hall does so rent free. They are merely responsible for the utilities. Mr. Morrison said the day care center was not being proposed as a profit making venture and the traffic generated with the center would be approximately 1 percent of the daily flow along Sherwood Hall Lane.

Page 719, July 29, 1997, (Tape 1), MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 and SP 97-V-006, continued from Page 718

A discussion took place between the Board and Mr. Morrison regarding the proposal for the day care center. Mr. Morrison said the church has not done a thorough study as to whether the center would be feasible.

Mr. Dively made a motion to grant VC 97-V-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MOUNT VERNON PRESBYTERIAN CHURCH, VC 97-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking to remain less than 10.0 ft. from front lot line. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Given the configuration of the property this clearly meets the standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the existing parking spaces shown on the plat prepared by R.C. Fields, Jr. & Associates, dated January 20, 1997, revised through August 5, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. 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 12, 1997. This date shall be deemed to be the final approval date of this variance.

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Mr. Dively said this was a difficult situation as there has to be a balance between the demand of the church and its needs to fulfill its mission and the desire of the community to maintain the residential character of the neighborhood. He said he believed that a church and a day care were both compatible with residential usage and it appears that the church has been a good neighbor for the most part. Mr. Dively emphasized the need for the left turn lane even if the day care center is not granted and that he believed the Conditions would address the stormwater management issues. He did not believe that the day care issue had been well thought out, but noted that the church did have the right to come back with a more detailed plan for the center.

Mr. Dively made a motion to grant SP 97-V-006, excluding the day care center, for the reasons noted in the Resolution subject to the Development Conditions. He deleted Conditions 6, 7, 8, 9, 11, and 12 and revised Condition 10 as stated in the Resolution. Mr. Kelley seconded the motion.

Mr. Ribble asked if it had been the Maker's intent to require that the left-turn deceleration lane be constructed. Mr. Dively said it was. In response to Mr. Ribble's request, Ms. Spage said if the day care center is denied then the left-turn lane would not be needed. Mr. Dively amended his motion accordingly.

Mr. Kelley asked that the reference to the trail along Courtland Road be deleted. Mr. Dively accepted the revision as stated by Mr. Kelley with respect to Condition 22. Chairman DiGiulian informed the applicant that revised plats must be submitted.

Mr. Pammel said that he would reluctantly support the motion as he believed the application before the Board was a part of a normal outreach of a church and that he had no problem with the day care center. He agreed that the applicant should go back and review the proposed plans for the center. Mr. Pammel pointed out that churches do expand and he believed the church was doing everything possible to work with the neighborhood.

Mr. Ribble said he agreed with Mr. Pammel to an extent, but added that sometimes there are misunderstandings regarding the activities performed by a church, which he believed had occurred in this instance. He also did not believe the church had completely thought out the plans for the day care center.

Mr. McPherson echoed Mr. Pammel's comments especially with regard to the ability of a church to have a day care center and although the church did not have a lot of details, the concept is an appropriate one. He said he would support the motion, but that the request for a day care center would not fall "on deaf ears" as far as he was concerned.

Mr. Kelley agreed with Mr. McPherson and he hoped the applicant would come back to the Board with a detailed plan as he believed it would be an asset to the community.

Mr. Hammack said there was a lot testimony with regard to the aging of the Sherwood Hall Estates community and the surrounding neighborhoods and the concern about the deterioration in property values. He pointed that one of the ways property values is maintained is by providing facilities to attract young families and the opposition should consider this fact.

The motion to grant in part carried by a vote of 7-0.

Ms. Kelsey stated for the record and for the benefit of the applicant that the revised plat must be submitted within thirty days. The Chairman so noted.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MOUNT VERNON PRESBYTERIAN CHURCH, SP 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and a child care center (**THE BOARD DID NOT GRANT THE CHILD CARE CENTER**). Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((11)) A and F. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This is a difficult situation in order to balance the needs of the church and its need to fulfill its mission as well as assisting the neighborhood in trying to maintain the residential character. A church is not incompatible with a residential use nor is a day care. During testimony, the word commercialization was used, and if this were a 7-11 or a fast food restaurant it might be different. The church has been at the site for a long time and, with the exception of a few minor things, has been a very good neighbor. The traffic is a serious issue and it is hard to argue that a day care at its maximum use would contribute significantly to the traffic problems that already exist. The day care center is awfully speculative at this point and the church has the option to come back at a future time with a more concise plan.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2001 Sherwood Hall Lane (3.19 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 January 20, 1997, revised

through August 5, 1997, and approved with this application, as qualified by these development conditions. Notwithstanding the notes on the special permit plat, the gross floor area for all phases shall not exceed 24,896 square feet. The footprint of each building shall not exceed those shown on the plat.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

Phase I shall be limited to: a) renovation of the existing Christian Education Building; b) construction of the two-story, 8,875 square foot Fellowship Hall addition to the Christian Education Building; c) installation of the 3,300 square foot outdoor play area between the existing 2-story chapel/classroom and the proposed 2-story Fellowship Hall addition; d) removal of eleven (11) existing parking spaces to meet current design standards, and the addition of 27 new parking spaces, for a total of 102 parking spaces; and e) compliance with storm water management requirements.

Phase II shall be limited to: a) construction of the one-story, 1,388 square foot office addition; b) construction of the two-story, 1,826 square foot addition to the Fellowship Hall; and c) construction of the 950 square foot addition to the Christian Education Building. All structures shall meet the bulk regulations of the Zoning Ordinance.

5. The maximum seating capacity/number of worshipers shall be 350.
6. One hundred two (102) parking spaces shall be provided on site as shown on the special permit plat. All parking shall be on site and parishioners shall be informed of this condition.
7. The transitional screening requirement shall be modified along all lot lines, as outlined below. The exact size, number and type of all plantings shall be determined by the Urban Forestry Branch, DEM.
  - ▶ *North:* A minimum 30-inch high hedge shall be planted along the entire Sherwood Hall Lane frontage.
  - ▶ *South, adjacent to Courtland Road:* An unbroken strip of open space, 25 feet wide and planted with large and medium evergreen trees.
  - ▶ *East:* Existing vegetation shall satisfy the transitional screening requirement.
  - ▶ *West:* A combination of existing vegetation with supplemental plantings (evergreen trees) between Sherwood Hall Lane and the end of the existing asphalt. Twenty-five (25) feet of plantings shall be provided along the remainder of the lot line to Courtland Road. The bio-retention pond may be located in the required transitional screening yard only if DEM allows the plantings as shown on the plat.
8. The barrier requirement shall be waived along the northern, southern and eastern lot lines. The existing 4 to 6 foot high wood fence along the western lot line shall satisfy the barrier requirement and shall be maintained in good repair.
9. The site shall meet the interior parking lot landscaping requirement, as determined by DEM.
10. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - ▶ The lights shall focus directly onto the subject property.
  - ▶ Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.

- 11. There shall be no outside amplification of music or any other sounds. Any noise shall comply with the Noise Ordinance of Fairfax County.
- 12. At the time of site plan review, the applicant shall submit a tree preservation plan showing the trees to be preserved along the eastern and western lot lines, for review and approval by DEM. The purpose of this plan is to preserve to the extent possible the quality vegetation which can help soften the adverse impact of the proposed structures and parking.
- 13. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by DEM.
- 14. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
- 15. If at the time of site plan review it is determined that the above-ground storm water management facility shown on the special permit plat and the underground alternative are inadequate, a special permit amendment shall be filed to obtain approval of an alternate location.
- 16. The dumpster shall be located near the southwest corner of the sanctuary and shall be screened from view of Sherwood Hall Lane and adjacent properties either with plantings or a brick wall.

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-RUP 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, Phases I and II of this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless Phase I construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:28 a.m. and reconvened at 11:40 a.m.

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Page 723, July 29, 1997, (Tape 1), Scheduled case of:

9:00 A.M. NABIL MANSOUR, Appeal 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31. (DEF. FROM 6/11/96. MOVED FROM 9/17/96. DEF. FROM 11/7/96 FOR NOTICES. DEF. FROM 1/28/97 FOR NOTICES. CONTINUED FROM 3/25/97. DEF. FROM 4/22/97)

The appellant's attorney, Jack Connor, came forward and made a correction to the last page of the letter he had submitted to the Board by stating that he had talked with the Department of Environmental Management (DEM) and the Zoning Administrator's office just prior to this public hearing. Mr. Connor explained that DEM

currently has what was previously filed and added the appellant was prepared to submit the \$3,000 filing fee. The DEM staff have indicated that if this is done, they will review the plan and report back to the Board. Mr. Connor said he believed DEM was acting in everyone's favor when they returned the plan the last time.

Mr. Connor said the appellant merely tried to follow the rules by obtaining the Non-Residential Use Permit (Non-RUP) prior to purchasing the property. The appellant relied upon the issuance of that permit, purchased the property for \$150,000, and made improvements to the property. Mr. Mansour operates his business on Lot 31 and leases Lot 32. Although Karen Harwood with the County Attorney's office disagrees, Mr. Connor said he believed it was within the Board's purview to interpret that the previous site plan waivers have no expiration date. The result of that interpretation would be that the previously granted site plan waivers beginning in 1978 are still in effect for the property; therefore, when the Zoning Administrator issued the Non-RUP in 1993 and 1994 she was correct thereby making the revocation void. The site plan waivers and Non-RUPS are in effect allowing the appellant to continue his operation.

Jane W. Gwinn, Zoning Administrator, said this was a difficult case but disagreed that the site plan waiver issued in October 1987 which specifically contained a sentence stating the approval was conditioned upon for two years could still be considered valid. She said it was staff's opinion that the site plan waiver approval died in 1989, and absent that approval, the Non-RUPS should not have been issued; therefore, they are null and void. Ms. Gwinn said it was her position that the Notice of Violation and revocation of the Non-RUPS were appropriately issued based on the Zoning Ordinance provisions.

A discussion took place between the Chairman and the Zoning Administrator regarding other parcels in the area that are under site plan waivers. Ms. Gwinn said the abutting property, also owned by the appellant, was subject to a site plan waiver issued in 1982 as outlined in Attachment 19 of the staff report, which contained no time limit on the approval. She said the issue before the Board is a letter wherein she states that the appellant does not have valid site plan approval therefore the NON-RUPS are null and void. Ms. Gwinn said staff has suggested all along that the remedy would be for the appellant to submit a minor site plan. If the site plan is denied by DEM, then the appellant can appeal that issue to the Board of Zoning Appeals. She assured the Board that if the appellant files a minor site plan and diligently pursues that process, enforcement will be held in abeyance pending the outcome of that filing.

Mr. Connor waived closing comments.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack said he believed the issue was a narrow, legal issue and although he has a great deal of sympathy for the appellant he believed the Zoning Administrator was correct in her interpretation; therefore, he made a motion to uphold that determination in A 96-L-013. Mr. Pammel seconded the motion which carried by a vote of 5-2 with Chairman DiGiulian and Mr. McPherson voting nay.

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Page 724, July 29, 1997, (Tape 1), Action Item:

Approval of May 6 and May 13, 1997 Minutes

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 724, July 29, 1997, (Tape 1), Action Item:

Approval of July 8, 1997 Resolutions

Mr. McPherson made a motion to approve the Resolutions as submitted with the revised wording requested by the Board. Mr. Pammel seconded the motion which carried by a vote of 7-0.



Page 725, July 29, 1997, (Tape 1), Action Item:

Out of Turn Hearing Request for Edgar and Julia Sibley, VC 97-P-069

Mr. Dively made a motion to deny the applicant's request. Hearing no objection, the Chair so ordered. The hearing is currently scheduled for October 7, 1997.

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Page 725, July 29, 1997, (Tape 1), Action Item:

Intent to Defer Request regarding J.L. Tree Service, A 1997-PR-015

Jean Zupan, 3183 Welby Court, represented the Tudor Hall Community Association as well as the civic associations of Hartford Village, Cedar Grove, and Fairfax Villa Apartments. She explained that the neighbors have been patiently trying to effect a clean up of the site since March 1986 and said they have been working with the appellant since April to try and arrive at a mutually agreeable manner in which the property can exist next door to their residential area. Ms. Zupan said the agreements have been excellent, but the performance has been poor. She said the neighbors would agree to the appellant's request for a deferral until October which would give him sixty days to complete the agreements that he has made with the neighbors with the stipulation of specific dates that certain steps must be completed

Mr. Kelley explained that the Board does not have the authority to do what the speaker was asking. Ms. Zupan said she was not aware that this was not in the Board's purview.

Jane W. Gwinn, Zoning Administrator, said the appellant had been present earlier but he had to leave prior to his case being called. She said staff would work with the appellant and the neighbors to bring this issue to resolution. Ms. Gwinn agreed to the deferral to allow the appellant an opportunity to obtain minor site plan approval.

Mr. Kelley made a motion to defer the request until August 5th to determine if the appellant has filed the minor site plan. Mr. Pammel asked if the property had been properly posted. Ms. Gwinn said the Clerk had indicated that all requirements for public hearing had been met and the Board could proceed as scheduled if it so desired. Mr. Dively seconded the motion to defer for one week which carried by a vote of 7-0.

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Page 725, July 29, 1997, (Tape 1), Action Item:

Request for Reconsideration from Lawrence and Filomena Tracy, SP 97-V-020

Mr. Pammel made a motion to deny the applicant's request that the Board of Zoning Appeals reconsider its action at the July 22, 1997, to deny SP 97-V-020. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 725, July 29, 1997, (Tape 1), Action Item:

Approval of July 22, 1997 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 7-0.

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## Robert Wheeler Appeal

Chairman DiGiulian said he had received a letter from the appellant wherein he stated that he had not received the notice package in a timely manner; therefore he could not meet the notice requirement. Jane Kelsey, Chief, Special Permit and Variance Branch, deferred to the Clerk.

Betsy Hurtt, Clerk to the Board of Zoning Appeals, explained that the package was mailed to the appellant forty days prior to the public hearing but the appellant had not signed for the package until July 15th.

Mr. Kelley asked if the Board could dismiss the appeal if they chose to do so. Ms. Hurtt pointed out that it has been the Board's policy to grant an appellant at least one deferral. Mr. Kelley made a motion to issue an intent to defer the appeal. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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## Revision to the Resolutions

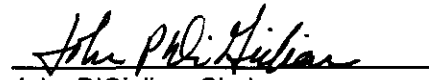
Mr. Dively asked if the revisions to the Board's resolutions had been indefinitely deferred. Chairman DiGiulian said he hoped so. Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that Mr. Ribble had made the formal request. Formal discussion was tabled.

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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: Betsy S. Hurtt

Approved on: October 28, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on August 5, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. He asked if there were any Board Matters to bring before the Board.

Prior to the meeting's commencement, Jane Kelsey, Chief, Special Permit and Variance Branch, introduced two new staff members, Denise Snyder and Ann-Marie Wellington, stating that the two ladies are Deputy Clerks for the Board of Zoning Appeals. Chairman DiGiulian, on behalf of the BZA members, warmly welcomed them.

There being no further Board Matters, Chairman DiGiulian called the first case.

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Page 227, August 5, 1997 (Tape 1), Scheduled case of:

9:00 A.M. DAVID MARSH, SP 97-B-018, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals. Located at 5475 Safe Harbor Ct. on approx. 2,380 sq. ft. of land zoned R-5. Braddock District. Tax Map 77-2((3))87. (MOVED FROM 7/8/97)

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 Marsh, 5475 Safe Harbor Court, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, on behalf the Staff Coordinator, Susan Langdon, who was not present, presented the staff report. She said that the applicant sought to keep his three dogs, one quite elderly and the other two middle aged, for the remainder of each dog's life, on his property with a lot size of less than 12,500 square feet. She pointed out that the Ordinance allows only two dogs on a lot that size. Ms. Kelsey stated that if the Board were to approve the application, staff recommended that the BZA condition its approval by requiring conformance with the conditions set forth in Appendix 1 of the staff report dated July 29, 1997.

David Marsh presented a brief history of moving into the neighborhood, the ownership and keeping of the three dogs, his pets' care and maintenance and the maintenance of the yard in which they are kept, and the fact that each dog has a gentle, quiet nature. He professed that he and his roommate strive to be good neighbors. He responded to Mr. Hammack's questions that there is a rather strained relationship with the next door neighbor, Tammy Marteney.

Chairman DiGiulian called for speakers in support of the application.

Dominic Mancuso, 5475 Safe Harbor Court, Fairfax, Virginia, identified himself as the subject property's owner, the roommate of David Marsh, and co-owner of the dogs. He pointed out that, due to them constructing a fence to enclose their yard and in which to keep the dogs, the yard was made slightly larger. He gave particulars of their next-door neighbor, Tammy Marteney's, open hostility and called the Board's attention to his September 12, 1995 letter which addressed many of the issues Ms. Marteney raised. (The letter is contained in the record.) Mr. Mancuso noted that he invites any concerns or complaints and will address each of them to resolution because he wants to live harmoniously with his neighbors.

Chairman DiGiulian called for speakers in opposition and receiving no response, closed the public hearing.

Before moving on the application, Mr. Hammack commented that the development conditions should address any sanitation or odor problems. He also suggested that it would have been helpful, in his determination, if the staff report had indicated the sizes of the dogs.

Mr. Hammack then moved to grant SP 97-B-018 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated July 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

DAVID MARSH, SP 97-B-018, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals. Located at 5475 Safe Harbor Ct. on approx. 2,380 sq. ft. of land zoned R-5. Braddock District. Tax Map 77-2((3))87. 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 5, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the agent and roommate of Dominic G. Mancuso, owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 2,380 square feet.
4. The development conditions shall alleviate any problems with odors or sanitation.
5. It is a reasonable request to allow the three dogs to remain on the property as long as the area is kept clean and sanitary.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This Special Permit is approved for the property on Tax Map 77-2((3))87 shown on the plat submitted with this application prepared by Alexandria Surveys, Inc., dated March 30, 1994 and David Marsh, dated March 11, 1997 and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicants existing three dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used to exercise the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.
5. The dogs shall not remain in the yard unsupervised.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits 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 unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 729, August 5, 1997 (Tape 1), Scheduled case of:

9:00 A.M. GARLAND L. AND RUBY L. NEESE, VC 97-V-047, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots with proposed Lot 2 having a lot width of 43.0 ft.; accessory structure to remain 12.9 ft. from side lot line of proposed Lot 1; and accessory structures to remain 8.3 ft. from side lot line and 20.5 ft. from rear lot of proposed Lot 2. Located at 7805 and 7809 Schelhorn Rd. on approx. 1.54 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-1((7))(6)23, 24. (MOVED FROM 7/8/97).

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Roger K. Bohr, giving his home address as 3006 Arbor Court, Dale City, Virginia, and stating that he represented the applicants, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She informed the Board that the applicants were requesting four variances. She stated that, in staff's evaluation, the variance request to subdivide Lots 23 and 24 into three lots would result in a pipestem lot rendering the created lot incompatible with the surrounding neighborhood lots as it would be approximately 30 percent smaller. Ms. Schilling reported that the requested subdivision does not satisfy several of the required standards for the granting of a variance, and that the existing lots, Lots 23 and 24, if the proposed subdivision were approved, would necessitate approval of several more variances for the on-site existing structures. Ms. Schilling also pointed out that there are on-going violations of the Zoning Ordinance for Lots 23 and 24.

Roger Bohr explained that the variance would permit the existing accessory building, which is currently in violation of the Zoning Ordinance, to be legally utilized as a single family dwelling in which the Neese's daughter may continue to reside. He reported that the Notices of Violations are being addressed with several already resolved. Mr. Bohr stated that there would be no adverse impact on the neighbors and that the approval of these variance requests would not change the appearance of the property from the street. Mr. Bohr responded to Mr. Ribble's question regarding the occupants of the property's three dwellings. He responded to Mr. McPherson's questions concerning the 1996 issuance of the building permit for the shed's improvements, the lease arrangement of one of the Neese's houses, and the length of time the daughter has resided on the property.

Chairman DiGiulian called for speakers either in support or in opposition.

Terry Jemmison, 2804 Boswell Avenue, identified himself as the President of the Hybla Valley Civic Association. He voiced his opposition to the subdivision plan but supported any legal alternative which would allow the Neese's daughter to continue to reside on the property. He stated that the Neese's situation was the subject of lengthy and involved discussion and consideration when it was brought before their Civic Association. He submitted one of his Association's suggestions for the Neese's plight, along with a caveat, for the Board's consideration which was that they wanted the Neese family to be allowed residential occupancy of the house in question, but not at the expense of resubdivision as he believed that it would set a disturbing and detrimental precedent.

There being no further speakers, Chairman DiGiulian closed the public hearing.

Mr. Ribble stated that a pipestem development would be precedent setting and detrimental to the neighborhood, that the redeveloped lot would be far smaller than its neighbors, and that he commended the neighbors for their willingness to assist the Neese's with their situation but that redevelopment was not the solution. He then moved to deny VC 97-V-047.

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**COUNTY OF FAIRFAX, VIRGINIA  
 VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

GARLAND L. AND RUBY L. NEESE, VC 97-V-047, Appl. under Sect(s). 18-401 of the Zoning Ord. to permit subdivision of two lots into three lots with proposed Lot 2 having a lot width of 43.0 ft.; accessory structure to remain 12.9 ft. from side lot line of proposed Lot 1; and accessory structures to remain 8.3 ft. from side lot line and 20.5 ft. from rear lot of proposed Lot 2. Located at 7805 and 7809 Schelhorn Rd. on approx. 1.54 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-1((7))(6)23, 24. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Access via a pipestem driveway would be setting a detrimental precedent that is not compatible with the neighborhood.
3. To subdivide the one parcel would render one of the lots far too small.
4. The request to subdivide the parcel is not a matter of hardship but one of convenience.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Dively seconded the motion which carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1997.

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9:00 A.M. TEMPLE BAPTIST CHURCH, SPA 85-D-009-4, Appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 85-D-S-009 for church and related facilities, child care center, and school of general education which has an enrollment of 100 or more students daily to permit building addition, site modifications and increase in parking. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2((1))7 and 7A.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Temple Baptist Church's Senior Pastor, David L. Pittman, residing at 509 Beauregarde Drive, Leesburg, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She listed what was being proposed and noted those things which would not change. Ms. Schilling stated that staff recommended approval of the special permit amendment subject to the development conditions contained in the staff report.

Pastor David Pittman briefly explained the particulars of the church's last construction. He noted the addition which was built onto the front of the building, the fact that 10,000 square feet had been deleted from the footprint, and that their last site plan had requested a 12,000 square-foot addition to the rear of the building. He submitted that they now wanted to move the proposed rear building to the side and build a gymnasium with it. Pastor Pittman stated that there was no increase in space, only a difference in use, and that the proposed facility would be very useful. He stated that the proposal enjoyed the support of the community and the Dranesville Supervisor. In response to Mr. Hammack's question, Pastor Pittman explained that the additions would be architectural compatible with the existing building and they have already submitted the plans to staff.

Ms. Schilling advised Mr. Hammack that staff had full-sized elevations of the site for his review.

Chairman DiGiulian called for speakers either in support or opposed to the application and receiving no response, he closed the public hearing.

Mr. Hammack moved to grant SPA 85-D-009-4 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

TEMPLE BAPTIST CHURCH, SPA 85-D-009-4, Appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 85-D-009 for church and related facilities, child care center, and school of general education which has an enrollment of 100 or more students daily to permit building addition, site modifications and increase in parking. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2((1))7 and 7A. Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 1997; 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 5.65 acres.
4. The church is in an unusual situation in that its located next to the high school.
5. The area is such that lends itself to this sort of development and particular use. These requests are appropriate, compatible, and complementary to the site, the community, and to the church's 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 Sections 8-303, 8-305 and 8-307, of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application at 1545 Dranesville Road, Tax Map 10-2((1))7, 7A 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 Kenneth W. White, dated January 10, 1997, as revised through July 21, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for the sanctuary shall be limited to 300.
6. The hours of operation of the child care center shall be limited to 6:30 a.m. to 6:00 p.m. Monday through Friday and the hours of operation of the school of general education shall be limited to 8:30 a.m. to 3:15 p.m. Monday through Friday.
7. One-hundred twenty-six parking spaces shall be provided in the location shown on the plat. All parking for the uses shall be on-site.
8. Transitional screening shall be provided in accordance with the following:

North

Along the northern lot line, the existing vegetation shall satisfy the transitional screening requirement, and may be supplemented where necessary to replace screening lost due to the construction of the storm water detention pond, subject to the determination of the Urban Forestry Branch of DEM.



West

Along the western lot line, nine replacement three (3) inch caliper oak tree or other shade trees shall be planted adjacent to the portion of the western (front) property line, a distance of twenty feet on center, as generally shown on the special permit plat and shall be under planted with evergreen shrubs to soften the visual impact of the parking lot and church buildings. The exact type and number of plantings shall be subject to the determination of the Urban Forestry Branch of DEM.

9. The barrier requirement shall be waived along the north and west lot lines.
10. The combined maximum daily enrollment of the child care center and school of general education shall not exceed 160; at a minimum 50% of the children enrolled shall arrive and depart in vehicles carrying two or more students, which shall cease when the improvements to Dranesville Road are completed. The maximum daily enrollment for the child care center shall not exceed 64 students. The maximum daily enrollment for the school of general education shall not exceed 96 students.
11. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve feet.
  - The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
12. All signs shall be in accordance with Article 12 of the Zoning Ordinance.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months\* after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 733, August 5, 1997 (Tape 1), Scheduled case of:

9:00 A.M. GREENBRIAR CIVIC ASSOCIATION, INC./AGAPE CHRISTIAN FELLOWSHIP CHURCH AND PLEASANT VALLEY PRESCHOOL, SPA 78-P-192-2, Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 78-P-192 for a community center, to include church and related facilities and nursery school, and to permit site modifications and increase in parking. Located at 4615 Stringfellow Rd. on approx. 1.52 ac. of land zoned R-3 and WS. Sully District. Tax Map 45-3((1))11. (MOVED FROM 6/10/97 AND 7/8/97)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Emerson D. Cale, President of the Greenbriar Civic Association, residing at 4427 Majestic Lane, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. In staff's evaluation, she explained, the proposed request enables the existing uses to more closely comply with the Zoning Ordinance requirements and is in harmony with the use and intensity recommendations of the Comprehensive Plan. Ms. Schilling stated that all land use, transportation and environmental issues are addressed with the adoption of the proposed development conditions before the Board today. She pointed out that the revised Proposed Development Conditions dated August 4, 1997 contained a minor adjustment to Condition 1, that the special permit application is now granted to the applicant only, as the BZA had directed. Ms. Schilling concluded her presentation by stating that staff recommended approval of the application subject to the revised development conditions.

Emerson Cale explained that their facility would not ingress or egress by way of Stringfellow Road which has required an agreement with the County Park Authority for access through a portion of the Park Authority's parking lot. He stated that the Greenbriar Civic Association agreed with staff's determination.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. Pammel moved to grant SPA 78-P-192-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions dated August 4, 1997 as contained in the staff report dated July 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

GREENBRIAR CIVIC ASSOCIATION, INC./AGAPE CHRISTIAN FELLOWSHIP CHURCH AND PLEASANT VALLEY PRESCHOOL, SPA 78-P-192-2, Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 78-P-192 for a community center, to include church and related facilities and nursery school, and to permit site modifications and increase in parking. Located at 4615 Stringfellow Rd. on approx. 1.52 ac. of land zoned R-3 and WS. Sully District. Tax Map 45-3((1))11. 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 5, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 and WS.
3. The area of the lot is 1.52 acres.
4. The application is in conformance with the Comprehensive Plan.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-305 and 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4615 Stringfellow Road, 1.52 acres, and is not transferable to other land. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Laura Lee Scott Surveys Inc. dated July 8, 1996, as revised through May 19, 1997, and approved with this application, as qualified by these development conditions.
2. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
4. Landscaping shall be provided along the western property boundary as generally shown on the special permit plat. The exact number, type and extent of landscape plantings are subject to the determination of the Urban Forestry Branch of DEM.
5. The Barrier requirement along the western property boundary shall be waived.
6. Prior to issuance of a Non-Residential Use Permit, the applicant shall obtain and record an ingress /egress easement and maintenance agreement through the existing parking lot for Greenbrier Park from the Fairfax County Park Authority, to ensure continuous unrestricted access to the subject property.
7. Prior to approval of a site plan, as may be determined by DEM, ancillary easements shall be granted to the Virginia Department of Transportation as necessary along the frontage of the property to accommodate the construction of improvements to Stringfellow Road.
8. Construction of the expanded parking lot for the property shall include the closure of the existing site entrance, which shall be scarified and restored with landscaping as shown on the approved plat.
9. All parking for any uses on the site shall be on-site or within the parking lot for Greenbrier Park, as shown on the special permit plat.
10. The southeast corner of the existing playground shall be reduced by three (3) feet so that the area of the playground is contained entirely within the application property.
11. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve feet.
  - The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
12. Parking shall be provided in accordance with the requirements of Article 11, Parking, of the Zoning Ordinance, and in compliance with the terms and conditions of the shared parking agreement between Greenbrier Civic Association and the Fairfax County Park Authority.

- 13. All signage provided on the subject property shall comply with the requirements of Article 12, Signs, of the Zoning Ordinance.
- 14. The maximum hours of operation of the community center shall be from 8:00 a.m. to 11:00 p.m. daily. The applicant shall be allowed 12 after-hour parties per year until 1:00 a.m. with prior approval of the Zoning Administrator. The number of after hour parties may be increased with the approval of the Zoning Administrator.
- 15. The maximum number of seats for the church shall be 100.
- 16. The maximum hours of operation for the church shall be from 9:30 a.m. to 12:30 p.m. and 6:00 p.m. to 9:30 p.m. on Sundays, and from 7:45 p.m. to 9:30 p.m. on Wednesdays.
- 17. The maximum daily enrollment for the nursery school shall be limited to 15 students.
- 18. The hours of operation for the nursery school shall be limited to 9:00 a.m. to 12 noon, Monday through Friday.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. 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. McPherson seconded the motion.

Discussion ensued between Ms. Schilling and Messieurs Hammack and Ribble concerning the road dedication along Stringfellow Road. The motion carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 736, August 5, 1997 (Tape 1), Scheduled case of:

9:00 A.M. MOUNT VERNON COUNTRY CLUB (FORMERLY WOODLAWN COUNTRY CLUB), SPA 74-V-107-3, Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-V-107 for country club to permit site modifications and change in name. Located at 5111 Old Mill Rd. on approx. 129.60 ac. of land zoned R-2, HD. Mount Vernon District. Tax Map 110-1((1))3, 4, 13, 13A.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate.

Jeffrey C. Michel, 5111 Old Mill Road, Alexandria, Virginia, identifying himself as the Country Club's Superintendent, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report. She explained that the applicant proposed to add a

wet pond and also change its name from "Woodlawn Country Club" to "Mount Vernon Country Club." Ms. Page B1, August 5, 1997 (Tape 1), MOUNT VERNON COUNTRY CLUB (FORMERLY WOODLAWN COUNTRY CLUB), SPA 74-V-107-3, continued from Page B3 (6)

Stagg informed the Board that at the August 4, 1997 Board of Supervisors Meeting, the BOS approved a proposal to allow filling within the 100-year floodplain.

Jeffrey Michel stated that the Club's intention is to provide long-term course improvements which necessitates generating fill in order to construct features on the golf course. He gave the particulars of the proposed pond and pointed out its private and public benefits.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Mr. Kelley moved to grant SPA 78-V-107-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1-B of the staff report dated July 29, 1997.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MOUNT VERNON COUNTRY CLUB (FORMERLY WOODLAWN COUNTRY CLUB), SPA 74-V-107-3, Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-V-107 for country club to permit site modifications and change in name. Located at 5111 Old Mill Rd. on approx. 129.60 ac. of land zoned R-2, HD. Mount Vernon District. Tax Map 110-1((1))3, 4, 13, 13A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 1997; and

WHEREAS, the Board has made the following findings of fact:  
1. The applicant is the owner of the land.  
2. The present zoning is R-2 and Historic District (HD).  
3. The area of the lot is 129.60 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-006, 8-403, and 7-200 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This Special Permit Amendment 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, 5111 Old Mill Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat originally prepared by Niles Bolton Associates and recertified by Williamsburg Environmental Group, Inc., dated March 29, 1990 as revised through July 3, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. There shall be a maximum of 175 parking spaces as shown on the plat. Accessible parking shall be provided in accordance with Code requirements as determined by the Director, DEM. All parking shall be on site.\*
6. Parking lot landscaping shall be provided in the parking lot in accordance with Sect. 13-106 of the Zoning Ordinance.\*
7. The total membership shall not exceed 700 members.\*
8. A fertilizer, herbicide, and pesticide integrated management program shall be developed for the golf course. The applicant shall develop the plan in consultation with a certified turf manager and/or the Virginia Soil and Water Conservation Department. The applicant shall document the implementation of the plan and create a monitoring report for the management plan. The County reserves the right to review the reports upon request.\*
9. The transitional screening requirement shall be modified to allow existing fencing and vegetation to suffice to meet barrier and Transitional Screening I requirements except for the areas along the lot line of the "disturbed area," where Transitional Screening I shall be provided. The barrier requirement shall be waived on all boundaries of the subject site to allow the existing fences to satisfy this requirement.\*
10. Prior to site plan approval, a tree save/tree replacement plan which establishes the EQC as the limits of clearing and grading and enhances the EQC with additional trees shall be submitted for review and approval by the Urban Forester, DEM. This plan shall identify, locate and preserve individual mature, large and/or specimen trees and tree save areas on the site as determined necessary by the Urban Forester, DEM. Emphasis shall be given toward the preservation of upland hardwood trees outside the EQC and within the "limits of disturbed area" particularly on the eastern portion of the disturbed area where 18 to 13 mature trees are located. The plan shall supplement all portions of the area outside the floodplain and the limits of disturbed area which do not maintain a 100-foot buffer from the floodplain. Replacement of the vegetation which will be lost during clearing and grading activities shall be provided; with size and number of species to be determined by the Urban Forester, DEM.\*
11. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly on the subject property.
  - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.\*
12. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:
  - All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.\*

- 13. Maximum hours of operation for the swimming pool:
  - Swim team hours - 8:00 a.m. - 9:00 p.m. with no more than 5 meets per season.\*
  - Pool hours - 9:00 a.m. until 9:00 p.m. \*

After hour parties for the swimming pool shall be governed by the following:

- Parties shall be limited to six (6) per season.\*
- Parties shall be limited to Friday, Saturday, and pre-holiday evenings.
- Parties shall not exceed 12:00 midnight.\*
- The applicant shall request written permission from the Zoning Administrator for each individual party or activity at least ten (10) days in advance and receive permission prior to the party.\*
- Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous extended-hour party\* or for the first one at the beginning of a swim season.
- Requests shall be approved only if there are not pending violations of the conditions of the Special Permit, and any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

- 14. The applicant shall ensure that no hazardous or toxic substances shall be stored within the floodplain area. If any petroleum products, hazardous materials, and or hazardous wastes are stored on the site, a spill prevention and containment plan will be submitted for the review and approval of the Fairfax County Fire and Rescue Department.\*

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 Site Plan or Rough Grading Plan approval 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 unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. JOHN J. AND THERESA W. BISAGA, Appeal Appl. A 96-H-055 under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant's single family lot cannot be re-subdivided for purposes of creating an additional lot because such proposal would not be consistent with the approved development plan associated with Rezoning B-230. Located at 2511 Penny Royal

Ln. on approx. 1.44 ac. of land zoned PRC. Hunter Mill District. Tax Map 26-4 ((5)) (2) 18. (MOVED FROM 3/18/97, 4/29/97 AND 6/17/97)

Jane Gwinn, Zoning Administrator, presented staff's position as set forth in the memorandum dated July 28, 1997, a copy of which is contained in the record. She explained that the appellants' single family lot cannot be subdivided for purposes of creating an additional lot because such a proposal would not be in accordance with the Zoning Ordinance and the approved development plan that is associated with RZ B-230. She briefly described the property noting the zoning, acreage and its one dwelling. Ms. Gwinn stated that the facts of the case were not in dispute, but rather the status of the preliminary plan that was approved by the Board of Supervisors in conjunction with the October 1965 approval of RZ B-230 which dealt with density tabulations. She explained the Zoning Ordinance's requirements which pertained at that time. Ms. Gwinn conceded that both staff and the appellants have expended considerable energy striving to understand the case's background but neither has been able to determine the basis for the approval which allowed the density to exceed 450 lots. She referenced two court cases which concerned land zoned in Reston noting that she based her decision on those two court decisions. It is her position, Ms. Gwinn stated, that the preliminary plan, which was approved by the Board of Supervisors (BOS), had limited the density to 450 lots and because the appellants' request to subdivide their property would create an additional lot, it would exceed the 450 lot cap, and that is not allowed without a development plan approved by the BOS.

Ms. Gwinn responded to Chairman DiGiulian's question concerning the number of lots which had been approved by both the Board of Supervisors and the Planning Commission.

Mr. Dively pointed out that regardless of any action the Board of Zoning Appeals may take on this appeal, the problem was on-going and, at this point in time, the County has not taken decisive action.

Ms. Gwinn advised the Board that Zoning Evaluation Division (ZED) staff has considered requesting the Board of Supervisors to initiate a Development Plan Amendment but that this resolution was still under discussion.

Chairman DiGiulian called the appellant to the podium to present his case.

John J. Bisaga, the appellant, stated that his request was to subdivide his 63,000 square-foot lot in Reston. He briefly explained the lot's configuration, the abutting properties, and the dwelling. He stated that he and his wife's first request was denied because the Zoning Administrator had determined that their proposal was not in accordance with the approved development plan, adding that it had taken 18 months for the County to render a determination. Mr. Bisaga quoted two zoning cases, each in Reston, that evidenced, what he believed, was the County staff's apparent difficulty in coming to its decision. (For a summation of the appellants' appeal justification, please reference the appellants' "Appeal written Statement" dated December 23, 1996, that is contained in the file record.) He stated that the preliminary plan which was required by the Ordinance in effect in 1962 had been provided during the rezoning action. Mr. Bisaga submitted that the Ordinance in existence at the time of the subject rezoning application did not require that the preliminary plan evidence the number of dwelling units proposed but only the proposed density of population in residential areas. He pointed out that it was an Ordinance revision four years later that now requires a much more detailed development plan. He carefully detailed the information that was required by the (then) existing Ordinance in 1965 which was contained in his preliminary plan that he had submitted with his rezoning application. Mr. Bisaga maintained that the subsequent action taken by the Planning Commission which used population density as a governing factor was legal, was consistent with the preliminary plan and the Zoning Ordinance in effect at that time, and supported his position in this matter.

Chairman DiGiulian called for speakers who wished to address this appeal and receiving no response, called upon Ms. Gwinn for her closing staff comments.

Discussion followed between Ms. Gwinn and Board members, Dively and Pammel, concerning the issue of density credit, its applicability, and the 88 dwelling units which are considered illegal because of the 450 cap limit.



Although Chairman DiGiulian had already called for speakers, William Mantan, 2507 Penny Royal Lane, Reston, Virginia, requested to address the Board and Chairman DiGiulian allowed him the opportunity. Mr. Mantan stated that he chose his property in Reston purposely because of the zoning assurance that restricted additional development in his area.

Chairman DiGiulian called upon Mr. Bisaga for rebuttal.

John Bisaga addressed his comments to the Ordinance's 450 units cap which, he believed, was not required by the Ordinance at that time. He submitted that there was confusion on the Ordinance's application twenty years ago. He pointed out that there was over 140 acres of streets and parkland on the 390 acres to which the 450 cap was applied that was not included in the density calculation. Mr. Bisaga believed that the 450 cap was not intended to be an applicable hard number and that density, as stipulated in the Zoning Ordinance, was the germane issue which has governed the development and evolution of Reston to what it is today.

There being no further questions or comments, Chairman DiGiulian closed the public hearing.

Mr. Dively stated that he sympathized with the Bisagas but in his determination, the zoning of property is a legislative action and in Fairfax County, the sole legislative body is the Board of Supervisors and it is the BOS who must take action. Mr. Dively pointed out that the Bisagas had a remedy, perhaps through a piggyback of the rezoning process which, he believed, was imminent because the situation with the 88 homes should be rectified. Mr. Dively then moved to uphold the Zoning Administrator's determination.

Mr. Pammel seconded the motion.

Mr. Hammack supported the motion commenting that the law states one cannot increase in intensity a nonconforming situation and he suggested that the Bisagas pursue a development Plan amendment which would allow the, currently nonconforming, 88 units.

Chairman DiGiulian disagreed with the motion explaining that the consideration in the rezoning was the population of which the said population has not been made, therefore, in his opinion, a subdivision would be allowed.

There being no further discussion, Chairman DiGiulian called for a vote. The motion to uphold the Zoning Administrator failed by a 3 to 4 vote (Messieurs Dively, Hammack and Pammel voting to support the Zoning Administrator and Messieurs DiGiulian, Kelley, McPherson, and Ribble voting to overturn the Zoning Administrator's determination) which was determined by the Board of Zoning Appeals to constitute a **REVERSAL** of the Zoning Administrator's decision.

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Page 741, August 5, 1997 (Tape 1), Scheduled case of:

9:30 A.M. ROBERT F. WHEELER, TRUSTEE, Appeal Appl. A 1997-MV-016 under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a storage yard and a junkyard in the R-1 District, all in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8270 Silverbrook Rd. on approx. 8.6528 ac. of land zoned R-1. Mount Vernon District. Tax Map 107-1((1))1.

Noting that the appellant, Robert F. Wheeler, had requested a deferral, William Shoup, Deputy Zoning Administrator, suggested October 28, 1997, at 9:30 a.m. There being no objection, Mr. Pammel so moved which carried unanimously.

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Page 742, August 5, 1997 (Tape 1), Scheduled case of:

9:30 A.M. JOHN O. DUNCAN, TRUSTEE, A 1997-SU-008, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant's property cannot be developed separately as two lots under the provisions of Sect. 2-405 of the Zoning Ordinance. Located at the Neverlett Property on approx. 5.0275 ac. zoned R-C. Sully District. Tax Map 65-3((1))71. (DEF. FROM 6/10/97. DEF. FROM 7/8/97 AND 7/22/97)

William Shoup, Deputy Zoning Administrator, called the Board's attention to the August 4, 1997 memorandum from Jane Gwinn, Zoning Administrator, which maintained the Zoning Administration's position that the subject lot is a single lot under the Zoning Ordinance.

Discussion followed among the BZA members to ascertain if this case was before the Board for decision only and Chairman DiGiulian, concurring that the public hearing was held July 22, 1997, called for a motion.

Mr. Pammel moved to **REVERSE** the Zoning Administrator's determination and find in favor of John O. Duncan that there were two lots created during a time when it was legal to develop both parcels as each met the Zoning Ordinance requirements.

Mr. McPherson seconded the motion.

Mr. Hammack concurred with the motion offering his comments on the definition of a lot, the Subdivision Ordinance Sect. 2-405, the issue of condemnation, and the creation of lots under that provision.

Chairman DiGiulian, also supporting the motion, noted his belief that, under the applicable circumstances, by definition, the subject parcel is a subdivision no matter who recorded it as such.

The motion to reverse the Zoning Administrator's determination carried unanimously.

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Page 742, August 5, 1997 (Tape 2), After Agenda Item:

Approval of April 29, 1997 & June 24, 1997 Minutes

Mr. Pammel moved to approve the above referenced Minutes subject to one correction to the April 29, 1997 Agenda Item, in the Resolution. He asked that the words "with conditions" for the denial of FREDERICK W. AND ELIZABETH F. CROOK, VC 97-D-015, be stricken. Mr. McPherson seconded the motion which carried unanimously.

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Page 742, August 5, 1997 (Tape 2), After Agenda Item:

Intent to Defer J. L. Tree Service, A 1997-PR-015

William Shoup, Deputy Zoning Administrator, explained that the appellant had submitted a minor site plan to Department of Environmental Management (DEM) that morning and the approval was pending a waiver letter to be hand-delivered by the engineer. As the site plan's approval should take four weeks and staff had initially supported the deferral to October 7, 1997, Mr. Shoup stated that staff continued to support the deferral.

George Trowbridge, Esquire, representing the appellant, concurred with staff's recommendation to defer explaining that outstanding issues were close to resolution and, with the site plan's approval, the application was moot. He listed reasons justifying the deferral.

Mr. Hammack moved to issue an intent to defer Appeal A 1997-PR-015, J.L. Tree Service, to October 7, 1997. Mr. Ribble seconded the motion which carried unanimously.

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Approval of Revised Plat for Clifton Children's Academy, SP 97-S-015

Mr. Pammel moved to accept the plat, as revised, as the realignment and right-of-way for widening had been deleted.

Julie Schilling, Staff Coordinator, responded to Mr. McPherson's question concerning the dedication shown on the plat. Discussion followed among Board members concerning the dedication concluding with Mr. McPherson pointing out that the plat was inappropriate. To clarify the issue, Ms. Schilling explained that the applicant would be instructed to remove the dedication from the special permit plat. As no motion was necessary for the removal of the dedication, Chairman DiGiulian called the next after agenda item.

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Approval of July 29, 1997 Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the Clifton Children's Academy was excluded from the July 29th Resolutions. Mr. Hammack moved for approval of the resolutions, with that exception. Mr. Dively seconded the motion which carried unanimously.


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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Paula McFarland

Approved on: December 9, 1997

  
Susan Langdon, Chief  
Special Permits & Variance Branch/BZA

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 12, 1997. The following Board Members were present: Chairman John DiGiulian ; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:07. There were no Board matters to bring before the Board and Chairman DiGiulian called for the first scheduled case. The Board waived the 8-day waiting period on all cases except in the case of Marcela Shaw, SP 97-Y-026.

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Page 140, August 12, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping less than 10.0 ft. from front lot lines. Located at 6211 Leesburg Pike on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A.(DEF. FROM 3/25/97 AND 4/8/97. DEF. FROM 6/10/97 FOR DECISION ONLY)

This case was deferred from March 25, 1997, April 8, 1997 and June 10, 1997, for decision only. Mr. McPherson made a motion to approve VC 97-M-008 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JUNIPER LANE ASSOCIATES, L.C., VC 97-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 21.7 ft. from one street line of a corner lot and 57.8 ft. from other street line, parking spaces to remain less than 10.0 ft. from front lot lines and peripheral parking lot landscaping to be less than 10.0 ft. from the front lot lines. Located at 6211 Leesburg Pi. on approx. 8.06 ac. of land zoned C-3, C-7, HC and SC. Mason District. Tax Map 51-3 ((11)) 190A; 51-3 ((23)) A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The facts contained in the Staff Report, the testimony of the applicant and the Board's comments are incorporated into the Resolution.
3. This is a reasonable application of the ordinances and the applicant meets the nine 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 **GRANTED** with the following limitations:

1. This variance is approved to waive the peripheral parking requirement and for the location of the existing structure and parking spaces shown on the plat prepared by Walter L. Phillips, dated December 31, 1996, 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. Pammel and Mr. Hammack were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this variance. The Board waived the 8-day waiting period.

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Page 746, August 12, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MARCELA SHAW, SP 97-Y-026, Appl. under Sect(s) 8-913 of the Zoning Ordinance to permit modification of minimum yard requirements for R-C lots to permit construction of deck 8.0 ft. from side lot line. Located at 4322 General Kearny Ct. on approx. 10,891 sq. ft. of land zoned R-C, WS, AN. Sully District. Tax Map 33-4((02))38. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hubert Shaw, 4322 General Kearny Ct., replied that it was.

Jennifer Smolko, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested modification of minimum yard requirements for an R-C lot to permit construction of a deck 8 feet from a side lot line. A minimum side yard of 20 feet is required in the R-C district, therefore, a variance of 12 feet is being requested. The subject property was comprehensively rezoned to the R-C district in 1982. Prior to this rezoning, the property was zoned R-2, Cluster. A minimum side yard of 8 feet, with a total minimum of

24 feet is required in a R-2 cluster District. Thus, the applicant is requesting a modification of the minimum setback requirement from 20 feet to 8 feet.

Mr. Shaw explained that one of the reasons he and his wife submitted the permit to build the deck was to provide safe access for their two small children from both sliding glass doors to the back yard. They also wanted to improve and enhance their property, thereby, increasing property values. Mr. Shaw felt that this was a reasonable request because both he and his wife would be able to enjoy this deck along with his neighbors, both in his court and on his street, once the deck is completed.

Safety hazards were an issue of concern along with privacy and noise. Mr. Shaw stated that the 8 foot minimum would not pose any potential safety hazards, according to County Code, and Mr. Shaw did not feel that building this deck would increase noise in the area. There is a 10 to 11 foot tree holly between Mr. Shaw's home and his immediate neighbor which he claims should address the privacy issue.

Mr. Shaw requested that the Board waive the 8-day waiting period.

There were no speakers in support of the application.

Randy O'dell, owner of Lot 37 and Toni Amy, owner of Lot 104, were not in opposition of the application, but asked that the Board consider having Mr. Shaw scale back the deck off of the property lines due to safety hazards and privacy issues.

Mr. Shaw rebutted by stating that both he and his wife shared the concerns of the neighborhood and after discussing these matters with the O'dell's, he felt that the issues raised were already resolved or would be resolved.

There was no further testimony. Chairman DiGiulian closed the hearing.

Mr. Ribble made a motion to approve SP 97-Y-026 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARCELA SHAW, SP 97-Y-026, Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification of minimum yard requirements for R-C lots to permit construction of deck 8.0 ft. from side lot line. **(THE BZA GRANTED CONSTRUCTION OF DECK 9.8 FEET FROM SHARED LOT LINE WITH LOT 37)** Located at 4322 General Kearny Ct. on approx. 10,891 sq. ft. of land zoned R-C, WS, AN. Sully District. Tax Map 33-4((02))38, 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 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS, AN.
3. The area of the lot is 10,891 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26 or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance 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 Lot; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART.**

1. This special permit is approved for a deck in the location shown on the plat prepared by Rice Associates, P.C., dated December 14, 1994 and revised by Marcela Shaw on \_\_\_\_\_, submitted with this application, but no closer than 9.8 feet from the side lot line. The plat submitted with the building permit shall reflect this distance.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on \_\_\_\_\_, 1997.

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Page \_\_\_\_\_, August 12, 1997, (Tape 1), Scheduled case of:

- 9:00 A.M. CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, VC 97-Y-058, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from rear lot line. Located at 15602 Compton Rd. on approx. 1.96 ac. of land zoned R-C, WS. Sully District. Tax Map 64-3((1))17. (OUT OF TURN HEARING GRANTED)
- 9:00 A.M. CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, SP 97-Y-029, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 15602 Compton Rd. on approx. 1.96 ac. of land zoned R-C, WS. Sully District. Tax Map 64-3((1))17. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lorenzo Vaughan, 15211 Compton Road, Centreville, Virginia, replied that it was.

Jennifer Smolko, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant was requesting approval of a special permit for a church and related facilities in order to construct an addition and install a septic field. The applicant was also requesting approval of a variance to add a 736.775 square foot addition to the existing 1338.25 square foot church. The applicant also wanted to install a septic field east of the church building in the northern part of the property. A modification of transitional screening on all lot lines and a waiver or modification of the barrier requirements on all lot lines was also requested.

Mr. Lorenzo Vaughan stated simply that his church was built 172 years ago. The members of the church are elderly with the oldest being 103 years old and this is the one who requested that they install indoor plumbing. He stated that they would not build the classroom but would like to have the fellowship hall and the pastor's study built. They enjoy having visitors and would like to be able to accommodate them.



Page 749, August 12, 1997, (Tape 1), CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, VC 97-Y-058 and SP 97-Y-029, continued from Page 748

Mr. Vaughan stated that he was not aware of anyone in the community that was in opposition to them adding the additions to the church.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve SP 97-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**

CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, SP 97-Y-029, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 15602 Compton Rd. on approx. 1.96 ac. of land zoned R-C, WS. Sully District. Tax Map 64-3((1))17, 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 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The church does not presently have a Special Permit, as it was built prior to the effective date of the current Zoning Ordinance and all preceding ordinances. The church was built in the year 1825.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location on the application, 15602 Compton Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit Plat prepared by Carl H. Robey, Jr., Land Surveyor, on April 7, 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. The maximum number of seats in the church shall be 50.
5. Fifteen parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.
6. The normal hours of operation shall be in accordance with the conditional Sewage Disposal System Construction Permit issued by the Health Department which limits the use of the church based on the ability of the septic field to function properly. If at some later date the applicant is able to provide septic

facilities which can accommodate greater activities, these hours may be expanded provided that approval is granted by the Health Department and a new Non-Residential Use Permit is obtained.

- 7. Transitional screening shall be modified to allow existing vegetation to satisfy requirements along the northern, southern, western and eastern lot lines.
- 8. The barrier requirement shall be waived along the northern, southern, and eastern lot lines. The existing wire fence along the western lot line shall satisfy the barrier requirement on that lot line.
- 9. Limits of clearing and grading shall be subject to review and approval by the Urban Forestry Branch and shall be the minimum necessary to construct the addition and the septic field shown on the Special Permit Plat approved with this application. The removal of trees shall be in accordance with Condition #5 on the Sewage Disposal System Construction Permit authorized by the Fairfax County Health Department which states that the system be kept 10 feet from all trees and property lines. No other vegetation shall be removed except that which is dead or dying.
- 10. The width of the existing entrance shall be provided as determined by the Virginia Department of Transportation during the site planning process.

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the 8-day waiting period.

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Mr. Pammel made a second motion to approve VC 97-Y-058 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, VC 97-Y-058, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from rear lot line. Located at 15602 Compton Rd. on approx. 1.96 ac. of land zoned R-C, WS. Sully District. Tax Map 64-3((1))17, 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 12, 1997; and

Page 761, August 12, 1997, (Tape 1), CUB RUN BAPTIST CHURCH/CUB RUN PRIMITIVE BAPTIST CHURCH, VC 97-Y-058 and SP 97-Y-029, continued from Page 750

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The church does not presently have a Special Permit, as it was built prior to the effective date of the current Ordinance and all preceding ordinances. The church was built in the year 1825.
3. The applicant has presented testimony before the Board on August 12, 1997, indicating that the applicant has complied with the prescribed criteria for the granting of a variance; specifically, the location of the property. There is no other location for the building to be placed.
5. The septic field in the front of the building provides constraints to the location of the addition and will not disrupt the historic structure.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by Carl H. Robey, Jr., dated April 7, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspection shall be approved.
3. The addition shall be architecturally compatible with the existing structure.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this variance. The Board waived the 8-day waiting period.

Page 752, August 12, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL, INC., SPA 90-S-024, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 90-S-024 for riding and boarding stable to permit continuation of use, and to amend previously approved conditions. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C, WS. Springfield District. Tax Map 66-4((1))15; 66-3((1))36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Golden, 6429 Clifton Road, Clifton, Virginia, replied that it was.

Brian Davis, Staff Coordinator with the Special Exception and Rezoning Branch, stated that due to a medical condition in the applicant's office, the notices were not sent out in a timely fashion. Therefore, it was requested that the public hearing be rescheduled for September 16, 1997, at 9:00 a.m.

Mr. McPherson made a motion that the hearing be deferred until September 16, 1997.

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Page 752, August 12, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CHANTILLY BIBLE CHURCH, SP 97-Y-022, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4390 Pleasant Valley Rd. on approx. 17.30 ac. of land zoned R-C, WS. Sully District. Tax Map 33-4((1))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. Dennis Smith, 13159 Applegrove Lane, Herndon, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a Special Permit for a church and related facilities which would include a main worship center with a 750 seat sanctuary, a christian education center, administrative space, a multi-purpose area, two parking areas, a 1,000 square foot maintenance building, and a storm water management, best management pond.

Noel Kaplan from the Environment and Development Review Branch of the Office of Comprehensive Planning, briefly discussed the environmental features and issues of the application properties.

Discussion followed between the Board members, staff, and Mr. Kaplan regarding the environmental issues raised in reference to undisturbed open space.

Mr. Smith spoke on the positive views of the application with regard to staff's desire to see permanent undisturbed open space as opposed to the applicant's need for open grassy areas for their use.

Mr. Smith also spoke on the following issues in which staff considered to be unresolved: an unwillingness to identify areas around the pond for wetland preservation or restoration; the intensity and visual impact of the land use; the proximity of the church development to the residential lots in the Pleasant Valley subdivision; the location of the building on the property; and, parking on Pleasant Valley Road. Mr. Smith felt that since setback requirements have been greatly exceeded, that the applicant has provided transitional screening along Pleasant Valley Road, and has designed a building that would compliment the residential area, the issues raised have been adequately addressed.

Mr. Smith provided the Board members along with staff marked-up copies of the applicant's proposed changes to the Development Conditions which included deletions to conditions 7, 8, and 9, and changes to the wording of condition 10. Mr. Smith asked that the Board approve the applicant's application with the amended Development Conditions.

Discussion followed between Mr. Hammack and Mr. Smith regarding the use of fertilizers and pesticides to the areas of the property designated as open space and the reasons why the applicant was not willing to commit the designated area to undisturbed open space.

Chairman DiGiulian called for speakers in support of the application.

Leroy Jackson, neighbor, voiced his support of the application stating that there were hundreds of houses in the area that are zoned R-C which generate pollutants. He spoke of the sod fields and the pollutants that they generate. He claimed that R-C land was not being protected because of the two sod farms. Mr. Jackson stated that the way the land is being used now is a worse use now than it would be with a church building. Mr. Jackson stated that he felt that the 50% undisturbed open space rule was ridiculous. He stated that he had spoken to 50 or more people who felt the same as he did.

A discussion was held between Mr. Kelley, Mr. McPherson and Mr. Kaplan in response to Mr. Jackson's statements about the sod farms.

Ralph Polachek, 25588 Polland Road, Chantilly, Virginia, stated that he gets his water from two wells on his property and has a septic field as well. He claims that he was unable to find any support in any statute, ordinance, rule, case or published guideline that links the policy of the water quality to the 50% rule. Mr. Polachek spoke on the present practices of the church and the church's history in dealing with its property. He stated there was much open space mowed and used regularly and pesticides and fertilizers were not used because the property was too large and that it was too expensive. Mr. Polachek stated that they wished to preserve the present operations and worship activities which would not be possible if the application were denied.

Elizabeth Brown, 15112 Philip Lee Road, Chantilly, Virginia, stated that she and her husband have been residents of Pleasant Valley since 1987 which is a very family oriented neighborhood. She stated that building Chantilly Bible Church makes a very good church available to families in Pleasant Valley. It provides opportunities for family worship and for them to take part in the activities made available. Ms. Brown felt that the church would be a beautiful addition to the neighborhood. The planned improvements to Cub Run would make it safer and easier to get in and out of the development. Ms. Brown expressed how important the planned open space would be to church members. Undisturbed open space would have a negative impact on her family.

Mitch Kirsch, 15109 Bernadette Court, Chantilly, Virginia, encouraged the Board to accept the application as presented and to reject the staff's report. He stated that he would prefer to see the church's design from the road rather than having the church located further back with unkempt, unmowed grass in the front. Mr. Kirsch felt that this would reduce his property values. He stated that Chantilly Bible has the opportunity to positively impact the community.

Charles Ditmar, 15213 General Stevens Court, Chantilly, Virginia, stated that he bought his house in 1981, and that when he moved into the area, there were lots of areas with undisturbed open areas which were preserved. Mr. Ditmar felt that the use that the church proposed would be in keeping with the feel of Pleasant Valley. Mr. Ditmar stated that the proposed use of the property by the applicant would enhance the quality of life.

Lora Smith, 43471 Plantation Terrace, Ashburn, Virginia, gave an explanation of how the open space would be utilized by the applicant. Ms. Smith stated that she was concerned about the social impact of the church and asked that the Board consider both the social impact as well as the environmental impact.

There were no speakers in opposition of the application and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to defer. There was a discussion between Board members regarding Mr. Hammack's motion. There was no second.

Mr. Dively made a motion to approve SP 97-Y-022 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

CHANTILLY BIBLE CHURCH, SP 97-Y-022, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4390 Pleasant Valley Rd. on approx. 17.30 ac. of land zoned R-C, WS. Sully District. Tax Map 33-4((1))1, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant meets all the requirements for Special Permit uses.
3. The submissions, pictures and architectural drawings submitted by the applicant of what the site looks like currently as opposed to what it will look like in the future, support the appropriate use of the site.
4. The Board considers this to be a good and well laid out application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4390 Pleasant Valley Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles P. Johnson & Associates, Inc., dated April 23, 1997, revised through July 17, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the main sanctuary shall be 750. The maximum number of seats in the multi-purpose area shall be 350, for a total maximum number of seats on site of 1,100.
6. A maximum of 497 parking spaces shall be provided as shown on the special permit plat. The minimum number of parking spaces shall satisfy the parking requirement of Sect. 11 of the Zoning Ordinance. All parking shall be on site.
7. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM). No clearing or grading for the SWM pond shall be allowed outside the limits of clearing as depicted on the special permit plat. The minimum amount of land disturbance possible shall be permitted in association with the reconstruction of the pond embankment and outlet in order to preserve wetlands. The SWM pond shall be developed with a shallow wetland bench around much of the perimeter of the facility. The bench shall be no greater than one foot in depth and shall extend no less than 10 feet in from the shore. The bench shall be planted with native, emergent wetland species that have a moderate to high value for wildlife and that are suited to the hydrologic conditions of the site, consistent with guidance provided within the "Native Plant Pondscaping Guide" in the Metropolitan Washington Council of Governments document entitled "Watershed Restoration Source Book".

8. A tree preservation and landscaping plan shall be submitted to the Urban Forestry Branch, DEM for review and approval at the time of site plan review.
9. Transitional screening along the western and southern lot lines is provided as shown on the Special Permit plat.

Transitional Screening 1 shall be provided by the applicant along the northern lot line unless a special permit is approved prior to approval of the site plan for the subject application which allows a non-residential use on Lot 10. If a special permit is approved for the adjacent Lot 10, then the landscaping plantings referenced in Development Condition 8 shall satisfy the barrier requirement.

Transitional Screening 1 shall be provided as depicted on the approved special permit plat along the eastern lot line.

Species and location of all transitional screening shall be as determined by the Urban Forestry Branch, with ornamental evergreen and native evergreen species of plant material to be used to meet screening requirements.

10. The barrier requirement shall be waived along all lot lines.
11. At such time as Pleasant Valley Road is reconstructed to a four lane divided road, the applicant shall provide unobstructed interparcel connection along with public access easements to Lot 10 to the north, if Lot 10 has developed with a non-residential use. If, at the time of reconstruction to a four lane divided road, a median break is provided opposite the site entrance on Pleasant Valley Road of the use on Lot 10, the interparcel connection shall not be provided.
12. The applicant shall construct a left turn deceleration lane into the site at the Cub Run Road entrance. The turn lane shall be constructed to standards as determined by the Virginia Department of Transportation (VDOT).
13. The proposed maintenance building shall be used for storage purposes only. No maintenance of vehicles or busses shall be performed on site.
14. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve feet.
  - ▶ The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - ▶ Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
15. A sign permit shall be obtained for any sign proposed for this site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless 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. McPherson seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the eight-day waiting period.

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Page 756, August 12, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BOARD OF MISSIONS OF MOUNT VERNON BAPTIST ASSOCIATION, LTD., SP 97-Y-012, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 10.10 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 10. (DEF. FROM 6/24/97 FOR DECISION ONLY)

Note: This hearing was held on June 24, 1997 and deferred to this date for decision only.

Susan Langdon, Staff Coordinator, stated that an addendum to the staff report was given to the applicant which included revised Development Conditions and that staff had been working with the applicant's agent and the agent agreed to the conditions submitted dated August 5, 1997.

Mr. Pammel made a motion to approve SP 97-Y-012 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

BOARD OF MISSIONS OF MOUNT VERNON BAPTIST ASSOCIATION, LTD., SP 97-Y-012, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 10.10 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 10. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 24, 1997; 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 Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Robson Group Architects dated March 10, 1997, revised through July 31, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the sanctuary under Phases I and II shall be 325. Upon completion of Phase III, the maximum number of seats may increase to 650.
6. A minimum of 84 parking spaces shall be provided as shown on the special permit plat for Phases I and II. Pursuant to the construction of Phase III, the parking spaces shall increase to 212 spaces as shown on the special permit plat. All parking shall be on site.
7. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM). No clearing or grading for the SWM pond shall be allowed outside the limits of clearing for the property as depicted on the special permit plat. If the SWM pond is waived or reduced in size, the area approved for the pond shall become part of the perpetually undisturbed open space on site.
8. The Environmental Quality Corridor (EQC) shall be denoted 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 or shrubs. There shall be no structures located in the EQC.
9. A tree preservation and restoration plan shall be submitted to the Urban Forestry Branch, DEM for review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and all areas shown on the plat outside of the limits of clearing to be preserved and labeled as "perpetually undisturbed open space" and shall include the existing vegetation and EQC shown on the approved special permit plat. The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat.

The restoration plan shall include the planting of 100 saplings, two (2) to four (4) feet in height, in an area seventy-five (75) feet in width along the northern property line excluding the existing tree line. An additional 200 evergreen seedlings shall be planted by the applicant outside the delineated limits of clearing shown on the special permit plat. The location of the plantings shall be at the discretion of the applicant; however, shall include plantings in each yard of the site.

Species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short-leaf pine or other native evergreen varieties. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space. The reinforced lawn area as designated on the special permit shall be considered disturbed area and may be mowed.

10. Existing vegetation along the western lot line shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1 (within a 25 foot screening yard).

Transitional Screening 1 shall be provided by the applicant along the northern and southern lot lines unless a Non-Residential Use Permit for the subject application is issued prior to approval of the site plan which allows non-residential use(s) on the remaining portion of Lot 10 and on adjacent Lot 1. If one or both of the special permits are approved for the adjacent parcels, then the restoration plantings referenced in Development Condition 9 shall satisfy the barrier requirement adjacent to the special permit use. The existing vegetation within the EQC shall satisfy transitional screening along that portion of the lot line.

Transitional Screening 1 shall be provided as depicted on the approved special permit plat along the eastern lot line.

Notwithstanding the plant legend on the approved special permit plat, species and location of all transitional screening and peripheral parking lot landscaping shall be as determined by the Urban Forestry Branch, with ornamental evergreen and native evergreen species of plant material to be used to meet screening and peripheral parking lot landscaping requirements.

11. The barrier requirement shall be waived along all lot lines, except as noted above.
12. Road dedication and construction shall be determined at the time of site plan review. If road improvements are not constructed coincident with development, ancillary easements shall be provided if necessary to facilitate any road improvements. At such time as Pleasant Valley Road is reconstructed to a four lane divided road, the applicant shall provide unobstructed interparcel connection along with public access easements with the property on Lot 1 to the south, if Lot 1 has developed with a non-residential use. Subsequent to the aforementioned road improvements, the applicant's site entrance may be maintained and shall provide right-in/right-out turning movements only. If, at the time of reconstruction to a four lane divided road, a median break is provided opposite the applicant's site entrance, the interparcel connection is not required to be provided and full access to the site entrance shall be allowed.
13. A floodplain analysis shall be completed and if it is determined that a floodplain exists on the application property, it shall be delineated on the site plan and shall be designated within the area to be preserved as perpetually undisturbed open space. If the stormwater management pond or proposed building and/or parking areas are found to be located within the floodplain, the pond and/or other affected development shall be moved outside the floodplain and any area designated as undisturbed open space.
14. A soccer field may be provided on site as outlined on the approved special permit plat. There shall be no applications of pesticides or herbicides. The use of the soccer field may be open to groups other than the church congregation up to ten (10) times per year.
15. The edges of the reinforced lawn parking area shall be delineated in such a way that all parking shall remain on the reinforced area and vehicles shall not be allowed to enter into the perpetually undisturbed open space.
16. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve feet.
  - ▶ The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - ▶ Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
17. A sign permit shall be obtained for any sign proposed for this site.
18. Notes 6, 8, 11 and 17 on the special permit plat shall be deemed null and void. Site design is subject to minor engineering modifications provided that building and parking setbacks are maintained, and the limits of clearing and grading shall not intrude into the EQC.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. 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.

Page 759, August 12, 1997, (Tape 1), BOARD OF MISSIONS OF MOUNT VERNON BAPTIST ASSOCIATION, LTD., SP 97-Y-012, continued from Page 758)

Mr. Dively seconded the motion which carried by a vote of 6-0-1 with Mr. McPherson abstaining.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the 8-day waiting period.

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Page 759, August 12, 1997, (Tape 2), Scheduled case of:

9:00 A.M. VICTORY CHRISTIAN CHURCH, SP 97-Y-013, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 9.19 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 10. (DEF. FROM 6/24/97 FOR DECISION ONLY)

Note: This hearing was held on June 24, 1997 and was deferred to this date for decision only.

Susan Langdon, Staff Coordinator, stated that an addendum to the staff report was given to the applicant which included revised Development Conditions and that the applicant's agent agreed to the conditions submitted dated August 5, 1997.

Mr. Pammel made a motion to approve SP 97-Y-013 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

VICTORY CHRISTIAN CHURCH, SP 97-Y-013, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 4300 Block of Pleasant Valley Rd. on approx. 9.19 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 33-2((1))Part of 10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 24, 1997; 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 Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9.19 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 Robson Group Architects dated March 10, 1997, revised through June 10, 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 Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the sanctuary under Phases A through C shall be 600. Upon completion of Phase D, the maximum number of seats may increase to 800.
6. A minimum of one hundred seventy-one (171) parking spaces shall be provided as shown on the special permit plat for Phase A, B, and C. Pursuant to the construction of Phase D, the parking spaces shall increase to 209 spaces as shown on the special permit plat. All parking shall be on site.
7. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM). No clearing or grading for the SWM pond shall occur within the existing tree line of the EQC. No portion of the SWM pond structure shall be located within the EQC. Any area of encroachment into the delineated EQC for clearing and/or grading associated with the SWM pond shall be restored as determined by the Urban Forestry Branch, DEM. If the SWM pond is waived or reduced in size, the area presently depicted on the special permit plat for the pond shall become part of the perpetually undisturbed open space on site.
8. The Environmental Quality Corridor (EQC) shall be denoted 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 or shrubs and clearing and/or grading associated with the SWM pond as outlined in Condition 7. There shall be no structures located in the EQC.
9. A tree preservation and restoration plan shall be submitted to the Urban Forestry Branch, DEM for review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and all areas shown on the plat outside of the limits of clearing to be preserved and labeled as "perpetually undisturbed open space" with the exception of the possibility of clearing and/or grading for the SWM pond as outlined in Condition 7. The "perpetually undisturbed open space" shall include the existing vegetation and EQC shown on the approved special permit plat. The restoration plan shall be developed with the intention of revegetating and restoring portions of the perpetually undisturbed open space to its natural habitat.

The restoration plan shall include the planting of 100 saplings, two (2) to four (4) feet in height and 200 evergreen seedlings outside the delineated limits of clearing shown on the special permit plat. The location of the plantings shall be at the discretion of the applicant, however, plantings shall be provided in each yard of the site.

Species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short-leaf pine or other native evergreen varieties. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the perpetually undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural secession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.

10. Existing vegetation along the western lot line shall be preserved and maintained and shall satisfy the requirement of Transitional Screening 1. A minimum width of 25 feet shall be maintained adjacent to the rectory.

Transitional Screening 1 shall be provided by the applicant along the southern lot line unless a special permit is approved prior to approval of the site plan for the subject application which allows a non-residential use on the remaining portion of Lot 10. A portion of the plantings associated with the restoration plan

referenced in Development Condition 9 shall be planted along the southern lot line to satisfy the barrier requirement if a special permit is approved for the southern portion of Lot 10. The existing vegetation within the EQC shall satisfy transitional screening along that portion of the lot line.

Transitional Screening 1 shall be provided as depicted on the approved special permit plat along the eastern lot line.

Notwithstanding the plant legend on the approved special permit plat, species and location of all transitional screening and peripheral parking lot landscaping shall be as determined by the Urban Forestry Branch, with ornamental evergreen and native evergreen species of plant material to be used to meet screening and peripheral parking lot landscaping requirements.

11. The barrier requirement shall be waived along all lot lines except as qualified above.
12. A floodplain analysis shall be completed and if it is determined that a floodplain exists on the application property, it shall be delineated on the site plan and shall be designated within the area to be preserved as perpetually undisturbed open space. If the stormwater management pond and/or proposed building, parking area or driveway (exclusive of the portion of the driveway serving as access to Old Pleasant Valley Road) are found to be located within the floodplain, the pond or other affected development shall be moved outside the floodplain and any area designated as perpetually undisturbed open space.
13. Road dedication and construction shall be determined at the time of site plan review. If road improvements are not constructed coincident with development, ancillary easements shall be provided if necessary to facilitate any road improvements.
14. Any proposed lighting of the parking areas shall be in accordance with the following:
  - ▶ The combined height of the light standards and fixtures shall not exceed twelve feet.
  - ▶ The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - ▶ Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
15. Notes 6, 8, 11 and 17 on the special permit plat shall be deemed null and void. Site design is subject to minor engineering modifications provided that building and parking setbacks are maintained, and the limits of clearing and grading shall not intrude into the EQC except as permitted in Condition 7.
16. A sign permit shall be obtained for any sign proposed for this site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0-1 with Mr. McPherson abstaining.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the 8-day waiting period.

9:00 A.M. TRUSTEES OF THE LUTHERAN CHURCH OF THE ABIDING PRESENCE, SPA 84-S-003-4, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-S-003 for church and related facilities to permit child care center (adult). Located at 6304 Lee Chapel Rd. on approx. 3.13 ac. of land zoned R-1. Springfield District. Tax Map 78-3((1))22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeff Nein, 5810 Wood Loral Court, Burke, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested an amendment to the existing special permit for a church and related facilities to permit the addition of an adult day care center.

Jeff Nein stated that the applicant was not proposing any new construction but wants to use existing classroom space for an adult day care use for alzheimers patients. The adult day care center would provide care limited to 15 adults and the hours of operation would be 7:00 a.m. to 6:00 p.m., Monday through Friday. Mr. Nein stated also that the applicant would like to request a waiver of the 8-day waiting period.

There were no speakers, either in support or in opposition of the application. Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to approve SPA 84-S-003-4 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 LUTHERAN CHURCH OF THE ABIDING PRESENCE, SPA 84-S-003-4, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-S-003 for church and related facilities to permit child care center (adult). Located at 6304 Lee Chapel Rd. on approx. 3.13 ac. of land zoned R-1. Springfield District. Tax Map 78-3((1))22.

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This is beneficial not only for the area but also, in general, it is a very appropriate use for the facility.
3. The applicant has met the necessary standards for the granting of the Special Permit.
4. Comments contained in the Staff Report, the minutes and the Board's comments are incorporated into the Resolution.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This Special Permit is granted for and runs with the land indicated in this 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 T. DeBell, dated May 29, 1997, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.\*
5. The seating capacity in the main worship area shall not exceed 248 seats.\*
6. The maximum daily enrollment for the adult day care center shall be 15 adults.
7. The hours of operation for the adult day care center shall be limited to no more than 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. There shall be 132 parking spaces provided as shown on the Special Permit Plat. All parking shall be on site.\*
9. Transitional Screening 1 shall be maintained in accordance with the Special Permit Plat approved with this application except for the following modifications:
  - ▶ Landscape plantings along the lot line adjacent to Britford Drive in the area between the westernmost driveway and Lee Chapel Road shall be maintained.\*
  - ▶ Along the lot line adjacent to Lee Chapel Road, landscape plantings shall be maintained to soften the visual impact of the building and the detention pond from the surrounding residential neighborhoods, and\*
  - ▶ Plantings between the western lot line and the parking area shall be maintained to satisfy the intent of Transitional Screening 1.\*
10. A tree preservation plan showing final limits of clearing and grading for the Phase II addition approved in conjunction with SP 84-S-003-3 shall be provided at the time of site plan review for approval by the County's Urban Forestry Branch in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by the construction.\*
11. The barrier requirements shall be waived along all lot lines.\*
12. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director of the Department of Environmental Management (DEM) to meet the requirement of the Chesapeake Bay Preservation Ordinance. If the Director, DEM determines that the proposed stormwater management pond needs to be enlarged in order to accommodate the requirements of the Chesapeake Bay Ordinance, none of the existing vegetation located in the adjacent 25 foot transitional screening yards shall be removed in order to accommodate a larger pond.\*
13. Interior parking lot landscaping shall be provided and maintained in accordance with Article 13, Landscaping and Screening.\*
14. If a trash dumpster is to be located on the property, its location shall not be in a required parking space and shall be located in a manner which can be screened from view so as not to be seen from off the property.\*
15. A sign shall be permitted in accordance with Article 12, Signs of the Zoning Ordinance.\*
16. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.\*

17. The construction of Phase I (classrooms and fellowship hall) has established the use as approved pursuant special permit amendment SPA 84-S-003-3 and proposed Phase II may still be constructed as depicted on the approved special permit plat.

These development conditions incorporate and supersede all previous development conditions. Previous conditions are marked with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively and Mr. 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 August 12, 1997. This date shall be deemed to be the final approval date of this special permit. The Board waived the 8-day waiting period.

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Page 764, August 12, 1997, (Tape 2), Scheduled case of:

9:00 A.M. DR. MARILYN J. THOMPSON AND COMPANION ANIMAL CLINIC OF VIRGINIA, INC., SP 97-B-024, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit kennel with ancillary veterinary hospital. Located at 10998 Clara Barton Dr. on approx. .76 ac. of land zoned R-1. Braddock District. Tax Map 77-1((2))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. JoAnne S. Bitner, HAZEL & THOMAS, P.C. Attorney/Agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a special permit to construct a 4,992 square foot building for a kennel and ancillary veterinary hospital.

There was a discussion between Board members and staff concerning the fact that the zoning section map did not accurately reflect the traffic pattern for the area.

JoAnne Bitner explained that the site is well suited for the type of use proposed by the applicant because of the location and community serving use. Ms. Bitner also explained that the applicant had gone through a lot of effort and expense to make the facility look like a residence even though it would be used for commercial use. Ms. Bitner stated that the applicant met with Supervisor Bulova's office and the Burke Center Conservancy.

There were no speakers either in support or in opposition of the application. Chairman DiGiulian closed the public hearing.

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DR. MARILYN J. THOMPSON AND COMPANION ANIMAL CLINIC OF VIRGINIA, INC., SP 97-B-024, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit kennel with ancillary veterinary hospital. Located at 10998 Clara Barton Dr. on approx. .76 ac. of land zoned R-1. Braddock District. Tax Map 77-1((2))11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 12, 1997; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the contract purchaser.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10998 Clara Barton Drive, (0.76 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, dated April 16, 1997, as revised through July 10, 1997 for a kennel and ancillary veterinary hospital, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The area of the building utilized for an ancillary veterinary hospital shall not exceed 40% of the total gross floor area of the building. All grooming activities shall be associated with the kennel use, and all grooming and veterinary hospital activities shall be ancillary to the kennel use. The kennel and ancillary veterinary hospital shall be located entirely within the structure except for periodic walking of animals that are leashed and supervised. There shall be provisions to board a total of 70 animals, with no more than 50 animals boarding overnight.
6. The maximum number of employees shall not exceed ten (10).
7. A minimum of 15 parking spaces shall be provided on the site. All parking for the use shall be on-site, as shown on the Special Permit Plat.
8. The hours of operation for the kennel shall be limited to 6:00 a.m. to 9:00 p.m. seven days a week. The hours of operation for the ancillary veterinary hospital shall be limited to 8:00 a.m. to 7:00 p.m. Monday through Saturday, and 10:00 a.m. to 2:00 p.m. Sunday.
9. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval which shows the definitive limits of clearing and grading and emphasizes the preservation of the areas of natural vegetation and landscaping shown on the special permit plat. If it is

determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utilities that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to the Public Facilities Manual. In the event that a waiver of the stormwater detention pond is granted at the time of site plan review, the area shown on the plat for the pond shall be retained in natural vegetation to the maximum extent feasible, as determined by the Urban Forestry Branch of DEM.

10. The barrier requirements along all property boundaries shall be waived. Transitional Screening shall be provided as follows:

North

Transitional Screening shall be provided along the northern property boundary within a planted strip with a minimum of 20 feet, as shown on the sketch contained as Exhibit A, for the purpose of maintaining the residential appearance of the building. Natural vegetation may be utilized where possible for transitional screening. The exact number, type and extent of plant materials are subject to the determination of the Urban Forestry Branch of DEM.

East

Transitional Screening shall be provided along the eastern property boundary within a planted strip with a minimum of 25 feet with the exception of the area surrounding the sanitary sewer lateral, as shown on the Special Permit Plat, for the purpose of maintaining the residential appearance of the site. Natural vegetation, supplemented with landscaping may be utilized where possible for transitional screening. The exact number, type and extent of plant materials are subject to the determination of the Urban Forestry Branch of DEM.

South

Transitional Screening shall be provided along the southern property boundary within a planted strip with a minimum width of 25 feet, as shown on the Special Permit Plat, for the purpose of softening the visual impact of the parking lot from the adjacent child care center. Natural vegetation, supplemented with landscaping may be utilized where possible for transitional screening. The exact number, type and extent of plant materials are subject to the determination of the Urban Forestry Branch of DEM.

West

Landscaping shall be provided along the western property boundary within a planted strip which ranges from 13 feet to 32 feet, as shown on the sketch contained as Exhibit A, in order to maintain a residential appearance which complements the residential neighborhood on the west side of Route 123. This landscaping shall be subject to the review and approval of the Urban Forestry Branch of DEM, and if necessary, with VDOT.

11. Construction of the kennel and ancillary veterinary hospital shall be in general accordance with the conceptual elevation contained in Attachment A.
12. All signage shall be in accordance with Article 12, Signs, of the Zoning Ordinance.
13. The construction and operation of the kennel and ancillary veterinary hospital shall be approved by the Health Department prior to issuance of a site plan for the 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 or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 767, August 12, 1997, (Tape 2), Scheduled case of:

9:30 A.M. J.L. TREE SERVICE APPEAL, A 1997-PR-015, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the minor site land and Non-Residential Use Permit (Non-RUP) for the appellants' storage use have expired and that the continued storage of mulch, wood, company vehicles and equipment on the property without a valid Non-RUP is in violation of Zoning Ordinance provisions. Located at 3120 Spring St. on approx. 90,689 sq. ft. of land zoned I-5. Providence District. Tax Map 48-3((1))25.

Mr. Hammack made a motion to defer this case until October 7, 1997. Mr. Dively seconded which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 767, August 12, 1997, (Tape 2), Scheduled case of:

9:30 A.M. ROLLING VALLEY PROFESSIONAL CENTER CONDOMINIUM UNIT OWNERS ASSOCIATION, Appeal A 96-S-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's issuance of a Non-Residential Use Permit to Rolling Valley Nail Care as an accessory service use in the C-1 District. Located at 9295 Old Keene Mill Rd. in a condominium unit of approx. 1,315 sq. ft. on land zoned C-1. Springfield District. Tax Map 88-2 ((24)) 28. (MOVED FROM 1/28, 3/4/97, 4/22/97 and 6/3/97. NEED NOTICES)

Chairman DiGiulian stated that the agenda indicated "need notices" and questioned whether the notices were in order. He also noted that the case had been deferred several times. Marilyn Anderson, Staff Coordinator, commented that according to the clerk's note, if the case is deferred until November, notices would have to be done again. Ms. Anderson stated that the notices were in order, and that the applicant was just requesting a deferral. Chairman DiGiulian noted that the case had already been deferred four times and wanted to know the reason for that. Ms. Anderson answered that there was an attachment dated August 4th from Mr. Shoup which stated that staff needed the extra time to pursue resolution of a notice of violation and that staff felt that they would be able to resolve the issue without coming before the Board. Chairman DiGiulian asked Ms. Anderson if they had a proposed date in which she answered, November 4th at 9:30 a.m. Mr. McPherson so moved the request stating that there should be no more continuances, that the issue needed to be resolved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 767, August 12, 1997, (Tape 2), Action Item:

Approval of June 17, 1997 Minutes

Mr. Pammel made a motion to approve the minutes as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 7-0.

Page 768, August 12, 1997, (Tape 1), Action Item:

Out-of-Turn Hearing Request  
SPA 84-D-001, St. Luke's United Methodist Church.

Mr. Dively made a motion to approve the request for a Out-of-turn Hearing. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new hearing date will be on October 14, 1997.

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Page 768, August 12, 1997, (Tape 1), Action Item:

Approval of Revised Plats and Resolution  
SP 97-V-006 and VC 97-V-020, Mount Vernon Presbyterian Church

Mr. Ribble made a motion to approve the revised plats. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 768, August 12, 1997, (Tape 1), Action Item:

Approval of Revised Plats and Resolution  
SP 97-S-015, Clifton Childrens Academy

Mr. Ribble made a motion to approve the revised plats. Hearing no objection, the Chair so ruled. The motion carried by a vote of 7-0.

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Page 768, August 12, 1997, (Tape 1), Action Item:

Approval of August 5, 1997 Resolutions


Mr. McPherson made a motion to approve the Resolutions with the exception of SP 97-B-018, condition No. 1, which should accurately reflect the resolution passed by the Board and that the phrase "for this applicant only" be inserted after the word "approved". Mr. Ribble seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Minutes by: Denise Snyder

Approved on: September 30, 1997

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals