

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 9, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; James Hart; Paul Hammack; and James Pammel. John Ribble was absent from the meeting.

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

~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M. NOVUS LLC, SPA 80-C-091-2 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 80-C-091 previously approved for a skating facility, health club and related facilities to permit change in permittee, increase in land area and building addition. Located at 1800 Michael Faraday Ct. on approx. 6.65 ac. of land zoned I-5. Hunter Mill District. Tax Map 18-3 ((5)) 8C and 9. (Moved from 7/1/03 per appl. req.)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah Hall, Blankingship & Keith, 4020 University Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant was requesting approval of an amendment to a special permit previously approved for a skating facility, health club, and related facilities to permit a change in permittee from the Reston Property Investors Limited Partnership to Novus, LLC, to increase land area from 4.75 (Lot 9) acres to 6.65 acres, with the addition of Lot 8C (1.9 acres), and to add a building addition, consisting of a 1,440-square-foot trailer, to the site in Phase I of the development. The additional land area was developed with 120 existing parking spaces. The trailer addition currently housed fitness equipment that was proposed to remain. The additional land area and the trailer comprised the first phase of development for the site. Ms. Stanfield stated that the previous special permit amendment permitted construction of an additional 93 parking spaces. The current application included this new construction as Phase II. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and, therefore, recommended approval of the application.

Mr. Hammack noted that a letter was received from the Northern Virginia Regional Park Authority (NVRPA) and asked if there was any impact on the Park Authority property as a result of this application since it was already developed. Ms. Stanfield stated that a conference call was held with a representative for the NVRPA attempting to determine if anything additional was needed. She stated that the proposed construction in the current application had been previously approved and stated that Ms. Hall would present additional development condition language to the Board to address the issue regarding understory along the trail with the Phase II construction.

Mr. Hammack questioned the location of the temporary trailer. Ms. Stanfield stated that the trailer had been on-site since the original construction and noted that a development condition was developed to address the issue.

Sarah Hall, the applicant's agent, came to the podium to speak on behalf of the applicants. Ms. Hall presented a plat which was approved with the amendment from 1992 and explained that the request for the current application was for three items, a change in permittee, to add a 2-acre parking lot and make it a part of the amendment application, and to permit the construction trailer to remain on the property as a weight room and other uses related to the ice skating rink.

Ms. Hall stated that the trailer had been originally brought onto the property as a construction trailer and as such did not need to be permitted at that time; however, it was included in the application to be a permanent part of the facility. She stated that the plans had been submitted to the Reston Planning and Zoning Committee and the Reston Architectural Board of Review for approval and noted that a number of their suggestions were included in the plat submitted to the Board to include landscaping around the mechanical equipment, painting the equipment and the trailer with the building colors, gates and fences around the dumpster at the rear of the property, and landscaping in the front of the trailer. Ms. Hall suggested a new development condition be added and proposed language and asked for the Board's approval of the special permit amendment.

--- August 5, 2003, NOVUS LLC, SPA 80-C-091-2, continued from Page 1

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

Mr. Hammack moved to approve SPA 80-C-091-2 for the reasons as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

NOVUS LLC, SPA 80-C-091-2 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 80-C-091 previously approved for a skating facility, health club and related facilities to permit change in permittee, increase in land area and building addition. Located at 1800 Michael Faraday Ct. on approx. 6.65 ac. of land zoned I-5. Hunter Mill District. Tax Map 18-3 ((5)) 8C and 9. (Moved from 7/1/03 per appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 9, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general required standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1800 Michael Faraday Court, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Burgess and Niple, dated February, 2003, as revised through August 22, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The hours of operation for the skating facility, health club and related facilities shall be limited a maximum of 6:00 a.m. to 12:00 midnight, daily.

~ ~ ~ August 5, 2003, NOVUS LLC, SPA 80-C-091-2, continued from Page 2

6. All parking shall be on-site. Parking shall be provided as shown on the Special Permit plat.
7. The maximum number of patrons permitted on-site at any one time shall be limited to 603.
8. If additional on-site stormwater management is required, as determined by DPWES, it shall be provided without altering the parking, road, building or landscaping as shown on the special permit plat. If stormwater management cannot be provided without such alterations, a special permit amendment shall be required.
9. Any changes or additions to the parking lot lighting shall be approved by the Architectural Review Board of the Reston Land Corporation. All new outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
10. Prior to issuance of a new Non-Residential Use Permit (Non-RUP) additional landscaping, including the landscaping on the northern side of the trailer, shall be provided as depicted on the Special Permit plat. The exterior of the trailer shall be painted to match the exterior color of the skating facility.
11. Prior to issuance of a new Non-Residential Use Permit (Non-RUP) the applicant shall apply for a Proffered Condition Amendment to add language to the proffers that govern the site that would permit the continued use of the existing skating facility until such time as the site is redeveloped with the proposed office buildings.
12. At such time that the Phase II parking lot is constructed, understory vegetation shall be added along the southeast boundary of the parking lot to screen the W&OD Trail as may be determined in consultation with the Urban Forester.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M. NAOMI C.B. HAGLER, VC 2003-PR-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lots 1 and 2 having a lot width of 25.0 ft. Located at 3009 Fairhill Rd. on approx. 3.02 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((1)) 27 and 49-3 ((6)) 178.

Chairman DiGiulian noted that the application had been administratively moved to October 7, 2003 at 9:00 a.m.

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~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 74. (Def from 6/10/03 7/1/03, 7/15/03 and 7/29/03 for decision only)

Chairman DiGiulian noted that the application had been deferred from July 29, 2003, for decision only and asked Mr. Link to address the revised plat.

Mr. Link stated that he had changed the design, the size, and the location of the structure to address the Board's concerns. He stated that the structure would now be 11.5 feet from the lot line.

Mavis Stanfield, Senior Staff Coordinator, stated that the previous application had shown an eave as well and noted that there was not an eave with the new request.

Mr. Link stated that he removed the eave from the structure, reduced the size from 40 feet to 35 feet, and moved it closer to the house.

Mr. Hart questioned how many cars the new garage would hold. Mr. Link stated that it was a hobby shop/garage with two garage doors which would hold two cars.

Mr. Pammel moved to approve VC 2003-MV-047 for the reasons as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 74. (Def from 6/10/03 7/1/03, 7/15/03 and 7/29/03 for decision only) 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 9, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The request as originally submitted has been modified to provide a greater side yard than was originally projected in the initial application.

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

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

~ ~ ~ September 9, 2003, JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047, continued from Page 4

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

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

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

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

1. This variance is approved for the location of an accessory structure, consisting of a garage, shown on the plat prepared by Larry N. Scartz, dated January 23, 2003, revised September 2, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M. OX HILL BAPTIST CHURCH, SPA 82-S-082-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-S-082 previously approved for a church to permit the addition of a public use. Located at 4101 Elmwood St. on approx. 3.39 ac. of land zoned R-1, AN, HC and WS. Sully District. Tax Map 34-4 ((6)) 46.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McKenney, 12757 Ashley Road, Fairfax, Virginia, replied

~ ~ ~ September 9, 2003, OX HILL BAPTIST CHURCH, SPA 82-S-082-2, continued from Page 5

that it was.

William Sherman, Staff Coordinator, presented the request as contained in the staff report. Mr. Sherman stated that the applicant was requesting the addition of a computer learning and homework assistance center to be operated by the Fairfax County Office of Partnerships, which would serve up to 30 children at a time on weekday afternoons from 2 p.m. to 7 p.m. and Saturdays from 11 a.m. to 3 p.m. He stated that the center would be staffed by one full-time director and additional volunteers and noted that no other changes to the site other than minor interior renovations would be required. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and, therefore, recommended approval of the application.

Mr. Hammack asked if the proposal would have a traffic impact, specifically young adults attending the computer learning center. Mr. Sherman stated that it was his understanding that most of the participants would be young children who would walk. He stated that the hours of operation would not be the same as the church. Mr. Sherman stated that the program was an established program and noted that a member of the Fairfax County Office of Partnerships was present to speak to the application.

Mr. McKenney came to the podium to speak on behalf of the applicants. He stated that the Office of Partnerships had approached the church 2 ½ years prior to ask for the space for their program. He stated that approximately 300 square feet were used for the use. He stated that the church received no compensation for allowing the use within the church. Mr. McKenney stated that most of the children were walkers to the facility. He stated that the request to permit the additional use which currently existed within the church facility was due to a Notice of Violation and asked for the Board's approval of the request.

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

Mr. Hart moved to approve SPA 82-S-082-2 for the reasons as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

OX HILL BAPTIST CHURCH, SPA 82-S-082-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-S-082 previously approved for a church to permit the addition of a public use. Located at 4101 Elmwood St. on approx. 3.39 ac. of land zoned R-1, AN, HC and WS. Sully District. Tax Map 34-4 ((6)) 46. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 9, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general required standards for the granting of a special permit.
3. Given the record and testimony presented, the impacts on the surrounding area would be minimal.
4. There won't be exterior changes.
5. The traffic implications, if any, would be slight.
6. It would be logical that people would walk to the facility rather than drive, especially from the Chantilly Mews community.
7. Staff provided a favorable recommendation.
8. A letter of support was received from the Western Fairfax County Citizens Association.

~ ~ ~ September 9, 2003, OX HILL BAPTIST CHURCH, SPA 82-S-082-2, continued from Page 6

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

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

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4101 Elmwood Street (3.39 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Rinker-Detwiler and Associates, P.C. dated June 24, 1987, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the principal place of worship shall be 350.
6. The hours of operation for the computer learning and homework assistance center shall be limited to

~ ~ ~ September 9, 2003, OX HILL BAPTIST CHURCH, SPA 82-S-082-2, continued from Page 7

a maximum of 2:00 p.m. to 7:00 p.m. on weekdays and 10:00 a.m. to 3:00 p.m. on Saturdays.

7. The number of students present on site at the computer learning and homework assistance center shall not exceed 30 at any one time. A maximum of ten special events per year may be held at the site. During special events, the number of students present at the site shall not exceed 50 at any one time.
8. The maximum number of parking spaces shall be 122. Handicapped spaces shall be provided in accordance with applicable code. All parking for the use shall be on site.
9. Transitional Screening shall be modified as shown on the special permit plat.
10. The barrier requirement shall be waived.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 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 obtain a new Non-Residential Use Permit if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        SUSAN M. MARTIN, VC 2003-MA-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.0 ft. with eave 23.0 ft. from front lot line and 11.5 ft. with eave 10.5 ft. from side lot line and addition 10.5 ft. with eave 9.5 ft. from side lot line. Located at 6362 Lakeview Dr. on approx. 11,607 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 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. Susan Martin, 6362 Lakeview Drive, Falls Church, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the request as contained in the staff report. He stated that the applicant requested two additions. One addition was to be located 24 feet with eave 23 feet from the front lot line and 11.5 feet with eave 10.5 feet from the side lot line. A minimum rear yard of 35 feet and minimum side yard of 15 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, variances of 11 feet, 9.0 feet, 3.5 feet, and 1.5 feet, respectively, were required. The second addition was to be located 10.5 feet with eave 9.5 feet from the side lot line; therefore, variances of 4.5 feet and 2.5 feet, respectively, were required.

Susan Martin presented the variance request as outlined in the statement of justification submitted with the application. Ms. Martin stated that she requested the ability to permit the conversion of the existing carport into a garage and to permit an expansion to the current kitchen of 8 by 7.5 feet to allow an eat-in kitchen area. Ms. Martin stated that the sanitary sewer easement issue limited the ability to expand on two sides of

~ ~ ~ September 9, 2003, SUSAN M. MARTIN, VC 2003-MA-102, continued from Page 8

the property. She stated that the house was constructed in 1956 and had no alterations since its construction. Ms. Martin stated that the lot was smaller than an R-2 zoning and was exceptionally narrow, therefore, requiring the need for the variance. She stated that the lot had topographic issues which included its placement within the side of a steep hill and, therefore, caused undue hardship. Ms. Martin stated that she met with 10 neighbors, of which none had objection to her requests. She noted that she had approval from the Lake Barcroft Homeowners Association for the improvements as well.

Ms. Martin reviewed the plat in detail with the Board including the existing carport setbacks and the roof height of the proposed construction.

Chairman DiGiulian called for speakers.

William Evans, architect and neighbor, stated that the kitchen addition would face his property and he had no objection and supported Ms. Martin's application, noting the difficulty in the site.

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

Ms. Gibb moved to approve VC 2003-MA-102 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN M. MARTIN, VC 2003-MA-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.0 ft. with eave 23.0 ft. from front lot line and 11.5 ft. with eave 10.5 ft. from side lot line and addition 10.5 ft. with eave 9.5 ft. from side lot line. Located at 6362 Lakeview Dr. on approx. 11,607 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 124. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 9, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The property has an exceptional size and is smaller than the minimum R-2 zoning district.
4. The lot has an unusual shape and topographic conditions and has a steep slope.
5. The property has an extraordinary situation with a sanitary sewer easement which wraps around the house.
6. The applicant has made an effort to minimize the impact regarding the kitchen addition.
7. The garage will be less deep 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;

~ ~ ~ September 9, 2003, SUSAN M. MARTIN, VC 2003-MA-102, continued from Page 9

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

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

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

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

1. This variance is approved for the location of two additions, as shown on the plat prepared by John L. Marshall, dated June 2003, updated through July 7, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 9, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      KIRK S. SCHNOEBELEN, SP 2003-BR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. from side lot line. Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with VC 2003-BR-098).

~ ~ ~ September 9, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 10

9:00 A.M. KIRK S. SCHNOEBELEN, VC 2003-BR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. with eave 5.5 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with SP 2003-BR-027).

Chairman DiGiulian noted that there was a request received to defer the applications to September 16, 2003, at 9:00 a.m.

Mr. Hammack made a motion to defer the applications to September 16, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. BRIAN K. & REIKO K. BRISCOMBE, VC 2003-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. with eave 2.0 ft. from one side lot line and 10.4 ft. from other side lot line. Located at 6703 McCrea Pl. on approx. 18,808 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 24.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Briscoombe, 6703 McCrea Place, Falls Church, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. She stated that the applicant requested a variance to permit the construction of an attached two-story garage 3.0 feet with eave 2.0 feet from the side lot line. The applicant also requested approval of a second story to an existing home 10.4 feet from the other side lot line. A minimum side yard of 12 feet is required; therefore, variances of 9.0 feet, 7.0 feet, and 1.6 feet, respectively, were required.

Mr. Briscoombe presented the variance request as outlined in the statement of justification submitted with the application. Mr. Briscoombe gave an overhead presentation to the Board. He stated that the previous owners had built the home too close to the lot line, therefore, requiring the need for the variance. He further stated that the addition was to be located above the existing home and that the garage addition would be in the same location as the existing carport. He noted that the lot had an unusual shape and was narrow. He stated that a neighbor was approved for the same variance request. Mr. Briscoombe provided six letters of support to the Board. He stated that the need for the garage was to accommodate a disabled child who used a walker and asked for the Board's approval of the variance request.

The Board members expressed concern regarding the width of the garage and the height of the second story addition. Mr. Briscoombe stated that the garage width was the same as the existing carport and the height of the home would be a second story addition on the entire home.

Gilbert Glaubinger, the applicants' agent/architect, 3915 Carolyn Avenue, Fairfax, Virginia, came to the podium to explain the measurements of the structures as depicted on the plat.

Chairman DiGiulian called for speakers.

Reiko Briscoombe, 6730 McCrea Place, Falls Church, Virginia, came to the podium to address the Board. Ms. Briscoombe stated that the addition of the attached garage was very important to them because of the needs of their disabled son. She stated that her immediate neighbors supported their request. She noted that the house was located on a cul-de-sac and their back yard faced a wooded view and asked for the Board's approval of the variance request.

Wanda Sue Banks, 3200 Dashhill Road, Falls Church, Virginia, came to the podium to speak in support of the application. She stated that she was the immediate next-door neighbor and had no objection to the request. She stated the Briscoombes were a positive contribution to the neighborhood.

~ ~ ~ September 9, 2003, BRIAN K. & REIKO K. BRISCOMBE, VC 2003-MA-101, continued from Page 11

Lisa Bremmer, 6702 McCrea Place, Falls Church, Virginia, came to the podium to speak in support of the application. She stated that she supported the renovations, that they would beautify the community, and the property would support the additions without affecting other homeowners. Ms. Bremmer stated that the garage was a necessity for their disabled son and noted that she was also disabled and strongly believed the variance request should be approved.

Bruce Rassmussen, 6706 McCrea Place, Falls Church, Virginia, came to the podium to speak in support of the application. He stated that the practical considerations and the special needs required the need for the renovations.

Sonya Motz, 6704 McCrea Place, Falls Church, Virginia, came to the podium to speak in opposition to the application. Ms. Motz stated that although she supported home improvements to include the attached garage request, she stated that the entire cul-de-sac had the same issue with the narrow street and narrow lot sizes with limited side-to-side improvements. She stated that the County tax records showed that Mr. Briscoombe currently had a garage and not a storage shed. Ms. Motz expressed concern that the approval of the request would set a precedent within the neighborhood and noted that the applicants had enough space in the rear of their property to accommodate the garage addition. Ms. Motz stated that the applicants' request for the addition may be to house foreign students.

Jose Garcia, 6700 McCrea Place, Falls Church, Virginia, came to the podium to speak in opposition to the application. He stated that he was against the renovation because it would be too close to other neighbors and would make the neighborhood look like a townhome.

Mr. Hart reviewed the plat with Mr. Briscoombe and staff regarding the current additions to the property. Ms. Langdon reviewed the history of building permits with the Board.

Mr. Briscoombe, in his rebuttal, stated that the addition would accommodate his wife's relatives and stated that an overwhelming majority of the neighbors supported the application.

Chairman DiGiulian closed the public hearing.

Mr. Beard made a motion to approve VC 2003-MA-101. Ms. Gibb seconded the motion and stated that the addition was closer to the lot line than preferred, yet expressed concern regarding the safety of the applicants' child.

Mr. Hammack stated that he agreed with Ms. Gibb that the lot was narrow, however, expressed concern with the second story addition and noted that it would be a convenience to the applicant. He suggested the applicants research other alternatives to lessen the impact on neighbors and stated he would not support the motion as presented.

Mr. Hart made a substitute motion to defer decision to October 14, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Ribble was absent from the meeting.

Mr. Pammel said he would like to have a revised plan presented to the Board to show changes to the addition, and Mr. Beard asked for elevations as well.

Mr. Hart made a motion for a revised plan. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tape 2), Scheduled case of:

9:00 A.M. J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 9044 Patton Blvd. on approx. 1.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 82. (moved from 7/22/03, notices not in order)

~ ~ ~ September 9, 2003, J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086, continued from Page 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. Sara Kroll, Land Design Consultants, 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. She stated that the applicant requested approval to permit the construction of an attached 2-car garage 6.0 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 9.0 feet was requested.

Ms. Kroll presented the variance request as outlined in the statement of justification submitted with the application. She stated that the granting of the variance would permit the construction of a 13-foot-wide and 37-foot-deep garage on the south side of the property. Ms. Kroll stated that the applicant currently did not have a garage and noted that the over one acre property could accommodate a garage; however, because of the unique shape of the lot, the only location was to the south side of the property. Ms. Kroll noted that the applicant had six neighbors in support of the request. She stated that the tree buffer would be preserved with the addition. Ms. Kroll stated that the existing driveway was proposed to remain and noted that the garage addition would hold storage of antique vehicles. She stated that the rear of the property already had an existing patio and pool area and was, therefore, not a feasible location and asked for the Board's approval of the request.

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

Mr. Hammack moved to deny VC 2003-MV-086 stating that the application was a convenience and that there were other locations to place the garage on the property. He said the driveway would impact the neighborhood and change its character. Mr. Hammack stated that there was nothing unusual about the topography or shape of the lot that would require the need for the variance.

Mr. Pammel seconded the motion and stated that all lots were similar in nature and noted that a 100-foot frontage was standard for the R-2 lot and, therefore, that the application was a matter of convenience.

Chairman DiGiulian stated that he could not support the motion and noted that the testimony presented indicated that most houses had either a carport or a garage and the subject property had neither. He noted that the lot was narrow, that six adjacent neighbors supported the request, there was no opposition to the application and that it was a reasonable request.

Mr. Beard agreed with Chairman DiGiulian that the use was adequate.

Mr. Hart stated that there seemed to be no easy place for the addition and noted that there was a Resource Protection Area in the rear of the applicant's property which was not shared by all the lots.

Mr. Hammack stated that the applicant was requesting two driveways and two sets of cars and noted that he believed that would be a convenience.

Mr. Beard stated that the vehicles were driven several times a month; therefore, it would make the garage not for storage.

Ms. Gibb expressed concern regarding two driveways.

Mr. Hammack made a substitute motion to defer decision to September 23, 2003, at 9:00 a.m., and asked the applicant to reconfigure the location of the addition and noted that he would not support two driveways. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tape 2), Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2003-DR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a contractor's office and shop and a storage yard and has erected structures without Building Permit approval on property in the R-1 District, all in violation of Zoning Ordinance provisions. Located on the W. side of Merchant La., approx. 500 ft. S. of Ramshorn Pl. on approx. 21,746 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 124C.

Chairman DiGiulian noted that the applicant had requested a deferral to a later date.

Lynne Strobel, the appellant's agent, stated that the appellant requested the deferral because they were trying to resolve the issues cited in the Notice of Violation. Ms. Strobel stated that a building permit had been received for one of the structures and suggested a site visit with members of Zoning Enforcement could resolve some of the other issues addressed in the Notice of Violation. Ms. Strobel stated that the front-end loader had been permanently removed from the property.

Mr. Pammel made a motion to defer the application to October 14, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tapes 2 and 3), Scheduled case of:

9:30 A.M. GREEN TEAM, INC., STANLEY P. DULL, A 2003-SP-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has expanded the original plant nursery use and landscape contractor business, located in the R-C District, without special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 11501 Popes Head Rd. on approx. 6.64 ac. of land zoned R-C. Springfield District. Tax Map 67-2 ((1)) 27.

Chairman DiGiulian was not present for the hearing. Vice-Chairman Hammack called for staff's presentation.

Jayne Collins, Zoning Administration Division, stated that the appeal issue was of a determination that the appellant had expanded the original plant nursery use and landscape contracting business on the subject property located in an R-C District without special exception, site plan, building permit, or Non-Residential Use Permit approval.

Ms. Collins stated that the issues were with regard to the nonconforming status of the subject property. On April 28, 1986, the Zoning Administrator initially determined that the plant nursery use was nonconforming and that the 28-foot by 40-foot potting shed was a legal nonconforming structure. In October 1986, the Zoning Administrator determined that a portion of the residential dwelling could be used for office purposes provided any space devoted to the office was clearly subordinate in area and extent to the residential use. As new evidence was presented, in March 1987 the Zoning Administrator further determined that not only were the plant nursery use and potting shed nonconforming, but also that the 30-foot by 96-foot greenhouse was also a legal nonconforming structure and in accordance with Paragraph 1 of Section 15-103 could remain, but could not be enlarged or expanded.

Ms. Collins stated that in early 2003 the Zoning Administrator reconsidered that determination and concluded that the plant nursery use was not a nonconforming use, but rather the use was a grandfathered use and subject to the provisions of Paragraph 2 of Section 15-101, which states that a use lawfully existing on the effective date of the current Zoning Ordinance that was now allowed as a special exception use could continue to operate by right, but could not be replaced or enlarged without approval of a special exception. The structures which existed on the subject property on August 14, 1978, included the residential dwelling, one greenhouse, one potting shed, and one acre planted in nursery stock.

Ms. Collins explained that on August 29, 2003, at the appellants' request, staff re-inspected the subject property and found that little had changed. Although the hot tubs and the three conex storage containers had been removed, a 6-foot high, 1500-gallon water tank had been added, and the conex storage containers

had been replaced by two sea-cargo containers. Other structures and uses included the residential dwelling, which was damaged in a fire in January of 2003; two office trailers connected by a large wooden deck; a greenhouse; a potting shed, which was actually a large barn being used for the repair of commercial vehicles; a gravel parking lot; an irrigation pond; and numerous items related to a landscape contracting business, including construction equipment, fuel tanks, hundreds of wooden pallets, rolls of pipe, slate pieces, and bags of mulch and soil, lawn ornaments, and commercial trucks. The majority of the site was being used for storage of these items and plant material. The structures and uses on the property had been established without site plan, building permit, and Non-RUP approval.

Ms. Collins stated that the appellant had acknowledged that he had between 20 and 80 employees, depending on the season, and that only 5 to 10% of the total business was related to the plant nursery use, with 90 to 95% related to the landscape contracting business, which installed hot tubs and spas, decks, patios, gazebos, lawn ornaments, landscaping, retaining walls, irrigation systems, and similar items. She said the scope of the plant nursery and landscape contracting business was evident from the photographs taken of the property in January and June of 2003 and from the aerial photographs, all of which were provided in the Staff Report. She noted that staff had taken additional photographs of the property during the inspection on August 29, 2003, and advised the Board that she had copies available.

Ms. Collins explained that based on the Zoning Administrator's determinations, the Non-RUPs which had been issued for the subject property limited the uses and structures on the property to that which existed on August 14, 1978. The addition of structures and uses on the property in the last 30 years constituted an illegal expansion and enlargement of a grandfathered plant nursery use and would only be resolved by obtaining the approval of a special exception for a plant nursery, which would allow the appellants to continue the use of the property in accordance with the standards found in Paragraph 1A of Section 9-517 of the Zoning Ordinance, and absent special exception approval, all of the structures and uses on the property must be scaled back to what existed on the property on August 14, 1978.

Mr. Pammel asked what the distinction was between grandfathered lawfully existing use and the term "nonconforming use." Ms. Collins stated that the use would be considered nonconforming under Section 15-103 and was a use not allowed in the district in which it was located; therefore, the use could not be enlarged or expanded. She said a grandfathered use under 15-101 was a use that was no longer allowed by right, but was allowed by special permit or special exception. The Board discussed the interpretation of the use at length.

Lynne Strobel, Walsh, Colucci, et al., the appellants' agent, introduced Alice Haas from their Manassas office. Ms. Strobel stated that the appeal was filed in response to a Notice of Violation (NOV) issued to the Green Team. She stated that the property had been a nursery since 1978, which was prior to the requirement to obtain a special exception; therefore, their belief was that the use should be either grandfathered or nonconforming. Ms. Strobel referred the Board to Attachment 11 of the staff report which referenced the use as nonconforming. Mr. Strobel presented photographs to the Board to address their concerns as to what was currently located on site and reviewed each item in detail. She referenced a residential structure, which was substantially destroyed by fire in January of 2003, and needed to be replaced. Ms. Strobel referred to two office trailers, which were considered temporary in order to allow the business to continue after the damage to the house which destroyed the offices located within. She noted that the potting shed and greenhouse were permitted structures and were in place at the time the Non-Residential Use Permit was issued and were not in dispute. Ms. Strobel stated that the hot tubs, counters, and landscaping ornaments referenced in the original NOV letter had been removed from the property. Ms. Strobel reviewed photographs with the Board in detail. Ms. Strobel submitted letters in support of the business to the Board.

The Board discussed with staff the issue of a use being subordinate to a principal use and continued their review of photographs presented to the Board. They also stated that the damaged house could not be rebuilt until all violations were cleared by the Board.

John Zemlan, Zoning Inspector, Zoning Enforcement Branch, stated that the main issue would be a comparison of 1978, 1980, and current photographs to determine the use of the land. Staff concluded that the use of the nursery and of the landscaping business had increased since 1978 and the extent of the increase required the appellant to either obtain a special exception or reduce it to the use as approved in 1978.

~ ~ ~ September 9, 2003, GREEN TEAM, INC., STANLEY P. DULL, A 2003-SP-029, continued from Page 14

Ms. Strobel presented aerial photographs to the Board from 1970, 1980, and 1997 for their review of the use in those time periods.

Mr. Hammack asked how many employees were employed for both the plant nursery and the landscape contractor business. Ms. Strobel replied that the number varied by season, but noted that at the present time there were 44 employees which were split between both businesses.

Vice-Chairman Hammack called for speakers.

Nora Jewell, 13046 Champlain Drive, Manassas, Virginia, came forward to speak on behalf of the employees of Green Team. She stated that one year prior there were 77 employees and currently there were 44 employees. She explained that the downsizing was a direct result of the fire and the delay in rebuilding the house. Ms. Jewell stated that every employee was dependant upon their job and were the main supporters of their families. Ms. Jewell stated that the service was provided to the residents that surrounded the business.

George Bott, 11398 Bantry Terrace, Fairfax, Virginia, came forward to speak in opposition to the application. He noted that he resided on Popes Head Road across from the Green Team. He stated that the Green Team had violated County rules which included zoning, building, and land use. He noted that the area was considered Resource Conservation and expressed his concern regarding the impact of the landfill debris within the area. Mr. Bott stated that in the 1980s the use could have been considered a retail operation; however, that within the last several years that had become only a small part of the operation. He referred to a barn on the property, noting that it was approximately three years old. Mr. Bott stated that the size of the office in the single-family home was a 12 by 12 office and noted that the temporary trailers could be for office use. Mr. Bott requested the violations be upheld because they had changed the character of the use over time.

Gloria McCloud, 11425 Popes Head Road, Fairfax, Virginia, an employee of Green Team, came forward to speak in support of the application. She stated that there was no change in traffic issues on Popes Head Road nor were there noise issues. She stated that she lived next door to the nursery as well as being an employee and said the new home would be a beautiful addition to the neighborhood.

James McClure, 5258 Ofaly Road, Fairfax, Virginia, came forward to speak in opposition to the application. He noted that there was a high volume of traffic and noise from trucks entering the property and expressed concern about the danger when the trucks exited the property. He stated that the property looked like a dump and storage area with hot tubs and resembled a used car lot. Mr. McClure stated that the business should not exist in a residential neighborhood and asked the Board to close the business down.

Christy Sciscoe, 5299 Lewisham Road, Fairfax, Virginia, where she stated she had resided for 21 years, came forward to speak in opposition to the application and read a letter to the Board. She stated that she has seen firsthand all the changes which had occurred to the subject property without permits, public hearings, or conservation plans. She stated that the result was a multimillion dollar commercial enterprise which required delivery of stock and supplies via tractor-trailer at all hours of the day and night creating a noise burden. She submitted signatures to the Board in opposition to the appeal from residents of the Ridges of Glendilough, Popes Head View, and along Popes Head Road and asked the Board to deny the appeal request. Ms. Sciscoe stated that the original owner, the Sheltons, who grew mums and azaleas on the premises which were potted and sold on the roadside, had no employees. Ms. Sciscoe also read a letter to the Board from Doris Goodlett, 11437 Popes Head Road, Fairfax, Virginia, downstream from the Green Team business. Ms. Sciscoe stated that Mrs. Goodlett had to leave the public hearing for an appointment. The concerns included noise, air, and water pollution.

Sandra Moran (phonetic), resident of Glendilough since 1980, came forward to speak in opposition to the application. Ms. Moran requested the Board deny the appeal for any use other than for what it was originally zoned. Ms. Moran stated that it was their understanding that the use was to consist of one house, one greenhouse, one potting shed, and one acre of plantings. Ms. Moran also read a letter to the Board addressing her concerns which included the gravel, mulch, hot tubs, and traffic issues.

Ms. Strobel, in her rebuttal, stated that the only thing Mr. Dull was hoping to accomplish was to obtain a

building permit to rebuild the damaged house and have an accessory small office in the house as was previously located on the property. Ms. Strobel reiterated that he was willing to remove the additional two trailers on the property and noted that he had already removed four trailers. Ms. Strobel stated that he was also willing to go back to the approval he had when he had purchased the property. She noted that the area which was currently used for the nursery and growing stock had not been expanded from what it was in 1978 and noted that it was difficult to notice any changes from the aerial photographs and that there continued to be a wooded buffer around the property. Ms. Strobel stated that Mr. Dull had already made a good faith effort to remove a lot of the offending objects from the property, was willing to bring the property back to its original use, and asked that he be allowed to continue to operate under either the grandfathered or nonconforming use to be able to rebuild the house. Ms. Strobel stated that Mr. Dull had purchased the property in 1986 and only replaced the roof of the potting shed and had not built a new one.

Ms. Stehman stated that the violation indicated a number of structures and material which had been added to the property and indicated an expansion of the use from what was grandfathered from the 1978 Ordinance. Ms. Stehman noted that a special exception would still be necessary to continue the business to the extent of the contracting business. Ms. Stehman stated that the photographs presented to the Board also reflected the extent of the contracting business, which appeared to staff to exceed the landscaping portion of the business. Ms. Stehman asked the Board to support their position on the application.

Mr. Hart asked if the filing of a special exception would enable the applicant to obtain the building permit. Ms. Stehman replied that a building permit could not be issued until after the special exception was filed and accepted.

Ms. Strobel asked if the two additional trailers were removed whether a re-inspection could be performed to bring the property into conformance so a building permit could be issued for the house.

Ms. Gibb stated that it was not only storage but the business itself was the concern of the adjacent property owners and noted that there was no way for the Board to determine what use was considered subordinate.

Mr. Hart noted that a deferral would not help the situation. Mr. Hammack noted that the appellant had a sufficient amount of time to clean up the property and would not support a deferral.

Vice-Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to uphold the decision of the Zoning Administrator and stated that the appellant had expanded the original plant nursery and landscape contracting business located in the R-C District without special exception, site plan, building permit, or Non-Residential Use Permit approvals, all in violation of Zoning Ordinance provisions. Mr. Pammel noted that the action taken by the Zoning Administrator relative to these violations and the activities which had occurred on the site was entirely appropriate. Mr. Pammel stated that the contracting business was a large portion of the use on the property and noted that a plant nursery did not have those materials on-site.

Mr. Hart seconded the motion.

Mr. Beard stated that he supported the motion; however, he was sympathetic to the employees of the business as well as the neighbors. Mr. Beard stated that his concern was of the possible vehicle repair being performed on the property.

Mr. Hart agreed with the members of the Board and stated that the testimony and photographs both showed expansions beyond the original use in 1978 and he would support the motion.

Ms. Gibb stated that since the house in its currently damaged state was considered an eyesore to both the appellant and the neighbors, she asked that the appellant be given some flexibility to obtain a building permit to rebuild the house.

Mr. Pammel stated that the purpose of the motion was to give staff and the appellant the ability to begin negotiations to try to resolve differences and get the property back to its original use. Mr. Pammel stated that the motion was not intended to put the appellant out of business or the employees out of work, but to get the issues back to the point of negotiations and hopefully resolve those issues.

~ ~ ~ September 9, 2003, GREEN TEAM, INC., STANLEY P. DULL, A 2003-SP-029, continued from Page 17

The motion to uphold the Zoning Administrator's determination carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tape 3), After Agenda Item:

Approval of August 13, 2002; December 10, 2002; and December 17, 2002 Minutes

Mr. Pammel moved to approve the August 13, 2002 minutes, with a correction to Page 18 to correct the word "Inspectorator" to "Inspector." Mr. Hart also made a correction to Page 20 to correct the word "Buddhist." Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Beard abstained from the vote. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting.

Ms. Gibb moved to approve the December 10, 2002 minutes. Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Beard abstained from the vote. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Pammel moved to approve the December 17, 2002 minutes. Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Beard abstained from the vote. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tape 3), After Agenda Item:

Consideration of Acceptance - Application for Appeal  
Submitted by Young K. Lee and Young A. Lee

Mr. Hart stated that although the response letter to the determination request came from the Department of Public Works and Environmental Services, the Zoning Administrator had a duty under the Code and the Ordinance to respond to inquiries about buildability, and although the Zoning Ordinance of Fairfax County in the buildability provisions specifically incorporated by reference the Subdivision Ordinance, when someone requested a determination on buildability, it remained the Zoning Administrator's responsibility. He said it was a proper appealable determination and should be accepted consistent with other appeals the Board of Zoning Appeals had accepted. He indicated that no judge had disagreed with the Board on that issue, and Ms. Gibb added that Judge Alden had agreed.

Margaret Stehman, Zoning Administration Division, commented that the subject case was different than the previous cases in that the subject question was a subdivision question relating to the number of lots at issue and not the buildability of the lots, and she said there was no reference to the Subdivision Ordinance.

Ms. Gibb pointed out that the letter from the appellants' agent, Mr. Baskin, to the Zoning Administrator dated June 26<sup>th</sup> specifically stated that he requested a formal determination that Lots 1, 2, and 5 of Miller Oaks Heights Subdivision were three separate buildable lots and that the fact that the answer was given by Thomas Nelson, the religious and community group ombudsman, did not change the fact that the question was in regard to buildability.

Mr. Baskin stated that he agreed with the comments the Board made. He said the underlying facts may be different than other cases brought before the Board, but the essence of the determination was the buildability of the lots, and the Board had found the determinations were appropriate to be heard by the Board.

Mr. Hart commented that Mr. Baskin's June 26<sup>th</sup> letter was addressed to William Shoup, Zoning Administrator, and requested a formal determination that the subject property consisted of three separate buildable lots and requested the Zoning Administrator make a determination on the buildability of the three lots.

Mr. Hart moved to approve the acceptance of the appeal. Ms. Gibb seconded the motion, which carried by a

~ ~ ~ September 9, 2003, AFTER AGENDA ITEMS, continued from Page 18

vote of 5-0. Chairman DiGiulian was not present for the vote, and Mr. Ribble was absent from the meeting.

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~ ~ ~ September 9, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Patricia M. and S. Gordon Leary, Jr., VC 99-V-154

Mr. Pammel moved to approve one year of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting. The new expiration date was July 19, 2004.

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~ ~ ~ September 9, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Shalom Presbyterian Church of Washington, SP 00-S-063

Mr. Pammel moved to approve one year of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting. The new expiration date was September 13, 2004.

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~ ~ ~ September 9, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Rita Powell, SPA 94-Y-059

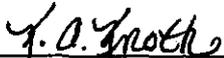
Mr. Hart moved to approve 30 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Mr. Ribble was absent from the meeting. The new expiration date was February 14, 2006.

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As there was no other business to come before the Board, the meeting was adjourned at 1:36 p.m.

Minutes by: Deborah A. Hedrick

Approved on: November 30, 2004



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 16, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ September 16, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CHURCH FRIENDS MEETING OF LANGLEY HILL, SP 2003-DR-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit an addition to an existing church. Located at 6410 Georgetown Pi. on approx. 15,300 sq. ft. of land zoned R-2 and HD. Dranesville District. Tax Map 22-3 ((1)) 48. (In association with RZ 2003-DR-019). (Deferred from 7-1-03)

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

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

Peter Braham, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to increase the size of the existing church on the 15,300-square foot property from 2,029 square feet to 2,711 square feet, with no increase in the current membership of 120 members. He advised the Board that the applicant had also filed a request to rezone the property from the R-1 to the R-2 District, and on September 11, 2003, the Planning Commission had recommended that the Board of Supervisors approve the rezoning request, subject to proffers. He indicated that staff found the special permit application was consistent with the recommendations of the Comprehensive Plan, was in conformance with applicable special permit standards, and met the applicable Zoning Ordinance regulations.

Mr. Hart asked about the status of the lighting issue referred to in a memorandum in the staff report. Mr. Braham explained that there was currently no parking lot lighting on the site. He said typical concerns regarding lighting would be addressed by the Lighting Ordinance, and it was staff's position to leave the review for Historic District architectural compatibility up to the Architectural Review Board.

Mr. Hart asked if the applicant would have to request another special permit amendment to add parking lot lighting, to which Mr. Braham replied affirmatively.

Ms. Flynn presented the special permit request as outlined in the statement of justification submitted with the application. With regard to the lighting issue, she said that the applicant was not seeking light poles and used instead a motion detector at the back door to provide safe entrance. She said the changes purposed with the special permit request were very minor, with the addition to be located at the back of the building, and would not change the appearance of the church. Ms. Flynn confirmed that there would be no increase in membership, therefore, no increase in traffic or in the impact to the neighborhood. She stated that as part of the addition, the applicant planned to update the heating and plumbing, bring the building into compliance with the Americans with Disabilities Act, and add additional fireproofing. She said the McLean Citizens Association supported the application and had passed a resolution to that effect on September 3, 2003.

Mr. Hammack asked if the proposed Development Conditions were satisfactory to the applicant, to which Ms. Flynn answered affirmatively.

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

Mr. Hammack moved to approve SP 2003-DR-013 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CHURCH FRIENDS MEETING OF LANGLEY HILL, SP 2003-DR-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit an addition to an existing church. Located at 6410 Georgetown Pi. on approx. 15,300 sq. ft. of land zoned R-2 and HD. Dranesville District. Tax Map 22-3 ((1)) 48. (In association with RZ 2003-DR-019). (Deferred from 7-1-03) 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 16, 2003; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6410 Georgetown Pike, and is not transferable to other land.
2. This Special Permit is approved to allow the addition to the existing church building as shown on the combined Generalized Development Plan/Special Exception Amendment Plat/ Special Permit Plat prepared by GDN Engineering, Inc., dated April 3, 2003 submitted with this application and is not transferable to other land.
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 Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. This property is also subject to the proffers accepted by the Board of Supervisors pursuant to the approval of RZ 2003-DR-019.
6. If a sign permit has not been previously obtained for the existing sign for the church, such a permit shall be obtained by the applicant prior to the issuance of the Non-Residential Use Permit to occupy the addition and the sign brought into conformance with the provisions of Article 12, Signs.
7. The fire lanes on the property shall be posted with appropriate signage as determined by the Director, DPWES.

~ ~ ~ September 16, 2003, TRUSTEES OF CHURCH FRIENDS MEETING OF LANGLEY HILL, SP 2003-DR-013, continued from Page 22

8. The transitional screening yard requirement shall be modified along the eastern and southern boundaries and that the barrier requirement shall be waived along the eastern and southern boundaries in favor of that shown on the Generalized Development Plan/Special Permit Plat.
9. If the stormwater management/best management requirements are not waived or modified and the measures used to meet these requirements are not in substantial conformance with the Generalized Development Plan/Special Permit Plat, approval of a Special Permit Amendment will be required prior to the approval of the site plan for the proposed addition.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 16, 2003, (Tape 1), Scheduled case of:

- 9:00 A.M.      KIRK S. SCHNOEBELEN, SP 2003-BR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. from side lot line. Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with VC 2003-BR-098) (Deferred from 9-9-03)
- 9:00 A.M.      KIRK S. SCHNOEBELEN, VC 2003-BR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. with eave 5.5 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with SP 2003-BR-027) (Deferred from 9-9-03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kirk Schnoebelen, 4101 Doveville Lane, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on error in building location to permit an accessory structure, specifically a storage shed, to remain 2.9 feet from a side lot line. The minimum required side yard in the R-1 zoning district is 20 feet; therefore, a modification of 17.1 feet was requested for the storage shed. The applicant requested a variance to permit construction of an addition 7.2 feet with eave 5.5 feet from a side lot line. Eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 7.2 feet and 5.5 feet, respectively, were requested for the addition. The applicant also requested a variance to permit a fence 7.1 feet in height to remain in the front yard. A maximum fence height of 4.0 feet is permitted; therefore, a variance of 3.1 feet was requested for the fence.

~ ~ ~ September 16, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 23

Mr. Ribble asked why the case was deferred from the prior week. Ms. Shulenberger replied that the applicant was unable to attend. Mr. Schnoebelen stated that he was out of the county the prior week, and his wife was in the hospital.

Mr. Schnoebelen presented the special permit and variance requests as outlined in the statements of justification submitted with the application. With respect to the variance, he explained that he and his wife had purchased the property on December 13, 2002, in good faith, and they were requesting the variance due to the exceptional narrowness of the lot relative to the existing structure, which left only 20 feet on either side of the house at the narrowest points. He noted that there was no existing carport or garage, the addition of which would not be unusual, and he said many of the nearby homes had two-car garages, two of which were adjoining properties, and did not share the hardship of the subject property because of differences in the dimensions of their lots and structures. Mr. Schnoebelen presented photographs of some of the neighbors' garages and a front elevation drawing of the proposed addition. He stated that the only by-right location for the garage would be in front of the house, which would be nonfunctional with respect to the house layout and aesthetically unpleasant to the neighborhood. He said he believed the garage addition would contribute to the general improvements ongoing in the area and would not change the character of the area. Mr. Schnoebelen stated that several neighbors had signed a statement supporting the construction and that he thought the spirit of the Ordinance had to balance the rights of property owners, neighbors, and community services.

With respect to the special permit to allow an existing shed to remain, Mr. Schnoebelen stated that they discovered the shed was noncompliant with the applicable zoning requirements during the variance application process, and he presented photographs of the freestanding shed and explained that the shed sat on a level platform to accommodate for the sloping grade, and that although the front height was in compliance, the height at the back peak was 8 foot, 11 inches. He said the shed was in a wooded area, was not visible from any of the neighbors' houses due to the slope in the lawn and woods, and was located 2.9 feet from the neighboring property, which had a pool and a six-foot high wire link fence. Mr. Schnoebelen said the shed did not create any unsafe conditions, was not a detriment to the use and enjoyment of other properties, and to move it farther to the back of property where there was zero slope would be a difficult task.

Mr. Hammack asked whether the variance request relating to the fence in the front yard was still an issue. Mr. Schnoebelen replied that it was and had also been discovered during the variance application process for the garage. He said the height was slightly above that allowed for the location along the front line, and he believed it was located there because the neighbor to north, who had a pool and a surrounding fence, had a carport on the other side.

Mr. Beard asked the height of the fence, to which Mr. Schnoebelen replied 7 feet, 1 inch at the highest point.

Mr. Hammack asked whether the fence extended to the street. Mr. Schnoebelen said it did not and explained that there was a 65-foot distance between the end of the fence and the street.

Mr. Pammel asked whether the conditions regarding the fence and the shed existed when the applicants purchased the property, to which Mr. Schnoebelen replied that they did. He said he had no reason to believe the previous owners had constructed them in bad faith and were probably unaware of the requirements.

Mr. Pammel said the Board usually saw 20-foot to 22-foot garage width requests and noted that the subject request was in excess of that. He asked whether the applicants would consider a 22-foot width. Mr. Schnoebelen stated that the width request was made to accommodate two single garage doors, which was more in keeping with other construction in the neighborhood, and would also allow for storage of bicycles that the children had difficulty storing in the shed due to the slope of the property.

Mr. Pammel noted that a 22-foot width would allow a 10-foot side yard, which he said was more in keeping with the neighborhood.

Mr. Hart asked whether the fence would require a variance if the proposed garage existed, regardless of the garage width. Ms. Shulenberger replied that a small portion of the fence that would extend beyond the location of the proposed garage would still require a variance.

~ ~ ~ September 16, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 24

Mr. Hart asked whether the fence behind that point would be by right, to which Ms. Shulenberger replied affirmatively and added that if a line parallel with the front of the home was drawn, a fence over four feet in height located between the line and the street would require a variance.

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

Mr. Pammel moved to approve SP 2003-BR-027 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

KIRK S. SCHNOEBELEN, SP 2003-BR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. from side lot line. Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with VC 2003-BR-098) (Deferred from 9-9-03) 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 16, 2003; 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

~ ~ ~ September 16, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 25

unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the accessory structure shown on the plat prepared by Alexandria Surveys International LLC, dated February 3, 2003, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve-in-part VC 2003-BR-098 for the reasons stated in the Resolution. Mr. Hammack seconded the motion.

Mr. Beard asked whether the fence caused any obstruction to the view when entering the street from the driveway. Mr. Pammel said the fence would extend only four to six feet forward of the garage with the rest of the front yard being open.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KIRK S. SCHNOEBELEN, VC 2003-BR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. with eave 5.5 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. **(THE BZA APPROVED THE ADDITION TO BE NO GREATER THAN 22 FEET IN WIDTH WITH A MINIMUM SIDE YARD OF 9.8 FEET.)** Located at 4101 Doveville La. on approx. 24,867 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 8. (Concurrent with SP 2003-BR-027) (Deferred from 9-9-03) 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 16, 2003; 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 that he does meet the standards as prescribed by the Zoning Ordinance for the granting of a variance.
3. The fence was built by the prior owners and was no fault of the applicant.
4. The width of the property as related to the depth is a peculiar circumstance. The lot is deep but relatively narrow.
5. Given the narrow width of the property, the proposed garage is located in a logical place on the subject property.
6. There are topographic considerations to the rear of the property that would not make the location of a garage feasible in that area.
7. The fence only extends about four to six feet forward of the garage and the rest of the front yard is

~ ~ ~ September 16, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 26

open.

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

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

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

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

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

1. This variance is approved for the location of the addition and fence shown on the plat prepared by Alexandria Surveys International LLC, dated February 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

~ ~ ~ September 16, 2003, KIRK S. SCHNOEBELEN, SP 2003-BR-027 and VC 2003-BR-098, continued from Page 27

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 16, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PAUL T. MCMAHAN, TRUSTEE, VC 2003-MV-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. and eave 8.1 ft. from side lot line. Located at 7521 Milway Dr. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((25)) (3) 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. Paul Thomas McMahan, 7521 Milway Drive, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a shed addition 8.8 feet with eave 8.1 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.2 feet and 0.9 feet, respectively, were requested.

Mr. McMahan presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to add 12 feet to his existing carport to build a tool room to store paint supplies, gasoline cans, a workbench, and yard maintenance equipment.

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

Mr. Hart moved to approve VC 2003-MV-097 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL T. MCMAHAN, TRUSTEE, VC 2003-MV-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. and eave 8.1 ft. from side lot line. Located at 7521 Milway Dr. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((25)) (3) 23. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 2003; 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 showing compliance with the required standards for a variance.
3. The subject lot is narrow, only 80 feet wide.
4. The subject lot is tucked in between two corner lots and is five-sided.
5. The variance request is fairly modest and is in a logical place for a house with a carport. Where the storage of tools or equipment would be placed should probably be next to that.
6. The proposed location of the addition extends no further into the minimum yard than the existing carport, which has been there in excess of 30 years.
7. There would be no significant negative impact.
8. The proposed addition is located to the rear of the property, and based on the photographs

presented, it would be somewhat difficult to see where the shed would be from anywhere else.

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

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

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

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

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

1. This variance is approved for the location of a shed addition, as shown on the plat prepared by Rebecca L.G. Bostick, dated May 1, 2003, revised June 10, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September

~ ~ ~ September 16, 2003, PAUL T. MCMAHAN, TRUSTEE, VC 2003-MV-097, continued from Page 29

24, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 16, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND DENISE SPAULDING, VC 2003-BR-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line such that side yards total 16.8 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 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. Denise Spaulding, 4203 Braeburn Drive, Fairfax, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 5.0 feet from a side lot line such that side yards would total 16.8 feet. A minimum side yard of 8.0 feet and minimum total side yards of 24 feet are required; therefore, variances of 3.0 feet and 7.2 feet, respectively, were requested.

Ms. Spaulding presented the variance request as outlined in the statement of justification submitted with the application. She noted that a previous variance application had been submitted requesting construction 3.5 feet from the side lot line, and that although three BZA meetings voted to approve that application as submitted, the ultimate disposition was that construction 3.5 feet from the side lot line was unacceptable, but construction 5.0 feet from the side lot line would be acceptable. She said she now had new plans to construct the addition 5.0 from the side lot line.

In looking at the plat, Mr. Hart noted that moving the garage to the rear would increase the side yard and asked why the garage could not have been slightly shifted to the rear. Ms. Spaulding replied that moving the garage back would block the view from the back patio.

Mr. Hart asked how far back the side door that led into the garage was located. Ms. Spaulding confirmed that the current side door would lead from the kitchen into the proposed garage. She said she would guess the door was eight to ten feet back.

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

Mr. Ribble moved to approve VC 2003-BR-100 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN AND DENISE SPAULDING, VC 2003-BR-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line such that side yards total 16.8 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 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 September 16, 2003; and

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

1. The applicants are the owners of the land.

~ ~ ~ September 16, 2003, JOHN AND DENISE SPAULDING, VC 2003-BR-100, continued from Page 30

2. The applicant has met the nine standards required for a variance.
3. Particularly noted was the shape of the lot with the converging lot lines toward the front of the lot and the explanation of why the garage couldn't be moved further toward the rear.

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

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

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

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

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

1. This variance is approved for the location of a garage addition, as shown on the plat prepared by David L. Mayne, dated January 13, 2003, revised through June 3, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

~ ~ ~ September 16, 2003, JOHN AND DENISE SPAULDING, VC 2003-BR-100, continued from Page 31

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 16, 2003, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 88-S-091 previously approved for a church and related facilities to permit building additions, increase in parking and site modifications. Located at 12409 Henderson Rd. on approx. 14.44 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-4 ((1)) 7.

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Lubeley, Emrich, and Terpak, P.C., the applicant's agent, noted that an incorrect affidavit was attached to the staff report and stated that a correct affidavit was distributed to the BZA at the hearing, which she reaffirmed was complete and accurate.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 88-S-091, previously approved for a church and related facilities, to permit the construction of a rectory and a parish hall totaling 6,500 square feet; the construction of an additional parking area with 75 new parking spaces and a new access point on Henderson Road; and additional site modifications, including changes to the existing septic system, fire protection system and stormwater management facility. No change to the number of seats was proposed. He noted that revised proposed development conditions were distributed at the hearing containing changes that resulted from citizen comments and had been agreed to by the applicant. He stated that there was an error in proposed Development Condition 2, which should reflect a plat dated July 1, 2003, instead of July 7, 2003. Mr. Sherman indicated that the applicant would distribute proposed development conditions containing changes to the wording in Development Conditions 9 and 13 and included Development Condition 15, which required a fence along the southern lot line. He stated that staff preferred the wording of Development Conditions 9 and 13 proposed by staff and did not object to the presence of a fence referred to in Development Condition 15, but would object to the removal of any trees. He said staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of the application subject to the approval of the revised proposed development conditions dated September 16, 2003.

Mr. Hart noted that the Board had been given correspondence at the hearing involving complaints about current violations regarding the number of people using the site, parking on Henderson Road and the court to the left, and lighting, and he asked if any investigation or evaluation had been done regarding whether the existing conditions were being complied with. Mr. Sherman replied that Zoning Enforcement had received the complaint and would be investigating it in the near future.

Mr. Hart asked whether any timeframe regarding the investigation of Zoning Enforcement was given, to which Mr. Sherman replied that no timeframe was given and he could not give an estimate.

Mr. Hart asked whether the 45-foot high water storage tank would be visible from homes in the neighborhood. Mr. Sherman replied that 45 feet was the maximum height shown on the plat. He said the water storage tank was a requirement of the Fire Marshall, and 45 feet in height was the worst-case scenario which would depend on the design of the system.

Mr. Hart asked whether the square foot of the building, the number of parking spaces, or something else was what affected the height of the water tank. Mr. Sherman replied that it depended of the design of the fire system and whether it included sprinklers in the buildings. He said the Fire Marshall required a certain number of gallons-per-minute per hour be achieved, which involved water volume rather than tank height.

Mr. Hart commented that he was not on the Board 15 years prior, but understood that staff recommended

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 32

denial of the original special permit, but currently was recommending approval of a significant expansion of buildings and paved area with a lit parking lot, resulting in a bigger critical mass or center of intensity than previously, and he asked what had changed in 15 years that staff could now support. Mr. Sherman replied that in terms of the additional impervious surface, it had become a staff policy over the past 15 years to attempt to get half of the site put in the conservation easements as a water quality measure, which was one of the conditions staff had asked for.

Mr. Hart asked whether a conservation easement on seven or seven and a half acres would be a quid pro quo. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it would be part of the reason that water quality requirements would be met through undisturbed open space, which was a direction staff's policy had gone in the previous 10 to 12 years. She pointed out that it was an established use, and staff was looking at it currently as an expansion of an existing use, not as a new use. Ms. Langdon said that if there were existing parking problems, the additional parking would help that issue. She noted that the additions were to the interior, and there was limited clearing of additional space.

Mr. Hart asked whether there would have been at least as much undisturbed open space with the smaller facility and parking lot 15 years prior. Ms. Langdon indicated that was correct, but that there would be a conservation easement established with the amendment that would remain, which previously had not been assured.

Mr. Hart asked what could be done in open space that could not be done if the same undisturbed open space was in a conservation easement. Ms. Langdon explained that putting in the conservation easement was a Department of Public Works and Environmental Services (DPWES) requirement to meet water quality requirements, and if the open space was not in a conservation easement, the water quality requirements would not be met.

With respect to the parking expansion, Mr. Hart noted that in some previous cases in the R-C District, discussions were had regarding a portion of the material being grass-crete (phonetic) or something similar, and he asked whether the subject parking lot was asphalt and what staff thought about the issue. Mr. Sherman confirmed that it would be an asphalt parking lot and said there had been no discussions regarding grass-crete or any other permeable surfaces for the parking lot.

Mr. Hart asked whether there was a reason, or if it was because it was existing, that it would be less of an issue on the subject case than other cases in the R-C District. Ms. Strobel indicated that the applicant would entertain grass-crete, but it had not been discussed.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She pointed out that some of the proposed minor site modifications were as a result of new standards and explained that in regard to the septic field, the applicant was providing an additional reserve area, but not increasing the capacity. She verified that no changes were proposed to the existing number of seats in the sanctuary or to the current operations. Ms. Strobel stated that the proposed floor area ratio (FAR) was .02, one-fifth of the permitted FAR for non-residential uses in the R-C District. She explained that the proposed improvements would be centrally located to ensure the greatest buffer to the surrounding neighborhoods and were located at a farther distance from the surrounding neighbors than the existing improvements. She said the improvements were to enhance the existing facilities and not to increase the number of parishioners or activities on the site. Ms. Strobel noted that the applicant had submitted detailed information regarding the types of activities that would be permitted within the parish center, and there was a proposed development condition that would hold the applicant to those activities, to which the applicant had no objection.

Regarding the items reflected in a Zoning Ordinance complaint submitted by an adjacent homeowners association's attorney and provided to the BZA, Ms. Strobel stated that all of the light poles were 11.8 feet in height, but with the concrete bases, the light standards exceeded 12 feet, which the applicant had previously been unaware of. She said the applicant had gone through the process of obtaining permits, approvals, and had received inspections, and it was not a noticeable error. She noted that there was a development condition that would require the replacement of the existing lights when any new parking lot lights were installed, which she pointed out was a significant cost for a nonprofit organization, but one the applicant had

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 33

agreed to in order to come into compliance with the conditions. With regard to the parking by parishioners on Henderson Road, Ms. Strobel said the application did provide additional parking spaces to address the problem, and the applicant was making some modifications to the interior circulation on the site to ease traffic flow and encourage parishioners to park onsite. With regard to the seating capacity, she said the applicant believed the capacity to be 300 seats, and it would not change with the application. She noted that the complaint said seating for a person was approximately 18 inches, but she said that would be with people sitting right next to one another rather than the way people generally space out. She stated that two pews could be removed if Zoning Enforcement found there was a problem. Ms. Strobel explained that the church had made improvements to the basement that was constructed when the building was originally built that did not consist of new space or an addition to the seating capacity of the sanctuary, but consisted of partitioning the basement, which was used for committee meetings, the choir director, and CCD classes. She stated that the number of site activities was not changing. With regard to trespass, Ms. Strobel explained that people do walk in the neighborhood and some walk their dogs across the parish property, but the church would be willing to provide a chain-link fence along the southern property line if trespassing was an issue the neighbors were concerned about and had included it in the proposed development conditions.

Ms. Strobel stated that the applicant had agreed to a development condition that required 50 percent of the property remain within a conservation easement, and she pointed out that there was an existing storm water management pond on the property so all of the easement was not necessary for water quality measures, but was being done by the applicant in response to staff's request. She said the church was proposing a modest addition meant to better serve its parishioners, and it was not an effort to increase membership. She submitted proposed development conditions with changes to the wording of Development Conditions 9 and 13 and the addition of a development condition regarding a vinyl-coated chain-link fence along the southern property line and letters of support from neighbors in the southern adjacent Shari Hunt Drive Subdivision.

Mr. Hammack noted that he was a BZA member at the time of the original special permit and was familiar with the site. He stated that there were serious constraints in 1985, the application was not approved until 1989 for something smaller than what was submitted, and the applicant was currently requesting something that would effectively double the size and add 75 parking spaces. He asked why a three-bedroom rectory was needed in a parish house if there would be no expansion of activities on the site and what the parking spaces were needed for. With regard to the rectory, Ms. Strobel stated that it was important to the applicant to have the parish priest living onsite. She said there was currently one priest serving the parish, and with the application there would be as many as two priests onsite, with the additional bedroom to be used for a visitor or guest. With regard to the parking, she stated that the current Ordinance requirement of one parking space for four seats was not adequate for places of worship. She said she understood there was some parking currently occurring on Henderson Road, and the additional parking spaces would ensure that all the parking would be onsite. With regard to the parish center, Ms. Strobel explained that meetings and activities were being held in the basement with the use of partitions that did not provide the best type of facility, and the parish center would provide a nicer place for ongoing activities, such as CCD classes, coffee between Sunday masses, choir director meetings, bible study groups, and the Knights of Columbus.

Mr. Hammack asked Ms. Strobel if she had seen and would like to comment on the handout of complaints about how the parish was not in compliance with its current activities, including that it was in violation of the existing conditions. Ms. Strobel stated that she had not seen the handout, but that she did not believe the church was in violation of the existing conditions, which were an appendix in the back of the staff report and included a limitation of the number of seats within the sanctuary and conditions regarding transitional screening, with no conditions limiting the number of services or the activities. She said the parish center would be used for the types of activities typically associated with a Catholic Church, was strictly for the use of the parishioners, and was not intended to be used by or rented to outside groups. She stated that the center would not be used for wedding receptions and explained that the kitchen was a residential type of kitchen, not a commercial kitchen, and was self-limiting as to what kinds of activities could occur.

Mr. Beard asked who monitored the activities. Ms. Strobel said it would be up to the parish priest, but if it were a development condition, Fairfax County would have enforcement authority.

Mr. Beard asked if there was a log kept regarding activities. Ms. Strobel replied that there was not currently, but it was something the parish could do if the Board desired.

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 34

Mr. Beard asked if the Board was to accept on faith that there would only be a certain number of meetings with a certain number of people. Ms. Strobel replied that it would not be unusual compared to any other place of worship in Fairfax County, that places of worship have a lot of activities that are associated with the building or religion.

Mr. Hart commented that one of the criteria the Board had to conclude in order to have a special permit consistent with the Comprehensive Plan in the R-C District was that the use be designed in such a way so as to minimize impacts on the Occoquan Reservoir, and he said he was struck by the size of the parking lot, more than doubling the number of spaces. He asked whether there was any evaluation of using another material such as grass-crete on some or all of the expanded parking so as to minimize the impacts on the Occoquan. Ms. Strobel replied that staff did not request the applicant consider the issue and recommended approval of the application, and although it would be more expensive than asphalt, the applicant would consider it.

Mr. Hart noted that a letter was received from Evalyn Sheehan regarding the driveway for Lots 4, 5, and 6, which stated that she did not want trucks, equipment, machinery, anything, or anyone on the driveway, and he asked whether Ms. Strobel had seen the letter. Ms. Strobel said no and added that there would be no reason for trucks to be anywhere other than on the subject property when construction activities occurred.

Mr. Hart commented that the development conditions dealt with the number seats rather than the number of people and asked what would happen if on a holiday, for example, there were more than 300 people. Ms. Strobel replied that she did not think any church in Fairfax County was in the habit of turning people away, but she said there was a period approximately four to five years prior when folding chairs were set up for special occasions, which had not occurred for years and would not occur. She said the facility was self-limiting by the number of seats, no temporary seating would be brought in, and people would have to attend another service.

Mr. Hart asked Ms. Strobel to confirm that if more than 300 people arrived, they would not be turned away and would just have to stand. Ms. Strobel replied that she did not think it was the practice of any church in Fairfax County to turn people away on special events.

Mr. Hart asked if the square footage of the basement would be included in calculating the FAR. Ms. Strobel replied that although the area had been referred to as a basement, technically by Fairfax County's definition, it would be a cellar because it was primarily underground and had a walkout condition in the back. Ms. Langdon clarified that because more than 50 percent was underground, it would not count towards the FAR.

In response to a question by Mr. Hart regarding the partitions and activities in the basement, Ms. Langdon stated that there was no prohibition in the previous application that the basement or cellar could not be finished. Ms. Strobel said she could find out the square footage of the basement, but the area was not very large.

Mr. Hart asked whether there was any depiction of the water storage tank or any expectation of the material that would be used, its color, or its appearance. Ms. Strobel stated that she had nothing at the hearing and she could check with her civil engineer to attempt to get some details, but noted that the tank would be located in the center of the site with trees surrounding it and a heavily treed area between the tank and any adjacent residences.

Mr. Hart stated that if the tank was an object that could be seen from surrounding homes, he would like to understand what it was made of and what it looked like. Ms. Strobel stated that because of the topography of the site and the trees, it was her understanding it would not be seen, but if appropriate, it could be painted a dark green or brown color.

Mr. Hart asked whether the new parking lot would have the same lights as the old parking lot. Ms. Strobel replied affirmatively and added that the lights had been inspected by her civil engineer, were appropriately shielded and directed downward.

Mr. Hart asked whether the lights would be turned off at a certain time. Ms. Strobel replied that other than

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 35

security lighting, the applicant would have no objection to that.

Mr. Hart whether staff had looked at the issue of hours when lights would be turned off or the use of timers. Ms. Strobel stated that it had not been brought to the applicant's attention, and the applicant had not been asked to agree to it or provide any information in that regard. Ms. Langdon stated that lighting be turned off when not in use was part of the new Ordinance requirements.

Mr. Hart asked for additional information regarding the lighting requirements. Ms. Langdon said staff would get the information from the Zoning Ordinance.

Ms. Gibb asked staff to point out on the plat the proposed north entrance on Henderson Road and the old entrance, and Ms. Langdon did so.

Ms. Gibb asked whether staff had seen the applicant's proposed development conditions. Ms. Langdon replied affirmatively and added that staff did not object to the condition regarding the fence, but preferred no trees be removed to install it.

Ms. Gibb asked whether trees would have to be removed to install the fence. Ms. Strobel said she thought it could be installed on the property line with only the removal of a few trees. Ms. Langdon showed an aerial view of the site and pointed out the existing church, existing entrance, and existing parking lot. Ms. Strobel pointed out the location for the proposed fence.

Ms. Gibb asked what color the vinyl fence would be. Ms. Strobel replied that it would be either green or brown vinyl and that both would be effective in screening the fence itself.

Ms. Gibb asked what the applicant's concern was regarding the wording of "the limits of clearing and grading being in substantial conformance." Ms. Strobel said they were willing to live with what was shown on the special permit plat, but the language was so strictly written that they wanted some flexibility. She said "substantial conformance" meant that the applicant would do substantially what was shown on the plat, but there could be some minor deviations at the time of the final design.

In response to Ms. Gibb's question regarding the Ordinance limit of the height of the water storage standpipe, Ms. Strobel replied that the Ordinance limit in the R-C District was 60 feet, and the applicant was suggesting that it would be approximately what was shown on the plat to provide some flexibility as the design had not been finalized.

Ms. Gibb asked what height was shown on the plat, to which Mr. Sherman replied 45 feet. Ms. Gibb and Ms. Strobel discussed how much deviation there could be to "approximate," with Ms. Strobel saying a foot or two, but that they could live with the existing conditions, and Ms. Gibb saying no more than 46 feet, and Ms. Strobel saying no more than 47 feet to give them some flexibility.

Ms. Gibb asked whether there was anything else besides paint and 45-foot trees that would minimize the visual impact. Ms. Strobel stated that putting up anything else to screen it would be more intrusive or obvious.

Mr. Hammack asked whether a tank 25 feet in diameter and 45 feet in height that would take care of a small city would have been required to meet the standards if the application had been before the Board in 1989. Ms. Strobel said she understood the regulations had changed in the intervening years, and she asked the civil engineer, Russell Smith (phonetic), to address the question. Mr. Smith stated that the Fire Marshall had been consulted regarding the project, and the Fire Marshall was mystified as to how the original church was built without any fire protection on the site, which is served by a well with no public water or a fire hydrant on the site or along Henderson Road. Mr. Smith said the application should not have been approved in that condition originally, and the Fire Marshall said it somehow skipped his office and was not reviewed properly. Mr. Smith said the current standard, which was the same as the standard that existed at the time of the original approval, was for a certain value of gallons per minute being required to serve for fire protection using a complicated formula that took into account factors such as whether the buildings were sprinkled and what the construction type was. He said they took a guess at the amount of volume required by using

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 36

approximately 1,200 gallons per minute to the standard of two hours, which was what the Fire Marshall required, and once they determined the volume of water needed to be stored to supply a fire hydrant, they figured a short, squatty standpipe would be the least obtrusive way to store it because to bury a large tank underground would require the removal of a large number of trees.

Mr. Hammack and Mr. Smith further discussed whether the size of the required water storage container would be affected by the proposed additions. It had been determined that if anything was done to the site, it would have to be brought into compliance with the current requirements, and the water supply for fire protection would be based upon the size of the existing church because the standard was based on the largest of the structures and the proximity of adjacent structures. The proposed additions were far enough away from the existing church that they would not affect the formula.

Chairman DiGiulian called for speakers.

Reverend Paul Sazinski (phonetic), 7616 Maple Branch Road, Clifton, Virginia, the pastor of St. Claire, came forward to speak in support of the application. He stated that a challenge he had faced was providing emergency sacramental assistance, which required travel through a highly trafficked area from his residence to the church. He said when he was assigned to the church, he had great concerns regarding the vandalism that was taking place on the grounds, and he spoke about some instances that had taken place that resulted in his decision to keep the lights on for extended periods for deterrence. Reverend Sazinski said that having a rectory on the premises would eliminate the need to have the lights on the entire night, would assist him in his ministering to the people, and would provide a center for people needing his assistance to find him. He said the current facilities created a hardship for the parish that the proposed parish center would in part relieve.

David Schnare (phonetic), no address given, came forward to speak in support of the application. He asked the Board to recall the restrictions placed upon zoning and other related limitations on churches under RLUIPA, a federal law. He reminded the Board that the ability of a church to practice its religion could not be limited, and the number of people who could go to the church and the number of seats could not be limited under zoning requirements. He said churches had an absolute right under the Constitution to practice their religion, which could include catechism classes.

In response to Mr. Beard question regarding the name of the law, Mr. Schnare replied that it had to do with both churches and individuals who practice religion and applied to prisoners or institutionalized individuals and churches. He offered to provide the Board with a brief that he had prepared, which included a case at law, that discussed the background of the law, its previous challenges, and the way it was applied on zoning cases.

Mr. Hammack asked Mr. Schnare if it was his opinion that the church had the right to expand indefinitely. Mr. Schnare replied that it was not a question of whether it was his position, but it was the position of at least one Circuit Court and the Supreme Court and the legislature of the United States that it could. He suggested that it could become a serious problem locally where landlocked churches could expand to the edges of their properties and as high as could be built and was an issue which required the serious attention by County counsel to determine how to deal with the matter. He briefly discussed the background and resultant implications of the Religious Land Use and Institutional Persons Act (RLUIPA).

Mr. Hammack asked Mr. Schnare who he was representing, to which Mr. Schnare replied that he was amicus and was informing the Board of the issue as a friend of the Board to ensure that the Board had it in mind as it dealt with the important issue.

Robert VanWinkle (phonetic), Colchester Hunt Drive, Fairfax, Virginia, a St. Claire charter parishioner, came forward to speak in support of the application. He stated that he had been a member of the parish since 1980, had been intimately involved in the development of the parish's place to worship, and that the parish suffered from two inabilities to flourish as a Catholic parish should. He stated that there were many empty seats at masses due to a lack of adequate parking and parish social activities. Mr. VanWinkle said he took part in the upgrade of the cellar, which did not serve the social activities of any basic church. He stated that the ability for the pastor to conduct the business of the church and to service and support the parishioners

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 37

from a pastoral perspective was grossly hindered by him not being able to do so from an onsite residence, and the lack of adequate social facilities would affect the parish's ability to continue to succeed and grow to the point where it should be within its potential.

Thomas Leonardo (phonetic), no address given, a parishioner of St. Claire, came forward to speak in support of the application. He stated that he was a part-time employee of the parish and had been involved in development of the proposal of adding the rectory and hall. He attested to the fact that in all the proceedings in which he had been involved, there was no expectation of expansion or imposition on the neighborhoods. Mr. Leonardo said the parish was willing to accommodate any protests in any reasonable way. He stated that it was virtually impossible for the parish to grow because there were no houses being built in the Clifton area, and all of the parishioners came from a strict boundary within the Clifton area.

Michael Bernard, 12401 Shari Hunt Grove, Clifton, Virginia, came forward to speak in opposition to the application. He stated that his property abutted the subject property and was affected by the proposal of the fence installation. He said they attended the church, their daughter was married in the church, and they knew Father Sazinski well and appreciated the past comfort received from him related to a serious illness. Mr. Bernard said they had an honest difference of opinion on a civil law matter before the Board. He stated that the community was zoned five-acre residential in a watershed area that was not compatible to adding a 45-foot water tower, a 40-foot high social hall, a 34-foot high rectory, and an additional approximate acre of paved parking to the existing facilities. He said he had concerns that in addition to the intended hall activities listed in the application, some of which he said he felt did not comply with the existing special use permit, the social hall would be used for substance abuse support meetings, bingo, and dances. With regard to a letter dated August 1, 2003, from the Virginia Department of Transportation (VDOT), Mr. Bernard said it correctly stated that the new parking lot entrance was on a dangerous curve and that VDOT limiting it to right turns would guarantee a continuation of his trespass problems which had existed since the church opened because drivers who wanted to go north would continue to use his private driveway and lawn to make U-turns. Contrary to the application, he said he believed there would be a large increase in church property use, which would bring an increase in associated risks. He stated that the increase in facilities would result in the use of more water and would raise the question of whether the well water supply would be compromised, as many of wells in the area currently had low water flow.

Mr. Hart commented that he had not seen the correspondence regarding the right-turn only limitation on an entrance and asked whether that applied to the new entrance. Ms. Langdon stated that it had not been included in the staff report. She explained that generally the County Department of Transportation (DOT) coordinated with VDOT and brought any pertinent issues forward, but they indicated it was not a requirement that would be enforced, although it would have to go through site plan review, and if VDOT brought up issues at that point, the applicant would have to deal with those.

Mr. Hart requested that the Board be provided with a copy of the memorandum.

Bill Marr, representative appearing on behalf of the Bernards and the Clifton Hunt Homeowners Association, came forward to speak in opposition to the application. He said the church had repeatedly violated the terms of the existing special permit, and on September 8, 2003, complaints were filed on behalf of the Association and the Bernards against the church, copies of which were provided to Ms. Strobel. Mr. Marr said the church violated the special permit by maintaining lighting fixtures that exceeded the 12-foot height maximum mandated by the special permit, by causing and/or permitting visitors to the church to park illegally in fire lanes and on the property of the Bernards and other Association members in derogation of the requirement that all parking be onsite, by permitting the seating capacity to exceed the 300-person maximum, by holding masses and other activities in excess of the number allowed, and by causing and/or permitting church visitors to trespass on foot and in vehicles on the property of the Bernards and other Association members. He noted that the Zoning Ordinance provided that a special permit shall be revocable by the BZA at any time because of the failure of the owner or operator of the use covered by the special permit to comply with the terms and conditions of the special permit, and that upon notice of a zoning violation, the Zoning Administrator may revoke a use permit to terminate the violation or take other appropriate action to remove the violation. He stated that his clients were not requesting the revocation of the special permit, but the Board should not allow the church to amend the special permit for additional development until the church demonstrated its compliance with the terms of the original special permit. Mr. Marr presented photographs

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 38

reflecting the current traffic congestion and parking problems and said that even with the additional proposed parking spaces, parking would be inadequate with the addition of the social hall. He stated that the tree removal for the additional parking would cause increased water runoff onto the property of the neighbors, and a study to determine the extent of potential runoff should be done. He presented photographs of a recently built home in the neighborhood for which trees were cleared and the resulting water runoff onto a neighboring property. Mr. Marr presented a copy of the church's 1996 dedication pamphlet, from which he read that the church had claimed for several years that its seating capacity was at least 350, and a document regarding the history of St. Claire, from which he read that the church will seat 350 people. He stated that the church often added to its seating capacity by placing folding chairs in the aisles and allowing congregants to sit on windowsills, and members of the church would testify to that. He said the church had exceeded the use permitted by the original special permit, and the bottom line was that it was a matter of expansion and growing of the church and usage.

Ms. Gibb asked if there was no limit on the number of masses in the development conditions, whether that meant there was no limit on the number of masses. Ms. Langdon stated that was correct. She said staff typically did not condition that.

Michael Kavanagh, 12425 Shari Hunt Grove, Clifton, Virginia, president of the homeowners association, came forward to speak in opposition to the application. He said he had lived in Fairfax County for 13 years. He stated that RLUIPA barred governments from enforcing zoning codes that imposed a substantial burden on religious assembly unless a compelling government interest can be cited, and he explained that one compelling interest in the subject case was that the perennial stream running south of the church that flowed directly into the Bull Run waters behind Kincheloe Park could be affected from contaminated water runoff caused by the removal of 92 percent of the trees in the area designated for parking expansion. Mr. Kavanagh stated that he did not oppose the addition of an onsite rectory and said he hoped a resident priest would bring more security. He said the addition of a social hall and increased social activities would increase the already existing traffic problems and would contribute to the noise pollution and traffic safety issues. He said he had been told by the previous pastors that St. Claire's Mission would never be more than a mission church. He noted that the church currently held Knights of Columbus meetings in the basements where the church provided alcohol and said he was concerned about the social activities that would go on at the church.

J. Alfred Baird, 12405 Shari Hunt Grove, Clifton, Virginia, came forward to speak in opposition to the application. He said he was an active member of the parish whose daughter was married in the church, was an original homeowner and had lived at his residence prior to the church being built, which was conceived as a mission church with all the requirements regarding water usage, runoff, and sewage based on the church holding three services each week. He explained that recently a mass had been added on Sunday evenings, which indicated the church was growing. Mr. Baird stated that his concerns were environmental in that the storm water drainage from the church came through his property. He said he was concerned about his well and that runoff from the sewage septic treatment would enter the stream. He stated that the growth of the church had been astronomical over the prior 13 to 14 years. Mr. Baird suggested the Board evaluate the existing church infrastructure to determine the environmental impacts on the neighborhood before addressing the massive new development.

David Schnare, representing the Occoquan Watershed Coalition, came forward to speak in opposition to the application. He stated that the coalition consisted of more than 100 homeowner associations. He presented a document entitled "Fulfilling the Promise, The Occoquan Watershed in the New Millennium," which he stated was a Fairfax County publication, in which he called the Board's attention to a chart that contained information regarding the biological integrity of streams and the amount of impervious space, which indicated that once 50 percent of impervious space was reached, a stream would have no biological integrity. Mr. Schnare noted that a 50 percent undisturbed space did not protect water quality. He said the original special permit included conditions that limited the development to 86 parking spaces and clearing and grading elsewhere, requiring in excess of 50 percent to remain undisturbed. He stated that when the Board of Supervisors (BOS) down-zoned the area, it established two kinds of controls for water quality on the watershed, which had been upheld in 1985 by the Fairfax Circuit Court, the controls being having structural retention ponds and high development density or having low density development without structural retention ponds and using the land as the best management practice for storm water runoff. He said because it was

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 39

unknown how much impervious space would result from the additions and the applicant had said it would consider using other ways to increase the permeability, the Board should not make its decision at the hearing.

Mary Kavanagh, 12425 Shari Hunt Grove, Clifton, Virginia, came forward to speak in opposition to the application. She stated that when she had bought her home 13 years prior, she had been told the church would be a missionary church, and there would be no expansion. She said the original proposal had reduced the land area by seven percent and the proposed larger building, new entrance, water tower, which would be exposed when the trees were without leaves, larger parking lot, additional lights, and chain-link fence would further reduce the remaining land area an additional seven percent.

Richard Payne, 12387 Henderson Road, Clifton, Virginia, came forward to speak in opposition to the application. He stated that he supported the environmental concerns expressed by previous speakers. He explained that Henderson Road had become a heavily traveled road over the 13 years that he had lived at his property to a point where he and similarly situated neighbors that had to exit onto Henderson Road had to wait three to five minutes before they could enter the stream of traffic. Mr. Payne noted that there were accidents on Henderson Road approximately once a month partly due to the poor sight lines along the road coupled with the heavy traffic coming from Prince William County. He said he was concerned about the impact the social hall would have on the traffic issues.

Lawrence Spellman, 12415 Henderson Road, Clifton, Virginia, came forward to speak in opposition to the application. He stated that he objected to the water tower and to the new church entrance, which would be located 67 yards from his driveway. He said the speed limit on Henderson Road was posted as 35 miles per hour with an additional fine of \$200 for speeding and explained that the road going south was a downhill rollercoaster ride leading into a dangerous curve that ended at his driveway with most vehicles passing his home at 45 to 50 miles per hour. Mr. Spellman confirmed that there were many accidents on Henderson Road and said the public entrance for the church should not be located near a dangerous section of the road because it would be a disaster waiting to happen, especially at night or during adverse weather conditions. He suggested the enlargement of the current entrance to four lanes and the elimination of the proposed entrance. He said the water tank would be the height of a four-and-a-half-story building, would be ugly, would be in view from his house when the trees were without leaves, and would be unfair to the surrounding houses on well water. Mr. Spellman suggested that a concrete underground water retention tank be constructed that would have lower maintenance and insurance costs and the trucking in of water so as not to disturb underground streams. He stated that the Zoning Ordinance complaint should be resolved before a vote occurred on the proposed amendment and asked that the vote be deferred.

Ms. Strobel, in her rebuttal, stated that the number of registered parish families were as follows: 401 in 1997; 391 in 1998; 411 in 1999; 425 from 2000 to 2002; and 418 in 2003, which she said demonstrated that the parish had not experienced a tremendous growth. She stated that the applicant would provide 50 percent of the property within a conservation easement, which would be enforceable by the County and from which nothing could be removed, but she pointed out that with the improvements, 10.69 acres of the total 14.44 acres would remain as undisturbed open space. Ms. Strobel said the fence was proposed to address the trespass issue. She explained that the water tank was recommended by the Fire Marshall, and the tank would be filled once and retained for fire protection services and would not be a constant drain from the water source. She said the parish center would not be a place for bingo or dances, noting that her letter stated the center would not be used for large activities, and explained that the applicant was not adding to the uses, but trying to provide a better space for the current uses, which commonly occur in association with any religious institution. Ms. Strobel stated that the use of folding chairs in the sanctuary no longer occurred. She said that when the premises were built, the applicant obtained all the proper building, occupancy, and non-residential use permits, had not received any zoning violations, and the issue of the light standards would be corrected with the application. She said the applicant was attempting to address the issue of parking on Henderson Road by providing additional parking onsite.

Mr. Hart asked whether Henderson Road was classified as an arterial road. Ms. Langdon said she would have to consult the Comprehensive Plan to answer, but did not have a copy at the hearing.

Ms. Gibb asked whether staff had an opportunity to view Mr. Marr's allegations regarding the applicant being

~ ~ ~ September 16, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 40

in violation of the special permit and whether the applicant was in violation if the allegations were true. Mr. Sherman replied that staff had seen the document, but that there were no limitations on the number of services in the existing special permit conditions, and he was unaware of how Zoning Enforcement measured seating capacity.

Ms. Gibb asked whether it was allowable to have 75 extra people standing. Mr. Sherman replied that he believed the requirement was based on the seating capacity, not the number of people in the church, and he was unaware of how Zoning Enforcement dealt with that.

In addition, Mr. Sherman noted that there was a requirement that all parking be onsite and said it was clear that parking was occurring offsite.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on SPA 88-S-091 to October 21, 2003, at 9:00 a.m. She said the troublesome point for her was that the property was located in the R-C District, and she hoped the deferral would allow the applicant and staff to address the most green-friendly way to park cars with reduced impervious surface, which had not previously been explored. With respect to the water tower, she said that although it was a safety requirement that had been missed earlier and had been picked up currently, she understood why neighbors would be upset, and she requested a picture of it be provided. She said with the additional time the deferral would provide, the applicant and the neighbors might be able to iron out any differences regarding the proposed fence. Mr. Ribble seconded the motion.

Mr. Pammel stated that although he favored a deferral, he would not support the motion as made because the key ingredient of the maximum size of 300 people had been left out. He said the Board had received documents containing numerous references that the applicant had exceeded 300 people on many occasions, and he moved to amend the motion to include an instruction to staff that on at least three separate occasions, unannounced visits be made to determine the attendance at the various masses. Ms. Langdon commented that in order to accomplish the task, Zoning Enforcement would need a longer deferral. Mr. Pammel moved to amend the motion to defer decision to November 25, 2003. Ms. Gibb and Mr. Ribble indicated they accepted the amendments to the motion.

Mr. Hart commented that he was interested in the results of the compliance inspections and the discussions of alternative materials or ways to limit the impervious surface and wanted more information regarding the materials and appearance of the water storage tank, and he added that additional issues to be addressed would include the addition of development conditions to prohibit the use of the Sheehans' driveway, as requested in Ms. Sheehan's letter, and to deal with the lighting hours.

Mr. Hart stated that to approve a non-residential use in the R-C District, the Comprehensive Plan required there be orientation to an arterial roadway, and he asked how the property was oriented to an arterial roadway. Ms. Langdon replied that it had been determined that Henderson Road was a minor arterial.

Mr. Hart said that regardless of the fire protection measures addressed in the special permit amendment, he hoped there was a current contingency plan in the event there was a fire in the occupied church with no current fire protection.

Mr. Pammel suggested that the applicant consider shielding the lights so as not to disturb the adjoining residents. Ms. Strobel stated that the lights were currently shielded.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

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~ ~ ~ September 16, 2003, (Tape 2), Scheduled case of:

9:00 A.M. DILLIAN LAFFERTY, VC 2003-BR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.8 ft. from rear lot line. Located at 9811 Dansk Ct. on

approx. 10,679 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((10)) 162. (Def from 7/29/03 for decision only)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dillian Lafferty, 9811 Dansk Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, stated that on July 29, 2003, the Board had deferred decision on the subject application to allow the applicant to revise the plat and provide building elevations reflecting the proposed addition, and she noted that the plat was revised to permit construction of the addition 13.92 feet from the rear lot line instead of the originally requested 12.8 feet, proposed building elevations, and revised proposed development conditions had been distributed to the Board.

Mr. Lafferty noted that he was accompanied by his wife, Kathryn Lafferty, and their architect, William Boyd (phonetic). He explained that the variance was being requested to permit the construction of a first-floor bedroom and full handicapped assessable bathroom to accommodate a permanently disabled household member, his mother-in-law, who was physically incapable of living alone and suffered from a degenerative neurological disease that would render her wheelchair-bound in the near future. He said the addition could not be built without a variance due to the bowtie nature of the lot, and as directed by the Board at the previous hearing, he had retained an architect and had submitted proposed elevation drawings. Mr. Lafferty noted that nine letters had been sent to the Board by neighbors, including one in which the next-door neighbor objected to the request, with the remaining nine letters from neighbors who actively supported the application, one of which was from the rear neighbors, the Migliores, who would be most affected, and he read comments from the letters of support. He stated that what was being requested was a necessity to allow them to remain in their home of 19 years, not a matter of convenience, and that the addition would be architecturally pleasing and compatible with their house and the neighborhood. He pointed out that the variance was to the rear lot line and not the side lot line shared by the Gubas. Mr. Lafferty said he believed that a strict application of the Zoning Ordinance along the common boundary line with Lot 187, owned by the Migliores, would place an undue hardship on his family.

Mr. Hammack asked whether the peak of the roof was 16 feet in height and extended back. Mr. Boyd replied that the ridgeline was 16 feet in height, but said the neighbors would sense less than that in the 8.5-foot wall, which was a typical one-story addition height.

Mr. Hammack stated that the room's dimensions were 23.5 feet in depth and 21 feet in width.

Chairman DiGiulian called for speakers.

Kevin Hildebeidel (phonetic), appearing on behalf of Howard and Dorothy Guba, adjacent property owners at 9809 Dansk Court, Fairfax, Virginia, came forward to speak in opposition to the application. He stated that it was the Guba property that was primarily affected by the modification because their line of sight and backyard would be occluded by approximately 400 square feet of wall and noted that a photograph and a letter which stated their objections had been submitted to the Board. He said the Gubas opposed the variance because it violated the Ordinance and went far beyond what could be built by right. Mr. Hildebeidel explained that was possible for the applicant to build out 12 feet into the backyard without requiring a variance and could combine a laundry room six feet in depth, which he pointed out on the applicant's plan, with the 12 feet into the yard to achieve an 18-foot area that could be built by right. He stated that the applicant was requesting a special privilege of building 11 feet into the setback requirement that was not available to the rest of the community, with no arrangements for runoff of water. He noted that he had submitted a map of the area which reflected the backyards of the houses located on Dansk Court and the court behind and showed that the backyard areas were all open with no other addition to a house the size and magnitude the applicant was requesting. Mr. Hildebeidel said the applicant was asking the Board to deviate from the purpose and intention of the Zoning Ordinance for a special privilege or convenience, which was not permitted within the Ordinance and violated a number of the provisions of Section 404, and the Board did not have the authority to grant what the applicant requested.

Mr. Lafferty, in his rebuttal, noted that one of the comments reflected in a letter he had received indicated that the scale was wrong in the drawings. He stated that the original drawings submitted were to proper scale and showed accurate measurements, but the copies the Board had were reduced to fit an 8 1/2-by-11

~ ~ ~ September 16, 2003, DILLIAN LAFFERTY, VC 2003-BR-083, continued from Page 42

inch format. He compared photographs from his backyard looking towards the properties to either side and pointed out that although it was clear and open towards the Gubas' property, it was not towards the property in the other direction. Mr. Lafferty stated that communities were not always open and clear and that the structure on the neighbor's property was similar to the one proposed. He said the addition was not inconsistent with the neighborhood and explained that he had driven around the neighborhood and found at least 15 homes with additions, some larger than the proposed. Stating that they had considered alternatives, Mr. Lafferty presented a drawing of an alternative design suggested by Mr. Guba and asked Mr. Boyd to explain it.

Mr. Boyd indicated that the addition could be turned and reoriented so the bathroom and closet ran vertically north and south, but the Gubas would be less served because there would be no windows on the side towards their property, their sightline would be blocked the same amount, and because the addition would flatten out, the roofline would have a different roof pitch requiring a wider roof truss, which would result in a less attractive elevation.

Mrs. Lafferty, 9811 Dansk Court, Fairfax, Virginia, came forward to speak. She said that if the laundry facilities were located in the basement, the person using them would not be able to hear her mother. She explained that although they did have a finished basement with a storage area, it was filled to overflowing, and they would have to try to find a way to move a laundry room down there. With respect to the Gubas' comments regarding line of sight, Mrs. Lafferty pointed out that the Gubas had built a six-foot fence on the other side of their property and had destroyed their own line of sight in that direction.

With respect to comments regarding water runoff, Mr. Lafferty stated that they had experienced problems with water runoff, as the Gubas had, and said he understood that was a problem and was more than willing to do something that was in conformance with the Code for water runoff.

Ms. Gibb commented that the plat appeared to show a much steeper angle for the rear setback than the drawing showed. Mrs. Lafferty replied that it could be due to the bow of yard being located towards the center of the house, leaving more of a setback on the right than on the left, and she stated that the addition had been scaled back from what was shown in the original drawing. Ms. Gibb said it looked like half of the addition would be lost at one point if it were moved. Mr. Lafferty explained that the drawing was done based on Mr. Guba's suggestion that would save two feet of depth, but would not change his line of sight and would not be as architecturally pleasing as one blank wall instead of having windows and architectural interest.

Referring to the drawing of the interior of the room, Mr. Hammack noted that at the end of the room there appeared to be some built-in dressers or shelves, and he asked what they would be used for. Mrs. Lafferty replied that it would be shelves with cabinets underneath to contain her mother's treasures that had been collected over her lifetime. She said her mother had lost her 2,400-square-foot house, and they wanted her to have as much of her own belongings around her as possible. Mr. Lafferty added that the cabinets below would store clothing and other items.

Mr. Hammack asked whether a hospital bed would be required. Mr. Lafferty replied that his mother-in-law currently had a powered bed with side rails. Mrs. Lafferty said the bed shown was a king-size bed with a headboard, and she would like to be able to sleep in the room with her mother on occasion if she became bed-bound. She added that when scaling back was discussed, her mother said she would give up the bed before she gave up the bookcases.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-BR-083 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DILLIAN LAFFERTY, VC 2003-BR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.8 ft. from rear lot line. **(THE BZA APPROVED THE ADDITION 13.9 FEET FROM**

~ ~ ~ September 16, 2003, DILLIAN LAFFERTY, VC 2003-BR-083, continued from Page 43

**THE REAR LOT LINE.)** Located at 9811 Dansk Ct. on approx. 10,679 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((10)) 162. (Def from 7/29/03 for decision only) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2003; 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 with a lot area of 10,679 square feet.
3. The applicant has met the nine required standards for a variance.
4. The unique nature of the rear yard was noted.
5. The applicants' desire to appease the concerned neighbors was noted. The applicants demonstrated that they have tried, as best they can, to deal with the concerns.
6. The preponderance of the neighbors have supported the application.
7. The variance is in the rear only.

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

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

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

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

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

~ ~ ~ September 16, 2003, DILLIAN LAFFERTY, VC 2003-BR-083, continued from Page 44

1. This variance is approved for the location of an addition shown on the plat prepared by David Folsom Rice, dated March 3, 2003, as revised through September 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-2. Ms. Gibb and Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 16, 2003, (Tape 2), Scheduled case of:

9:00 A.M. GREAT FALLS SWIM AND TENNIS CLUB, INC., SPA 82-D-019-8 Appl. under Sect(s) 3-103 and 8-914 of the Zoning Ordinance to amend SP 82-D-019 previously approved for community swim and tennis club to permit building additions and site modifications and to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 18.0 ft. from side lot line. Located at 761 Walker Rd. on approx. 5.52 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 27. (Def. from 7/22/03 at appl. Req.)

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

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 Hall, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 82-D-019, previously approved for a community swimming and tennis club, to permit a building addition and site modifications. The building addition and site modifications consisted of the placement of a "bubble" tennis court cover over three existing lighted tennis courts located on the north side of the property. The tennis court cover would be installed on a seasonal basis during the colder months of fall, winter, and spring. A development condition was included that did not permit the tennis court cover to be installed prior to October 12th of each year and required the cover to be removed no later than April 18th of each year. No other changes, such as changes in the hours of operation or maximum number of members, were proposed. The application also included a reduction to minimum yard requirements based on an error in building location to permit one of the existing tennis courts, which was considered an accessory structure, to be located 18 feet from the northern side lot line, where a minimum of 20 feet was required by the Zoning Ordinance. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval subject to the proposed development conditions dated September 9, 2003, with a minor editorial change to remove the second sentence in the last paragraph which referenced phase development.

Mr. Pammel asked whether there was any significance to the fact that all of the photographs submitted showed snow, to which Ms. Hall said there was not and added that the prior winter it had been hard to find anything else.

--- September 16, 2003, GREAT FALLS SWIM AND TENNIS CLUB, INC., SPA 82-D-019-8, continued from Page 45

Ms. Hall presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the applicant had been in operation at the subject site since the early 1970s, and she explained that the application was to allow a dark green "bubble" with reflective inner material over three of the tennis courts during approximately six months of the year, the composition of which would prohibit light from escaping to avoid creating a glowing mushroom effect on Walker Road. She said the particular bubble system was chosen because it was the quietest on the market, and the club did not want its tennis players or the neighbors disturbed and was satisfied that there would be no problem from a noise perspective. Ms. Hall confirmed that there would be no increase in membership as a result of the bubble and said it would offer its members the opportunity to play year-round. She explained that she had met three times with the residents of the Thunder Hill neighborhood, which adjoined the subject property on the east and south. They had expressed some concerns which had been addressed prior to the hearing, and she said they were happy with the arrangements made, which were reflected in the September 9, 2003 development conditions regarding the dates on which the bubble would be put up and taken down. She stated that she had appeared before the Great Falls Planning and Zoning Committee of the Great Falls Civic Association and had been in contact with the owner of the Great Falls Shopping Center, and both had no objections to the application.

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

Mr. Hammack moved to approve SPA 82-D-019-8 for the reasons stated in the Resolution, with the deletion of the sentence in the last paragraph which read, "The establishment of Phase I shall establish the use as approved pursuant to the special permit," and a correction of an error in the spelling of the word "loudspeakers" in the revised proposed development conditions.

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## COUNTY OF FAIRFAX, VIRGINIA

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

GREAT FALLS SWIM AND TENNIS CLUB, INC., SPA 82-D-019-8 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to amend SP 82-D-019 previously approved for community swim and tennis club to permit building additions and site modifications and to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 18.0 ft. from side lot line. Located at 761 Walker Rd. on approx. 5.52 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 27. (Def. from 7/22/03 at appl. Req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 2003; 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;

~ ~ ~ September 16, 2003, GREAT FALLS SWIM AND TENNIS CLUB, INC., SPA 82-D-019-8, continued from Page 46

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

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

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

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 716 Walker Road (5.52 acres), and is not transferable to other land.
- 2. This Special Permit Amendment is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Burgess and Niple, dated March 2003, as revised through September 2, 2003, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The existing vegetation shall be deemed to satisfy the Transitional Screening requirements and shall be maintained as an effective visual barrier along all lot lines. The existing chain link fence, which encircles the pool and tennis courts and extends along the southern lot line, 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 and Platform Tennis Courts: 8:00 a.m. to 10:00 p.m.
  - Swimming Pool Regular Hours: 9:00 a.m. to 9:00 p.m.
  - Adult Swim (18 and 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-hours 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,
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. All loudspeakers, bullhorns and lighting shall be directed on site.
10. There shall not be more than four "A" level swim meets per year at this facility.
11. Parking shall be provided on site as shown on the special permit plat.
12. All activities shall comply with the provisions of Chapter 108 of the County Code, the Noise Ordinance.
13. Any replacement or any new lighting fixtures shall be in conformance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
14. The maximum number of family memberships shall be 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. All required handicap accessible parking spaces shall be maintained with a dustless surface and shall be signed in accordance with the provisions of the Zoning Ordinance.
18. The proposed tennis court cover shall cover only the three tennis courts located in the northwestern portion of the site. The cover shall have a maximum height of 40 feet, shall have a reflective interior surface and shall have the appearance of the attached manufacturer's photograph #1, Attachment A. The color shall be dark green.
19. The tennis bubble shall be erected no earlier than October 12<sup>th</sup> of each year and shall be taken down not later than April 18<sup>th</sup> of each year.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established or construction has commenced and been diligently prosecuted. 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. Beard seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 16, 2003, (Tapes 3 and 4), Scheduled case of:

9:30 A.M. WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENDORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the use of a field located at Tax Map 30-3 ((1)) 38 and 65 remains a County park which is allowed by right as a public use and, therefore, the special permit provisions of the Zoning Ordinance are not applicable. Located at 1659 Chain Bridge Rd. on approx. 37.71 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 38 and 65.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 5, 2003. She explained that this was an appeal of a determination by the Zoning Administrator that the use of an athletic field at Lewinsville Park remained a public use and did not require special permit or special exception approval. She said at issue in the appeal was the limited use of Field 2 for lacrosse and soccer games and practices by Marymount University under an agreement between McLean Youth Soccer (MYS) and the Fairfax County Park Authority (FCPA). Ms. Stehman indicated that it was staff's position that the use by Marymount did not change the use from a public use to a special exception or special permit use because a public use, under the Zoning Ordinance, was defined as any building, area, or structure held, used, or controlled exclusively for public purposes by the FCPA, among others. She stated that staff believed the field remained under the ownership and control of the FCPA, who remained responsible for maintenance and usage scheduling. She said the agreement between the FCPA and MYS allowed MYS to allocate about 9.4 percent of their hours to Marymount. Ms. Stehman explained that there was no impact on the availability of the park for use by the general public because there was no increase in the number of hours allocated for use by other than the general public, and she said the use of the field by Marymount was consistent with the use of County park facilities generally throughout the County.

Ms. Stehman advised the Board that Regina Murray of the Zoning Administration Division, who had been involved in an earlier issue relative to the Lewinsville Park facility, and John Pitts of the FCPA were present at the hearing.

With respect to the definition of public use in Article 20 and "exclusively for public purposes," Mr. Hart gave an example of if it was an entrepreneur who wanted to have a driving range and charge people to hit golf balls 9.4 percent of the time, so it was minimal in the grand scheme of the park, but there was a bit of commercial aspect to it, semi-recreational, but money making, and he asked whether that would fall within the public use definition because the FCPA had leased it. Ms. Stehman replied that it would depend on how the lease was drawn and what the conditions were within the lease. She said she thought that as long as the FCPA retained ownership and retained control over the use and scheduling of the facility, it remained a public use. She pointed out that in the current case, the lease was not between the FCPA and Marymount, but between FCPA and MYS, and she said that although it was not a typical lease and was somewhat outside the normal realm, the FCPA made arrangements for many youth soccer leagues to use fields on a regular basis and that there were FCPA policies that governed the scheduling and use of the fields.

Mr. Hart asked whether it was simply because the Park Authority owned the land, that it was always a public use or if there was a case-by-case review. Ms. Murray indicated it would be a case-by-case review in each circumstance and that the scope and intensity of the use that was being made of the property was important in the determination.

Mr. Hart said the word "exclusively" was a pretty severe term in a definition and was an absolute. He asked if it was staff's determination that the package with MYS and one step removed was still compatible with the definition "exclusively for public purposes" with the activities, to which Ms. Stehman replied affirmatively.

Mr. Hammack asked if there was anything in the Ordinance that limited the use of FCPA property to residents or organizations of Fairfax County. Ms. Stehman answered that there was nothing in the Zoning Ordinance.

Bill Marr, the appellants' agent, presented the arguments forming the basis for the appeal. He said he would address the former Zoning Administrator's letter opinion of April 28, 2003, and property owners that in most cases adjoined the park would address the condition of the park, the size of the facility that was built, traffic, and other issues. He indicated that Mr. Hart had gone right to the essence of the issue with respect to the opinion of Ms. Gwinn. Mr. Marr explained that her opinion determination cited from the Zoning Ordinance

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENSCHORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 49

and referred specifically to public use. He read from Page 1, "Any area, building, or structure held, used, or controlled exclusively for public purposes," and pointed out that there was no reference to the ownership of the building, structure, or the realty upon which it was situated.

Mr. Marr said the document went on to say that after review of the agreement between Marymount and MYS, approximately 9.4 percent of the total time was actually Marymount's time under the agreement. He commented that it was interesting that in the next paragraph of the letter on Page 2, it said, "However, as noted above, this field will not be used exclusively by Marymount University for college practices and games, but rather for a specified portion of the time." He indicated that it was interesting that the word "exclusively" was used and said that the public use definition that the Board had been talking about earlier said "exclusively" and that "exclusively" had a very specific meaning, that being "only." Mr. Marr pointed out that in Ms. Gwinn's letter she said that she did not concur that the limited use of a field by a college or university team resulted in the field becoming a college athletic facility.

Mr. Marr said the public use definition specifically says that it shall be used exclusively for public purposes. He gave a definition of "public purposes," that being a public purpose had for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, for example, a state or the sovereign powers. He said he thought it was pretty clear that public purpose here referred to Fairfax County.

Mr. Marr noted that the question had been asked, were there any limitations on use of the athletic fields with respect to County residents and the answer being there's no Zoning Ordinance, but he said there were guidelines provided by the FCPA, those guidelines currently provided between 75 to 90 percent use by the residents and that team participants must be residents. He indicated that in earlier hearings it had been shown provided that Marymount, in terms of an institution and the makeup of the players on the various teams, was substantially non-County residents.

Mr. Marr said he thought Ms. Gwinn's opinion was based upon the 9.4 percent of use being okay, but that he thought the obligation was to look at the plain meaning of the Ordinance and follow it. He said the case he cited and provided a copy of, Board of Zoning Appeals for the County of York v. 852 LLC, Supreme Court of Virginia, 1999, was right on point. He explained that in that case, the Zoning Administrator had interpreted a local ordinance with respect to predensity (phonetic), and the interpretation was appealed to the Board of Zoning Appeals, who upheld the Zoning Administrator's determination. Mr. Marr said that once the case was heard in trial court, the judgment reversed the BZA's decision and adopted the Zoning Administrator's interpretation on the basis that the Zoning Administrator interpretation was plainly wrong because it was beyond the plain language of the statute. He said the Virginia Supreme Court upheld the trial court's determination and that he thought the case was right on the point.

Mr. Marr stated that the language with respect to public use in Ms. Gwinn's letter referenced exclusive for public purposes and that her letter indicated that other than that was the case, that a private university was utilizing the facilities for 9.4 percent of the time. He said the appellants' position, based upon the case law provided and the analysis, was that Ms. Gwinn's opinion was incorrect and that the matter should have been properly sent for a special exception hearing, and he requested that be done.

Ms. Gibb stated that the case turns on what was public and said the word "public" was what was important. She asked what made the subject use not public use. Mr. Marr replied that "public" and "use" had to be read together because that was the relevant definition and that it was a use by a private university for private activity, college games.

Ms. Gibb and Mr. Marr discussed whether use by George Mason or a public university in Arlington located in another jurisdiction would be okay and concluded that if it were public, it would be, but not a private university for a private purpose. Mr. Marr said he thought the legislature had looked at that particular issue in other context when they passed the Public/Private Education Facilities and Infrastructure Act of 2002.

Ms. Gibb asked whether MYS was available to everyone in Fairfax County or only McLean. Mr. Marr replied that that was available throughout the County and that he understood MYS conducted activities throughout the County and had a large and wide membership.

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENSCHORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 50

Ms. Gibb asked if someone living in Clifton can be in the McLean Soccer League. Mr. Marr answered that he didn't know, but that he knew the members of the McLean Soccer League extended beyond the immediate boundaries of McLean and that the following speakers would be able to address that specifically.

Ms. Gibb asked whether gender specificity would affect whether it would be public or not public, and Mr. Marr replied that that would not be determinative.

Ms. Gibb asked if the only distinction that made it not public was that it was use by a private university. Mr. Marr said that was right, that it was a private university that had used MYS as a straw man to avoid going through the complete procedures that should have been followed through the special exception process.

Ms. Gibb said she was trying to get to what made it not public. She commented that public could mean open to everyone, every age, sex, but that there are many facilities considered public that have restrictions, and Mr. Marr agreed.

Mr. Hammack pointed out that Attachment 2 defined colleges and universities as quasi-public in the Zoning Ordinance and that the Zoning Ordinance defined colleges, universities, sports arenas, and stadiums as quasi-public, not public exclusively, not private. He said he was not sure how that fit in because Ms. Gwinn had not addressed that specifically and he thought that was part of what Mr. Marr was trying to get to. Mr. Marr suggested that if Ms. Gwinn had thought that definition would have been helpful, it would have been referenced in her determination and was not, and he concurred with that.

Chairman DiGiulian called for speakers.

Dan Wolkensdorfer, 7009 Hamel Hill Court, McLean, Virginia, came forward to speak in support of the appellants' position. He said he had lived on Hamel Hill Court, adjacent to Lewinsville Park, for 19 years. He explained that he had three children and nine grandchildren, who had played high school and college level sports and that he had been a spectator in many stadiums and facilities up and down the east coast. Mr. Wolkensdorfer stated that all the collegiate athletic facilities he had visited that supported lacrosse and soccer were well developed in sanitary facilities, sufficient parking and stands to support the fans, and changing rooms for players. He added that safe separation between the fans and the team play on the field was provided, which he said was of great concern in lacrosse to avoid balls hitting spectators and causing significant injuries. He stated that college athletes were generally much stronger and swifter than high school or grade school athletes and that it should be anticipated that greater safety margins were required to protect the fans and players as the organized sports ladder was ascended in terms of age and associated physical strength.

Mr. Wolkensdorfer said the description of the facilities at Lewinsville Park was overstated and inflated by the Zoning Administrator. He stated that the tennis courts and the baseball field were not lighted and that there were two standard size soccer fields rather than four, one bordering Chain Bridge Road being used primarily for football and for practices, including the high school band, of McLean High School. He suggested that no one had actually visited the park and instead had accepted everything said to them as fact.

Mr. Wolkensdorfer stated that the baseball field was appropriately fenced for safety purposes. He said he was not suggesting that a protective fence be built, but that more appropriately safety and other impact surveys be done. He summed up by saying that the FCPA, as supported by the Zoning Administrator, had not done their lawful duty to conduct the appropriate and necessary surveys, and he urged the Board to compel them to do so.

Leonard Berman, 7008 Hamel Hill Court, McLean, Virginia, came forward to speak in support of the appellants' position. He said his backyard shared a common property line with Lewinsville Park and Fields 2 and 3 and that he was literally on a direct sightline with and steps away from the fields. He emphasized that his family had enjoyed living next to Lewinsville Park and watching many youth soccer games played on the fields. Mr. Berman stated that his daughter participated in MYS, with her current team using Lewinsville Park as its home field, and that he had coached soccer for two years. He said that in the 13-plus years they had lived there, his family had never voiced any complaints about the youth games in the park and that the community surrounding the park was appreciative of what MYS did for the youth and that the community had

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENSCHORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 51

organized over 25 years ago to save the park.

Mr. Berman said the conversion of Lewinsville Park into a college athletic facility was being made in collaboration with and to meet the requirements of a university whose campus was not located within Fairfax County. He stated that less than a year prior to the hearing, Field 2 was a standard, youth-appropriate, full-sized field covered by natural grass, but to accommodate Marymount University, the field had been engineered to meet different standards and artificial turf had been installed, financed in large part by Marymount. He explained that the dimensions of the grass field were too small to meet the university and possibly NCAA requirements, and to meet Marymount's need for a larger playing surface, the dimensions of the artificial turf field had been increased. Mr. Berman stated that the FCPA and MYS made presentations from Marymount originally to use Field 3 at a June 2002 public hearing, when they knew from County staff that Field 3 could not provide the size field that Marymount demanded and that they would have to consider Field 2.

Mr. Berman said that the FCPA had spent the prior year changing many of its countywide policies and practices for park usage to accommodate Marymount University and MYS. He gave as an example that under the Memorandum of Agreement between the FCPA and MYS, the Department of Community and Recreation Services, under whose authority athletic field allocations in Fairfax County fall, had lost its authority for Field 2. He stated that parks across the county could now open earlier, close later, and that any park with artificial turf was no longer subject to normal seasonal restrictions. Mr. Berman said that he had inquired about how the policies were changed and whether there was notice for public hearings and had yet to receive information from the FCPA.

Mr. Berman summed up by asking why a private Arlington County-based institution should be looking to claim a Fairfax County park for its home athletic facility for soccer and lacrosse and stated that according to the Washington Post, Arlington County had stopped a similar plan by Marymount two years prior to help finance an artificial surface field at Thomas Jefferson Community Center after neighbors complained that they were not consulted about the increased use of the field.

Ms. Gibb asked staff whether games had taken place, and an unidentified speaker from the audience replied that they had not and that the field construction had not been finished.

Barbara Bodson, 7006 Hamel Hill Court, McLean, Virginia, came forward to speak in support of the appellants' position. She explained that her family had been active in multiple youth sports and supported them, her daughter being a high school athlete and her son playing AAU baseball and on a soccer team composed of McLean residents that competed in Montgomery County Soccer. She stated that she had been a team manager for several years and her husband had been an assistant coach in MYS.

Ms. Bodson said there was a lack of sanitary restroom facilities in the park, that backyards and landscaping were frequently used as toilet facilities, and she had been told by the players that they were encouraged to use the yards by their coaches because use of the port-a-johns was untimely. She explained that the issue had been addressed directly with the coaches, who had been rude and unhelpful. She said complaints were made to MYS and a police report had been filed. Ms. Bodson stated that increased use of the park by Marymount would worsen the problem because spectators and players viewed the yards as a convenient bathroom since no real facilities existed in the park and there was no manager or anyone in charge in the park to handle problems when they arose. She said that she would be sorry to see a young person with an arrest record, but she was willing to press charges if necessary. She indicated that the police had suggested charges for trespassing, urinating in public, and indecent exposure as the next step.

Ms. Bodson addressed the issue of noise, saying that living close to the fields in use as much as 15 hours a day, even with the relatively small crowds that MYS attracted of 25 to 32 spectators per game, was intrusive. She said she had read that Mr. Kinghorn of MYS had referred to the field noise as "happy noise" and stated that although at times she agreed, given the frequency, duration, and volume that would occur with Marymount's use of the field, it would be more of an unwelcome intrusion. She summed up by saying it was an inescapable conclusion that a larger Marymount crowd for longer periods of time and an extended playing season was going to be a major disruption.

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENS DORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 52

Mr. Pammel asked Ms. Bodson if she had brought her concerns to the attention of her supervisor. She replied affirmatively and stated that she had also written and called the FCPA and received no answer.

Mr. Pammel asked Ms. Bodson if she had documented the urination on her property with pictures. She replied that MYS had suggested that, but that timing was an issue in that the urination happened quickly and her camera was not available. She added that she did not want to be caught taking pictures of kids with their pants down. Ms. Bodson explained that she had told the coaches immediately when she was able, but she said they did not want to hear it and did not listen. She pointed out that there was no manager, no one in charge, or no third party to report the occurrences to.

Mr. Hart commented that it was recognized that there were impacts of a park and that there may be some forum for dealing with things like noise or annoyance, but that he viewed the current public hearing as dealing with some relatively narrow and technical interpretations of a Zoning Ordinance provision and asked that the comments be focused on the issue before the Board, the construction of the Ordinance provisions, as opposed to park impacts in general.

Peggy Huff, 1563 Mary Ellen Court, McLean, Virginia, came forward to speak in support of the appellants' position. She stated that her property was contiguous to the baseball field and that her son currently played MYS soccer, with Field 2 as his home field. She said her concern, which was shared by the community surrounding Lewinsville Park, was the use of the park fields as a college athletic facility without adequate consideration of the traffic and parking issues. Ms. Huff explained that Lewinsville Park supported four athletic fields, six tennis courts, two basketball courts, a tot lot, dozens of garden plots, and added open space for volleyball players and pickup and practice games of various sports and that there were 147 parking spaces available that could not accommodate the number of vehicles generated by even partial use of the park facility.

Ms. Huff described her observations of park usage on Sunday, September 7, at about 1:00 p.m. She stated that Field 3 was in use, with practice being conducted for peewee football on Field 1 and the area contiguous to right field of the baseball field, and Field 2 and the baseball field were closed. She said parents and observers from the team completing their game on Field Number 3 and the next competing teams awaiting the field, which is four teams in total, numbered 45 people, and at least two-thirds of the parking spaces were occupied. Ms. Huff asked what would happen when a Marymount team, with an average attendance of 75 college students, arrived and there were other family and sports events already in progress and stated that there had been no parking study or traffic study to evaluate the consequences. She predicted parking along the entire contiguous roadside of Chain Bridge Road, the main two-lane road leading to downtown McLean, and parking in all contiguous residential areas. She explained that all parking lot traffic entered and exited from one single vehicle exit on Chain Bridge Road and that the backup she had observed was significant with non-capacity use of the parking lot. Ms. Huff added that the McLean Fire Department must use Chain Bridge Road for all the calls received for emergencies on Route 495. She commented that college students were not the same type of population as parents with young soccer or baseball players and that their understanding of traffic flow was significantly different. She asked whether college students would be as cautious as parents in leaving Lewinsville Park and indicated that sightlines for exiting the parking lot onto Chain Bridge Road would be affected when vehicles were parked along the roadside.

Ms. Huff said she believed community residents were willing to forgo some inconvenience to accommodate community based athletic activities, but the accommodation did not and should not extend to a non-County, private university. She stated that before Marymount University was even considered as an approved participant on Field 2, an adequate parking and traffic study needed to be conducted, including the opportunity for public input, and the resulting study should be shared with community residents.

Eileen Larsen, 7012 Westbury Road, McLean, Virginia, came forward to speak in support of the appellants' position. She said she had lived at her property for 34 years. She stated that the controversy being faced was not about children playing soccer, but about FCPA, who broke its own laws or rules, abrogating their responsibility to properly administer public parks. Ms. Larsen stated that district parks should be 50 or more acres and although Lewinsville Park was under 38 acres, it was declared a district park so athletic facilities could be packed in and a residentially zoned neighborhood lit up.

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENDORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 53

Ms. Larsen stated that the rule that the majority of players on a field be Fairfax County residents was circumvented by a Memorandum of Agreement giving total primetime use of a public field to a private entity, allowing that entity, MYS, to share the field with a non-County college. She said that made it virtually impossible to ensure that the majority of players using the field were Fairfax County residents. She stated that it was known that Marymount fell far short of that standard.

Ms. Larsen stated that all that was done initially in a very secretive way without the benefit of any impact studies. She explained that it had been very distressing over the years to watch Fairfax County public servants align themselves with powerful organizations, such as MYS. She said ordinarily taxpaying citizens often appeared at hearings, knowing they are considered adversaries and not part of the decision-making process, and in contrast, it was refreshing to read that Arlington would not permit Marymount to use their fields because the neighbors were concerned about the impact.

Ms. Larsen stated that the outcome of the appeal would have a great impact on Fairfax County residents because Supervisor Mendelsohn had promised to help MYS find more soccer fields, and most of the open land in McLean could be found in the parks. She cautioned that the Board's adverse decision in the case would set a precedent, enabling the FCPA and MYS to invade other residential neighborhood parks with similar Memorandum of Agreement schemes.

Bob Rosenbaum, 1601 Mary Ellen Court, McLean, Virginia, came forward to speak in support of the appellants' position. He thanked the Board for allowing speakers to appear to present their case with regard to the appeal. He stated that his property abutted Lewinsville Park and that he had three adult children who had participated in McLean Youth Sports. Mr. Rosenbaum said he had coached McLean Youth Sports for a number of years, served on the board of McLean Youth, Incorporated, for six years, the last two of which he was the president of MYI, and supported youth sports in the community and Lewinsville Park.

Mr. Rosenbaum explained that Lewinsville was established as a family-friendly neighborhood park to accommodate the community's youth sports and was never intended to be a college sports complex. He said 9-11, terrorism, the economy, and tight budgets have required us to become innovative and resourceful; however, there were other options available to McLean Youth which did not violate the regulations or the interests of the citizens of Fairfax County. He stated that he strongly objected to the deceptive way elected officials and their appointed representatives had allowed the process to proceed without any consideration whatsoever or respect for those who were most directly impacted. Mr. Rosenbaum said youth sports were appropriate in Lewinsville Park, but college sports were not.

Jack Hannon, 7006 Westbury Road, McLean, Virginia, came forward to speak in support of the appellants' position. He stated that he had resided at his property for 32 years. He said Mr. Marr was asking for a special exception or permit requirement for Marymount's participation, which would bring with it public process. He said the reason that was important was because there had been so little information public that members of his association had to file no less than five FOIA requests to find out what was going on. Mr. Hannon stated that all the parties on the other side of the case knew what was going on months before the residents did. He said the residents found out about it when formal notices of a hearing were sent to them for the lights that would have been required in the field originally planned for the synthetic turf, but that at that hearing, the County was rigorous in shooing off any question of the interconnection with synthetic turf and Marymount College.

Mr. Hannon said the residents were brought into a meeting in August with Representative Sossan (phonetic) and MYS. Mr. Hannon said the residents made their requests, most of which were summarily rejected; they asked to be a party to the negotiation and were rejected; they asked to be a signatory to enforce it and were rejected; they asked for another meeting and were ignored. He said the only time they got back together, with only Mr. Sossan, was after the agreement had been brought forward to the Board for approval and the residents had retained a lawyer and were going to go down fighting. Mr. Hannon stated that there was no response to their counsel's letter of December 19, in which most of the legal issues were raised that were before the Board at the current hearing.

Mr. Hannon stated that the lack of due process represented a poor return to those who in the mid-1970s fought hard to induce the County to acquire the land from a developer so that kids could play in McLean, and

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENS DORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 54

he asked the Board to require public process through accepting the argument that a special exception or permit application was needed.

Stephen L. Sulzer, 7000 Symphony Court, McLean, Virginia, came forward to speak in support of the appellants' position. He stated that he had resided at his property at the eastern boundary of the park since 1995 and that he was the president of the West Lewinsville Heights Citizens Association, an organization of roughly 400 households that surrounded Lewinsville Park on three sides, west, south, and east. He said his five-year-old daughter had just begun playing McLean Youth Soccer and confirmed that the people who surrounded Lewinsville Park were not anti-soccer or anti-youth sports activities, but very much the opposite.

Mr. Sulzer commented that having been a party with Mr. Hannon, FCPA, Supervisor Mendelsohn, and MYS, he was most struck by the fact that Marymount University had been absent from all the discussions and meetings and was not a party to the final agreement that was signed with the FCPA. He stated that the reason for Marymount's absence was because it created the problem that was before the Board. He said it was a private organization that wanted to use the field for its own private purposes, and it was not a Fairfax County resident.

Mr. Sulzer pointed out that there was widespread anger and concern in the community over the failure of the County's zoning procedures to protect the rights and the interests of anyone other than MYS. He advised the Board that they would be hearing from representatives of the Lewinsville Coalition, a coalition of 12 organizations that represented 1200 member households who were affected by MYS's relentless backroom campaign to turn every open space in the County into a soccer field, and from McLean Citizens Association (MCA), and the Board would hear about the FCPA's active cooperation with MYS.

Mr. Sulzer stated that the public remedy afforded by the Board and the protection of a Planning and Zoning proceeding and hearing was needed because all efforts to work with Marymount University, MYS, and the FCPA had been fruitless. He urged the Board to remedy the wrongs that had been done and to take account of the need to get some due process back into the system so that concerns of the community can be heard and not just those of MYS in a backroom deal.

Joan Grandy, Westbury Road, McLean, Virginia, came forward to speak in support of the appellants' position. She stated that she lived on Westbury Road, which was adjacent to the rear of the park. She said she was asked to read a document into the record; however, she would provide the Board a copy and summarize. Ms. Grandy stated that part of the reason she was asked to read into the record was because she was a former board member for MYS and has not against MYS games being played on the park. She explained that when she was a board member, MYS was very concerned with transparency and consideration of neighbors, and she was disappointed with the somewhat private negotiations that had occurred. She said Ms. Rothrock, whose testimony she would summarize, was also concerned and requested studies with regard to parking, facilities, and other matters.

Ms. Grandy read one paragraph written by Ms. Rothrock, as follows, "I have recently learned of average attendance claims for Lewinsville Park soccer games as no doubt provided by MYS and reflected in the County staff report on this appeal. As stated above, our home borders on Lewinsville Park. We probably own the home closest to the playing fields, and we can watch MYS soccer games from the window of our family room. I believe that the MYS statistics are grossly overstated. On Field 3 immediately adjacent to our home, there are bleachers that seat approximately 50 people, and over the years these bleachers have seldom been filled. Even after adding in the occasional lawn chairs and blankets that spectators bring with them, the MYS numbers are still quite high. The sound generated and the trash that remains following the games are clear indications of relatively low attendance. As I see it, MYS has overestimated spectator statistics for regular season by at least double the actual attendance, which, therefore, will reinforce those attendance figures put forward by Marymount University, the impact being probably very great. Perhaps MYS is confused by the fact that due to the limited number of parking spaces within the park borders, cars are forced to park in nearby church lots, neighboring streets, and other areas, thus giving the impression that there are more spectators in attendance than there actually are. When we actually do have these numbers, as we surely will with Marymount, this will be greatly, greatly overburdening our area."

Paul Wieland, 8112 Touchstone Terrance, McLean, Virginia, came forward to speak in support of the

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENSCHORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 55

appellants' position. He stated that he represented the Lewinsville Coalition, an organization of 12 homeowners associations located along the Lewinsville Road corridor from around the Beltway to Route 7. He said the coalition represented 1200 households that had been subjected to the tyranny of the FCPA and MYS on several occasions for several years and had an ongoing battle with them about Spring Hill Park, which had just had a public hearing. Mr. Wieland stated that the Lewinsville Coalition supported the subject appeal fully, unanimously, and unconditionally and that the coalition thought that a decision that would permit a private university from Arlington County to use a field in a small Fairfax County park as its home field for soccer and lacrosse games was a gross miscarriage of fairness and just plain bad government at its worst.

Mr. Wieland urged the Board to remember that the citizens who spoke from West Lewinsville Heights were solely responsible for the very creation and the existence of Lewinsville Park and had nearly 30 years ago saved the precious 38-acre site from becoming another bunch of houses, as planned by the developer. He stated that they alone provided the impetus that prompted the Board of Supervisors to acquire the land by eminent domain and the Park Authority to establish the park for the benefit and enjoyment of all Fairfax County citizens. He said that the outrageous Park Authority/MYS deal worked out behind closed doors was small thanks for the residents' prior efforts and sacrifices. Mr. Wieland stated that Fairfax County wanted the residents to tolerate an intolerable situation and that the residents were being asked to make a sacrifice that should be unthinkable to any rational government official, forcing the residents of the surrounding homes to endure the crowds, the traffic, the parking problems, the noise, and other major irritants that would result from Marymount University, a private institution, playing a full home schedule of soccer and lacrosse games almost in the residents' backyards.

Mr. Wieland stated that some soccer enthusiasts would argue that Fairfax County would gain a first-class athletic facility at little or no expense to the taxpayers because MYS and Marymount would be footing the bill, but he submitted that argument was fallacious. He said the County and its citizens, particularly the residents of West Lewinsville Heights, would actually be losing an athletic field to two well-funded and very politically powerful entities, and the arrangement essentially would prevent the average citizen from enjoying the field, except at midnight, during early morning hours when neither MYS or Marymount has scheduled a practice or a game, or in the snow when not even MYS scheduled outdoor games. He asked that the Board apply common sense and fairness in deciding the appeal and stated that the citizens and the residents of West Lewinsville Heights and Fairfax County will have to live with the Board's decision.

Charlotte Basset-Zimmerman, 8106 Birnam Wood Drive, McLean, Virginia, came forward to speak in support of the appellants' position. She stated that she had resided at her property for 40 years, and she represented the Lewinsville Coalition and its 1200 McLean households. She assured the Board that the Lewinsville Coalition fully supported the appeal and believed that allowing Marymount University, a private institution that was not situated in Fairfax County, use of a field at Lewinsville Park for its varsity soccer and lacrosse home games was shortsighted, politically motivated, and plain wrong. Ms. Basset-Zimmerman urged the Board to consider what would ensue if crowds of people descended upon Lewinsville Park to support Marymount University and a visiting team from another college, 300 or more fans crowded into the small confines of Lewinsville Park. She explained that she had spoken with parents whose children were involved with MYS and was told that a crowd of more than 40 spectators was unusual and that the norm for most games was more like 25 to 35, but occasionally as many as 50 or more attended for important but infrequent local MYS tournament games involving elite travel teams. She said the Marymount attendance, especially in years when they had strong, winning soccer or lacrosse teams, will be far higher than anything Lewinsville Park or the soccer complex near her home had seen at such games in the past.

Frank Crandall (phonetic), no address given, came forward to speak in support of the appellants' position. He stated that he was speaking on behalf of the McLean Citizens Association (MCA) and was the chairman of its environment, parks, and recreation committee. He said that MCA was established in 1914 and represented the 26,000 households and 65,000 population of the McLean Planning District.

Mr. Crandall stated that the County and all of its entities, FCPA, Board of Supervisors, and County staff, have violated stated procedures. He said an indication of that was district parks were supposed to be 50 to 200 acres, and the subject 38-acre park, which would normally be regarded as a community park, had been upgraded to a district park so it could be loaded with lights and other things.

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENS DORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 56

Mr. Crandall stated that a lease had been used to effectively deprive citizens at large of the use of public facilities because the lease conveyed some exclusivity to the lessee, and the lease had been used to subvert the Department of Community and Recreation Services' scheduling of public recreational facility use. He stated that the lease had been used to negate policy that two-thirds of team members must be from Fairfax County, and he commented that the policy was recently upgraded by the Board of Supervisors to three-fourths of team members must be from Fairfax County and would take effect the following year. He said the arrangement with Marymount clearly violated that. Mr. Crandall stated that law recognized the fiduciary duty as being the highest and most compelling of all duties. He said the fiduciary duty of FCPA, the Board of Supervisors, and County staff was to administer the County so that each of its citizens share equally in all of its recreational and park resources, and he submitted to the Board that the last three points he made indicated a substantial breach of the fiduciary duty. He stated that a lease had been used to convey a right for a private corporation to charge another private corporation money for the use of publicly-owned land, which he said, if not outright illegal, certainly represented a gross abuse of discretion.

Mr. Crandall appealed to the Board to redress the abuses that had been committed by the FCPA, the Board of Supervisors, and the Zoning Administrator.

Ms. Stehman, in rebuttal, stated that the issue at hand was whether or not the use of the one field at Lewinsville Park by Marymount University as part of the agreement with the FCPA and MYS was a public use. She said that some other issues raised relative to park facilities were not on the table. With regard to whether or not the use by Marymount was a public use, Ms. Stehman contended that it was a public use, as the Zoning Administrator had determined. She said that Lewinsville Park was a facility that was owned by the FCPA, and because of the agreement, the FCPA retained control over maintenance, scheduling, and use of the facility.

Ms. Stehman stated that the use by Marymount was a use of about 10 percent of the hours that were allocated to MYS, and there was no difference in the intensity of the one field being used by a particular group.

Ms. Stehman explained that the FCPA allowed other entities, high schools, corporations, and a wide variety of organizations, to use their facilities. She pointed out that there were other public uses that also had some of their facilities used by specific organizations, such as public schools and libraries where meetings were held by community groups and scout organizations. She said that the use that was being made of the field by Marymount in the subject instance was not much different.

Ms. Stehman said she would ask John Pitts to speak to the issue of the field. She said she thought it was an issue that the County was interested in having the field upgraded, and it was not upgraded specifically for the use of Marymount.

Ms. Stehman commented that the citizens had made a point of mentioning their lack of involvement. She said she understood there had been some involvement by the citizens in the area and that there was within the agreement a provision for a formal working group that included the West Lewinsville Heights Citizens Association as a representative group to discuss this agreement.

John Pitts, Fairfax County Park Authority, responded to Mr. Hart's earlier question about examples of other similar leases or agreements by discussing the Cub Run field house located adjacent to the recreation center that was under construction. He said the proposal was that a field house with an indoor track be constructed by a private party and operated by the private party for the duration of the long-term lease. He explained that a special exception was not required, that it was addressed at the 2232 stage in terms of the character of use. Mr. Pitts said that was one example of a type of use where there was private involvement and yet still public control.

Ms. Gibb asked whether the FCPA had a lease or an agreement with any other private company for use of Lewinsville Park, and Mr. Pitts responded not for Lewinsville Park, no.

Ms. Gibb asked whether the FCPA had a lease or an agreement with any other private company for any other park that is like Lewinsville Park that did not have a building or just the field. Mr. Pitts replied that

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENDORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 57

Richard Jones Park was owned by the FCPA and leased to a golf concessionaire who constructed and was currently operating as a private facility on public land.

Ms. Gibb asked whether that had existed only as a golf facility. Mr. Pitts responded that it did not go from passive to a special purpose park. He indicated it was perhaps not a district park. He said he could not think of another district park example, although he said he thought the recreation center was also a special purpose park.

Mr. Hammack asked whether there was any definition of what quasi-public use was in the Ordinance. Ms. Stehman replied that she did not believe quasi-public use was defined. She said it was a Category 3 special exception use and generally included things that were institutional uses, including colleges and universities.

Mr. Hammack asked whether there was a definition of what constitutes it. Ms. Stehman answered in the negative and said she thought it was self-defining by the kinds of uses that were listed as quasi-public uses.

Mr. Hammack commented that meant it was not completely public or exclusively public, and Ms. Stehman agreed.

Mr. Hammack asked whether there was any written policy adopted by Zoning Administration which defined how much limited use of a field could occur before it became a non-public use. As an example, Mr. Hammack asked whether a field could be used 49 percent of the time and still be considered a public use. Ms. Stehman replied that there was no set policy and said that each circumstance would continue to be looked at on a case-by-case basis, and it would depend on the type of use, the area that was being used, the intensity of the use, and a lot of variables. She commented that 49 percent sounded quite a bit high.

Mr. Hammack commented that the justification was being made based on 9.4 percent of time and the Board was being told that was insignificant and did not make the use of public space by a private university a non-public field. Ms. Stehman clarified that the 9.4 percent number was 9.4 percent of the hours that MYS had to use the facility and not 9.4 percent of all the hours the field was available for use, which reduced the percentage further, and also meant that the use by Marymount did not intensify the use of the field at all. Mr. Hammack responded that that may be subject to debate, but it was still 300 hours of time given to a private school.

Mr. Hammack asked whether MYS would be permitted to sublease part of its time if Marymount were a larger named university that had a bigger soccer program or if it would change anything if the University of Virginia wanted to come up a couple of times a year to use the field for four hours in an afternoon. Ms. Stehman replied that was a determination that would be made by the FCPA, and if the Zoning Administrator were asked to provide some advisory opinion on that, what was specifically proposed would have to be considered.

Mr. Beard asked, in regard to the golf course example, whether they were concessionaires and whether they changed the greens or the tees themselves with turf or whether that type of maintenance was reserved for the County. Mr. Pitts responded that in the Richard Jones Park example, they were a concessionaire, and they were, subject to FCPA review, responsible for maintenance of the course and were responsible for construction of it. He said the lease agreement involved FCPA in certain ways to assure the facilities were constructed in a way that they could be used by the public at the end of the term.

Mr. Beard commented that it was a facility in which they act as a concessionaire for the County residents primarily, and Mr. Pitts agreed and explained that the concept was that if FCPA did not have funds to construct it but they could encourage private participation, the facility could be provided sooner and ultimately would become an asset to the County.

Mr. Beard asked whether one of the contentions in the subject case was that the improvement of artificial turf and so forth benefited the public during the times it was not being used by Marymount or McLean Youth. Mr. Pitts replied that there was a public benefit. He said the turf itself was considered an enhancement to the ability to use the field in times of inclement weather and would be more durable in that regard, enhancing the use times, which was considered to be a public benefit in the discussions about the agreement.

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENS DORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 58

Mr. Hammack asked whether the Cub Run facility was open to the public. Mr. Pitts replied affirmatively and said it was just a concession.

Mr. Hammack commented that at Cub Run the concessionaire could not sell 10 percent of the time or do what they wanted to for other purposes, which Mr. Pitts confirmed.

Mr. Pitts said one of the points discussed was that Lewinsville Field 2 would still be open to the public. He explained that if you considered the percentages and you added in the additional time that would just be available for public use, Marymount's use was about five percent, MYS's use would be about 54 percent, and there was 43 percent remaining which would be available for public use. He added that one of the things they tried to make certain of in the agreement was that it was not exclusively for use by Marymount or MYS and that there was still a public benefit available from the facility.

In the Cub Run example, Mr. Pitts explained that it will be operated as a concessionaire, would be open and available to the public, but yet it was the similar circumstance where it was a facility that was needed predominantly by the adjacent high school for their track program. He said there were other related uses that the concessionaire intended to provide that would provide recreation facilities to the public for a fee. He stated that the agreement regarding Lewinsville Field 2 specifically excluded any fee recovery from any group or entity that was invited to play there by Marymount or anyone.

Ms. Gibb indicated she was worried that the analysis was based on the amount of time rather than the intensity of the use, and she asked what would happen if Marymount's representations regarding the attendance numbers were wildly wrong and what was available to the people that live next door. She commented that the type of thing that would come out at a special exception hearing would be all the facts and figures and negotiation would take place. Mr. Pitts replied that the agreement acknowledged that the facilities were limited and there would be creativity needed in terms of making sure that there are limited impacts associated with the use. He said the agreement provided for community involvement as a part of that to try to come to some solution if there was some impact that was not anticipated. He stated that Ms. Gibb was correct that Marymount's representations that their intensity of use had some limitation were being relied upon.

Ms. Gibb asked whether FCPA could void the agreement. Mr. Pitts responded that the agreement could be voided if disregard for the terms of the agreement were exhibited, in which case the facility would become the Park Authority's and use could be denied.

Ms. Gibb asked whether Marymount was limited regarding the number of spectators. Mr. Pitts replied that there was no limitation and added that their representations had been a number that was approximately 115 residents.

Ms. Gibb commented that it might be difficult to void the contract if it required Marymount's disregard of something nebulous. Mr. Pitts answered that the test in the contract was pretty high and that there were other requirements, such as complying with all FCPA policies, which had restrictions such as parking only in designated parking areas, and complying with any applicable laws or other regulations that would cover indecent exposure or other incidents, which he said FCPA was committed to assuring did not occur.

Ms. Gibb commented that they apparently had not had much luck pursuing that. Mr. Pitts clarified that Ms. Gibb was referencing that the community did not feel satisfied, and he stated that after discussions occurred at the Board level about the agreement and the Board members expressed a similar concern, the Section 10 provision in the agreement was added as a framework for resolution of problems as they occurred with the hope that would be sufficient.

Ms. Gibb asked whether Marymount was a party to the agreement. Mr. Pitts replied that neither Marymount nor Lewinsville Coalition were a party to the agreement, but he said that they were both named in Section 10 of the agreement as participants in a group that would meet periodically to resolve any issues that should occur.

Mr. Beard asked if FCPA were to void the agreement or it were to be voided through McLean, whether the

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENSORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 59

County would be liable for the money that Marymount had put into the facility. Mr. Pitts answered that that would be a question for the County Attorney.

Mr. Beard asked whether that was in the agreement. Mr. Pitts replied that there was no reference. He added that the agreement was not with Marymount and said he could not answer whether there was a provision in the separate agreement between MYS and Marymount.

Mr. Beard asked whether Mr. Pitts was familiar with the separate agreement. Mr. Pitts stated that there was an agreement in FCPA's possession and that they confidently felt covered. He said if FPCA terminated the agreement for whatever reason, there were grounds for rejection of Marymount's claims to the facilities.

Mr. Beard asked if that included any money invested in them, and Mr. Pitts responded that the County Attorney might be better prepared to answer that.

Mr. Hammack asked, with regard to the agreement with MYS, whether Marymount had to comply with the FCPA or Fairfax County policies determining the number of Fairfax County residents playing on the teams to qualify as a public purpose. Mr. Pitts replied that they did not have to comply because the field was not released for allocation to the Department of Community and Recreation Services, that the field was controlled by the FCPA, and the allocation policy did not apply.

Mr. Marr thanked the Board for listening to and asking a series of good questions with respect to the testimony presented. He pointed out that the Clerk to the BZA required notice be sent to almost 50 of the adjoining property owners and that the notice made clear that there was an opportunity to provide written or verbal comment. He said he thought the verbal comment had been helpful and highlighted the need for the special exception process.

Mr. Marr stated that the comments presented at the hearing and a review of Ms. Gwinn's letter made it clear that trying to squeeze the use by Marymount under the public use definition did not fit. He said that the argument boiled down to it was okay because only so much percent is private and that a clear reading of the Ordinance required the BZA to support the appellants' position and find against the position taken by the Zoning Administrator.

Mr. Marr pointed out that the reason the appellants received a letter on April the 28<sup>th</sup> was after going through previous appeals where it had been disclosed that at least part of this process had been done by e-mail transmission only, there had been an oral determination made that the appellants were not made aware of until after the agreement had actually been signed, and it was only when the BZA asked that if the appellants submitted a letter requesting a written opinion of the Zoning Administrator, it would be provided. Mr. Marr said the questions had pointed out that the process did not see the light of day, and he urged the BZA to reverse and overrule the Zoning Administrator.

Chairman DiGiulian closed the public hearing.

Mr. Pammel commented that this was an extremely complex and difficult case, so it would take him a bit of time to wade through all of the issues to identify them. He said with respect to Appeal Application A 2003-DR-030, the appellant being West Lewinsville Heights Citizens Association, Stephen L. Sulzer, Leonard M. Berman, Daniel Wolkensdorfer, Donald N. Huff, and Robert Rosenbaum, for the Lewinsville Park located at 1659 Chain Bridge Road, the appeal was of a determination that the use of the field located at Tax Map Parcels 30-3 ((1)) 38 and 65 remained a County park, which was allowed by right as a public use, and, therefore, the special permits of the Zoning Ordinance were not applicable, that being the opinion of the Zoning Administrator.

Mr. Pammel read from sections of what he said was some of the rationale that was used. He said that under the definition "public use" as set forth in Article 20, it basically stated that uses sponsored by the agency, such as Fairfax County Water Authority, Social Services Board, Redevelopment and Housing Authority, Economic Development Authority, Juvenile Court, and Fairfax Falls Church Community Services Board, shall not be deemed public uses and shall be subject to the applicable Zoning Ordinance provisions for the proposed use, and provided, however, that if such uses are implemented under the direct authority of the

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENDORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 60

Fairfax County Board of Supervisors, they shall be determined public uses.

Mr. Pammel read what he described as the basis or part of the basis expressed by the Zoning Administrator, as follows: "The use of this field for home games by Marymount does not cause the park to become a college or university or a sports arena or a stadium. As this use is being conducted in conjunction with a public park, the Group 4 special permit use that you reference," (referring to Mr. Marr), "is not applicable, and these special permit uses are for recreational or social uses where membership thereto is limited to residents of nearby residential areas. As this is allowed by right, the general standards for special permit uses or special exception uses set forth in Sections 8-006 and 9-006, respectively, are not applicable."

Mr. Pammel stated that his motion would be to overturn the position of the Zoning Administrator because he said he did not think that the rationale based in the above two sections, the definition and Ms. Gwinn's reading of that authority, really allowed the Park Authority the right to lease to an entity which was nonprofit, for the use, in this case, 3187 hours, of a facility at Lewinsville Park and then allowed that entity, which was institutional, again, referring to MYS, to sublease approximately nine and a half percent of their playing time to an institutional use, the college, not located in Fairfax County. Mr. Pammel said he thought the term used in the Ordinance and throughout used the term "exclusively for public purposes." He said he did not see how to read into that language the allowance of Marymount University, as a private institution, to use, albeit a small amount of time, 300 hours, a public park and say it was permitted by right.

Mr. Pammel commented that Mr. Marr had followed up with the citation from the Supreme Court of Virginia and Board of Zoning Appeals for the County of York versus 852 LLC, record No. 981246, and Mr. Pammel indicated it was on target relative to this issue.

Mr. Pammel stated that his opinion was that the Park Authority had abrogated its responsibility in the management of the public park system for the County in allowing entities that they leased facilities to to sublease those. He said there was absolutely no control, and in this case, it clearly had violated the requirements of the Ordinance.

Mr. Pammel said that whether this fell under a special exception use as set forth in the Ordinance or under a Group 4 special permit use, his inclination was that it fell under the section of special exceptions, requiring Board of Supervisors approval because it was a college or university function. He said it was established and sanctioned by that university, and, therefore, it was part of the use of the university.

Mr. Pammel moved to overturn the ruling of the Zoning Administrator with respect to the appeal. Ms. Gibb seconded the motion.

There was discussion as follows.

Mr. Hammack commented that the definition of public use dealt with exclusively for public purposes. He indicated that where Mr. Pammel started in his motion, the Ordinance said that a number of Fairfax County authorities shall not be deemed public uses and shall be subject to applicable Zoning Ordinance provisions for the proposed use, provided, however, if such uses were implemented under the direct authority of the Fairfax County Board of Supervisors, they shall be deemed public uses. Mr. Hammack said he thought anything not being used for public purposes should go to the County Board.

Mr. Hammack further stated that under the other standards and in particular Paragraph 4, Section 8-401, Group 4, Special Permit Uses for Community Uses, it says, "any other recreational or social use operated by a nonprofit organization" and then had other definitions. He pointed out that in Paragraphs 1 and 9 of Section 9-301, part of the staff report talked about special exception uses for colleges and universities and in the heading called them quasi-public uses. Mr. Hammack stated that quasi-public uses, by definition, could not be exclusively public uses. He said they included sports arenas and stadiums, and the subject field was being used for all home games for soccer and lacrosse under an assignment of the lease.

Mr. Hammack stated that anybody could avoid the provisions of the Zoning Ordinance if they wanted to subcontract out. He said that although he was sure the Zoning Administrator thought it was a limited use, it was a limited use by a nonprofit or it was a use by a college or it was a use by a sports arena or stadium,

~ ~ ~ September 16, 2003, WEST LEWINSVILLE HEIGHTS CITIZENS ASSOCIATION, STEPHEN L. SULZER, LEONARD N. BERMAN, DANIEL J. WOLKENS DORFER, DONALD N. HUFF, ROBERT ROSENBAUM, A 2003-DR-030, continued from Page 61

which was included in the definitions that required special exceptions, and he said he thought a mistake had been made in that regard.

Ms. Gibb commented that she thought that where the case ran afoul was the emphasis on the hours that the university was going to use and not the intensity or the possible impact of those few hours and that the case was the kind that a special exception analysis would be appropriate for. She said that traffic, safety, environmental, and all those issues that are taken up routinely with the special exception were not given any emphasis or thought.

Mr. Hart stated that he would reluctantly support the motion and made the observations that the problem was the wording of some provisions of the Ordinance. He said that if the term "exclusively" instead were something like "predominately," "substantially," or "overwhelmingly," there would be a way to rationalize a minimal amount of some other kind of use or allocation of a particular field, but he said where the definition says "exclusively," the plain language of the Ordinance provision under Virginia law would be to the exclusion of other things and would be 100 percent and not 91.4 or something like that.

Mr. Hart commented that another problem was that the term "public purposes" was also somewhat undefined. He said there was some further guidance in the paragraph with the definition of "public use" and there were a lot of things emphasized or itemized, but there was not any explication of the consequences of a lease or a sublease or to whom. He stated that he would not conclude that a lease, per se, was improper. Mr. Hart pointed out that there were many things mentioned, public schools or other County departments, a public golf course that was open to the public, a public recreation center, and those kinds of things might be the subject of a lease and might still be for public purpose in a public use and, to his thinking, wouldn't necessarily be jeopardized and that FCPA's ability to identify an operator of a facility or someone to build it and operate wouldn't necessarily be jeopardized.

Mr. Hart indicated the subject case was one step removed in that it involved a private university from outside of Fairfax County. He said he did not know whether that made this a college athletic facility or a college or university, but he said it was something that fell between the cracks in the Ordinance. He suggested that at the completion this item could go back on the work program as to what was done with the definitions.

Mr. Hart indicated that the answer to the question before the Board of whether the Zoning Administrator's determination was right that this was a public use was that if the definition says "exclusively," it was not exclusive, and he did not think the determination was correct.

Mr. Hart stated that he disagreed with a lot of things in the papers. He said he would not necessarily characterize all this as abuse and that it struck him more as an effort to get around some of the obstacles to create athletic facilities that were needed, a misapplication of this provision or misguided in some way. Mr. Hart indicated that it was recognized that there were needs for athletic facilities. He stated that if this was going to be by right, procedurally it had to be exclusively for public purposes, and he said that based on the record before the Board, he could not conclude that it was exclusive.

Mr. Pammel clarified that his reference to special exceptions should have read Category 3, Special Exceptions.

Chairman DiGiulian called for a vote on the motion, which passed by a vote of 7-0, and declared that the motion carried unanimously to overrule the Zoning Administrator.

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~ ~ ~ September 16, 2003, (Tape 4), Scheduled case of:

9:30 A.M. MCDONALD'S CORPORATION, A 2003-BR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed and is operating a freestanding video DVD vending machine which is not in substantial conformance with the development conditions of Special Exception SE 00-B-009 in violation of Zoning Ordinance provisions. Located at 8976 Burke Lake Rd. on approx. 1.14 ac. of land zoned C-6.

~ ~ ~ September 16, 2003, MCDONALD'S CORPORATION, A 2003-BR-013, continued from Page 62

Braddock District. Tax Map 69-4 ((1)) 49 pt.

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that a deferral of approximately six weeks had been requested by the appellant. She said she had spoken with the appellant's attorney and been told they were working with the Zoning Evaluation Division to determine how the vending machine could remain on the site by possibly moving inside so that it would be in substantial conformance with the special exception, including the hours of operation.

Vice Chairman Ribble called for speakers to speak to the issue of a deferral.

Michael Malak, 8621 Victoria Road, Springfield, Virginia, president of the Kings Park Civic Association, came forward to speak. Mr. Malak stated that he was opposed to a deferral. He said he did not want to spend another six or seven hours at the future date for the hearing and he had been at the Government Center two or three previous times with respect to McDonald's.

Dorothy Ballinger (phonetic), no address given, came forward to speak, but made no comments regarding the deferral. Vice Chairman Ribble stated that the Board was taking comments only regarding the question of a deferral, and Ms. Ballinger would be given the opportunity to speak regarding other issues at the public hearing.

Vice Chairman Ribble noted that there had been previous deferrals, and he asked Mary Theresa Flynn, the appellant's agent, to speak to what, if anything, was being done.

Ms. Flynn said the appellant made a proposal a month prior to move the machine or a similar machine inside. She explained that the reason for the current deferral request was due to the people being on vacation that were involved in making the decision and that there was some also confusion regarding the procedural hoops the appellant had to jump through in order to come into what the County considered compliance. She said the appellant was looking at compliance by putting the machine inside and operating fully in compliance with the special exception requirements by operating within the hours of operation of the restaurant. Ms. Flynn explained that the reason there was some confusion was that the letter that was the subject of the appeal stated that the DVD vending machine, if placed inside the restaurant, would be in substantial conformance with SE 00-B-009 and would be permitted. She said that was a thing decided, and the appellant was happy to do it, but had then been given the requirement that they had to go through a substantial conformance determination. She said that although she thought that was a new requirement, they were also happy to it, but had to be given time to do so. Ms. Flynn said that although they were planning on complying with the requirements, she was still required to file the letter, notwithstanding the fact it was never appealed, and said she was being cooperative with the County.

Mr. Hart stated that he had been to the site and looked at the machine the prior day, and he observed that the photographs in the staff report did not reflect what was there and that the machine appeared different. Ms. Stehman said she had been told by Mike Adams, Zoning Administration Division, that he had been to the site two weeks prior, and the photographs and what was on the ground were the same, but they would look into it.

Mr. Hammack moved to defer A 2003-BR-013 to November 18, 2003, at 9:30 a.m., and he said he hoped staff could find some way to work out the additional technicality of coming into compliance. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 16, 2003, (Tape 4), After Agenda Item:

Approval of January 14, 2003, and February 25, 2003 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Beard abstained from the vote.

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~ ~ ~ September 16, 2003, (Tape 4), After Agenda Item:

Approval of September 9, 2003 Resolutions

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

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As there was no other business to come before the Board, the meeting was adjourned at 1:58 p.m.

Minutes by: Kathleen A. Knoth

Approved on: December 21, 2004

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
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 23, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:05 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:05 A.M. STELIOS AND AMY VARIAS, VC 2003-SP-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. with eave 5.5 ft. from side lot line such that side yards total 15.9 ft. Located at 5913 Ridge Ford Dr. on approx. 15,656 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 4.

The applicants were not present at the time the case was called. Chairman DiGiulian moved the case to a later position on the agenda.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LESLIE KNIES, SP 2003-SU-028 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.6 ft. from side lot line and 33.5 ft. from front lot line. Located at 15114 Elk Run Rd. on approx. 12,420 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 417.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Leslie Knies, 15114 Elk Run Road, Chantilly, Virginia, 20150, replied that it was.

Kristen Shields, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to certain R-C lots to permit construction of a two-story addition 16.6 feet from side lot line and 33.5 feet from front lot line. A minimum side yard of 20 feet and minimum front yard of 40 feet are required; therefore, reductions of 3.4 feet and 6.5 feet, respectively, were requested.

Ms. Knies presented the special permit request as outlined in the statement of justification submitted with the application. She said the size and scale of the addition was reasonable in relation to the existing home and was in keeping with the surrounding neighborhood. She indicated there were two similar additions built by the same builder in the neighborhood. Ms. Knies said the staff report indicated 15 or 16 special permits granted in their neighborhood for similar additions. She stated the addition would not have any adverse effect on any of the adjacent lots, and the one tree that would be removed was damaged by a storm. Ms. Knies said the last four feet of the addition went over the 20-foot setback of the wedge-shaped lot. She said the house was originally built 34.8 feet from the property line, and the proposed addition was 33.5 feet from the front property line due to the street following the curvature of the lot in front of the house. She said the addition of the garage would reduce the need for street parking in their neighborhood.

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

Mr. Pammel moved to approve SP 2003-SU-028 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LESLIE KNIES, SP 2003-SU-028 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.6 ft. from side lot line and 33.5 ft. from front lot line. Located at 15114 Elk Run Rd. on approx. 12,420 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 417. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ September 23, 2003, LESLIE KNIES, SP 2003-SU-028, continued from Page 65

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2003; and

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

1. The applicant is the owner of the land.
2. The application is consistent with the standards set forth in the original R-2 Cluster District under which the development of the subdivision took place and the dwellings were constructed.
3. The subject lot has an unusual configuration.

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

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

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

1. This special permit is approved for the location of a two story addition, as shown on the plat prepared by Sam Whitson, L.S./Land surveying, dated March 10, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 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. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Beard 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 1, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:05 A.M.        STELIOS AND AMY VARIAS, VC 2003-SP-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. with eave 5.5 ft. from side lot line such that side yards total 15.9 ft. Located at 5913 Ridge Ford Dr. on approx. 15,656 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 4.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stelios Varias, 5913 Ridge Ford Drive, Burke, Virginia, replied that it was.

Kristen Shields, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, specifically a carport enclosure, 7.0 feet with total

~ ~ ~ September 23, 2003, STELIOS AND AMY VARIAS, VC 2003-SP-109, continued from Page 66

side yards of 15.9 feet. A minimum side yard of 8.0 feet with a minimum total side yards of 20 feet is required; therefore, variances of 1.0 foot and 4.1 feet, respectively, were requested.

Mr. Varias presented the variance request as outlined in the statement of justification submitted with the application. He said that in order to comply with the County's guidelines, he would have to demolish the current carport to convert it into a garage.

Chairman DiGiulian asked if there was anything unusual about the subject lot, to which the applicant replied no.

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

Mr. Hart moved to approve SP 2003-SP-109 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STELIOS AND AMY VARIAS, VC 2003-SP-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 15.9 ft. Located at 5913 Ridge Ford Dr. on approx. 15,656 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8))

4. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 23, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The subject property is only 73 feet wide at the front with converging lot lines, narrower at the front.
4. The house is skewed to the lot lines such that the right rear corner is closer to the lot line than the right front corner.
5. The applicant is just proposing to enclose a fairly substantial existing carport which has an existing roof.
6. The enclosure of the existing carport will not have a significant visual effect or negative impact.
7. The variance is consistent with or of a slightly less degree than several others granted in the immediate neighborhood.
8. The applicants have chosen the logical side of the house to place the garage.

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

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

~ ~ ~ September 23, 2003, STELIOS AND AMY VARIAS, VC 2003-SP-109, continued from Page 67

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Larry N. Scartz, dated May 22, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Beard 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 1, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 9044 Patton Blvd. on approx. 1.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 82. (moved from 7/22/03, notices not in order) (Deferred for decision only from 9-9-03)

Chairman DiGiulian stated that Mr. Ribble had indicated that he would like to participate in this case, so he proposed holding it later on the agenda. The other Board members had no objection.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMED & BENAZIR FERAZI, SP 2003-LE-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 addition to remain 9.0 ft. from side lot line and to permit accessory structure to remain 10.5 ft. from side lot line and 9.0 ft. from rear lot line. Located at 6825 Ridgeway Dr. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((7)) 6. (Cont'd from 6-24-03)

Chairman DiGiulian noted that SP 2003-LE-022 had been withdrawn.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALAN C. SAUNDERS, SP 2003-BR-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.8 ft. from side lot line. Located at 7307 Leesville Blvd. on approx. 11,252 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alan C. Saunders of 7307 Leesville Blvd., Springfield, Virginia 22151 replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction in minimum yard requirements based on error in building location to permit an addition consisting of the enclosure of a previously existing carport to remain 8.8 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 3.2 feet was requested.

Mr. Saunders presented the special permit request as outlined in the statement of justification submitted with the application. He explained that he had enclosed the existing carport with no change to the size or structure and no encroachment on the side yard. He said there was no adverse impact on any surrounding properties. Mr. Saunders said that at the time the enclosure was built, he did not recognize there was a 12-foot side yard requirement. He said he believed the request was relatively minor and that the enclosure had enhanced his property while affording security to a vintage automobile kept in the garage.

Mr. Pammel said he noticed in the applicant's written justification that several contractors had been contacted before work commenced and that all of the contractors said there was no requirement for a building permit. Mr. Saunders said the statement was correct. He stated that he was specifically told by the contractors that an electrical permit would be required to move the electrical meter box from inside the carport to the outside where Dominion Virginia Power could gain access. Based on that information, he said he applied for and was granted an electrical permit. Mr. Saunders said he was told by two contractors that because there was no change to the actual structure or size of the building, a building permit would not be required. He explained that when the electrical inspection was completed, the inspector had said he thought Mr. Saunders would need a building permit for the remainder of the job. Mr. Saunders said he moved immediately to comply with the requirement.

Mr. Hammack asked the applicant if he installed electricity inside the enclosure. Mr. Saunders said there had been existing electrical, and he had added boxes along the framed in wall to comply with the code requirements.

Mr. Hammack asked if they were inspected. Mr. Saunders said that the only thing inspected was the meter box that was moved to the outside of the building and that the final electrical inspection would be conducted with the building inspection.

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

Ms. Gibb moved to approve SP 2003-BR-029 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALAN C. SAUNDERS, SP 2003-BR-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.8 ft. from side lot line. Located at 7307 Leesville Blvd. on approx. 11,252 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 3. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 23, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant inquired with contractors about the necessity for a building permit.
3. The applicant had the required inspection for the electrical meter box.
4. There is no impact on the neighbors.

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

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

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

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

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

1. This Special Permit is approved for the location of an addition as shown on the plat prepared by

~ ~ ~ September 23, 2003, ALAN C. SAUNDERS, SP 2003-BR-029, continued from Page 70

Bryant L. Robinson, dated May 21, 2003, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.75 ft., bay windows 7.75 ft. and eave 9.25 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. (Def. dec. from 7/15/03)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Rikken, the applicants' agent, 919 North Van Dorn Street, Apartment 300, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, noted that at the July 15, 2003 hearing, the BZA had deferred decision on the subject application. Mr. Sherman explained that the applicants had previously requested a variance to permit construction of a dwelling 9.75 feet, bay windows 7.75 feet, and eave 9.25 feet from the side lot line, but the applicants had revised their request and were currently seeking a variance to permit construction of a dwelling 10.6 feet, bay windows 9.75 feet, and eave 10.1 feet from the side lot line.

Mr. Sherman stated that at the previous hearing the BZA had asked staff to investigate several issues. He said that staff had determined the area was not a jurisdictional wetland, and although the majority of homes were located on double lots, there were dwellings located on single lots in the immediate neighborhood. He noted that the revised plat submitted by the applicants clarified the location of the storm drainage easement and said that two memoranda from Steve Aitcheson, Deputy Director of Storm Water Management Division, Department of Public Works and Environmental Services, were included in the addendum to the Staff Report which indicated that the improvements as shown on the grading plan submitted by the applicants would address the existing drainage problems on the lot.

Mr. Hart asked for clarification of the purpose for the stub-out for future connections of underdrains and roof drains in the revised proposed Development Condition 3. Mr. Sherman indicated that it was to allow the neighboring houses to connect into the storm drain.

In response to Mr. Hart's question regarding whether the stub-out would be located on Lot 140, Mr. Sherman replied that he was unsure of the exact location, but said there was a plat marked up by Mr. Aitcheson included in the staff report.

Mr. Hart commented that if there was a requirement for something located offsite, he thought it would have to be located within an easement, and based on the information before the BZA, he said he did not understand that to be the case and asked if the applicants would clarify. Mr. Hart added that he understood the plan was to try to correct an existing problem in the neighborhood, but that development conditions were not generally required for offsite work or they were coupled with a requirement that an easement be approved by the County Attorney and recorded.

Susan Langdon, Chief, Special Permit and Variance Branch, said she did not believe an easement would be required for a stub-out, but would be required for the drainage pipe.

Mr. Rikken noted that concerns and questions were raised at the previous hearing regarding whether there was a genuine need for the setback relief, easement encroachment by bay overhangs on the left side of the

dwelling, storm water drainage management along the rear of the property, architectural concerns due to the proposed building height, density concerns, whether there were existing homes in the subdivision built on lots of similar dimensions, and whether any developing wetlands were involved because of the storm drainage issues.

Regarding the issue of there being a genuine need for the setback relief, Mr. Riggen referenced page 6 of the grading plan and said it noted that a sanitary sewer line and its accompanying easement existed on the right side of the property. He said that County Utility Rules in the 1995 FPM (sic) required a 15-foot distance from the pipe to any existing or proposed building. He explained that the required distance would push the right side of the foundation to 20.4 feet from the property line, and with the 15-foot setback on the left side, only 14.6 feet of buildable land in the center of the lot would remain. Mr. Riggen said further evaluation of the site since the prior hearing and existing utility locations enabled a shorter variance request of 10.6 feet from the left lot line for the dwelling, 9.75 feet for the bay overhangs, and 10.1 feet for the eaves. He noted that a new site plat, including the new setback requests on page 4, was submitted.

Regarding the issue of easement encroachment by bay overhangs, Mr. Riggen explained that the bay overhangs, which extended from the foundation wall on the left side of the dwelling, had been shortened to a 10-inch overhang, and with the moving of the footprint of the dwelling nine inches toward the right side of the property, the left side bay overhangs had been moved so there was no intrusion over the storm drain easement on the left property line.

Regarding the issue of storm water management, Mr. Riggen explained that concerns about poor storm water management had been ongoing on the subject and adjacent properties, and attempts by the County to address the issue included the existing underground box culvert and drainage located on Lot 163. He said that recent complaints by surrounding owners resulted in a site inspection by County storm water drainage personnel, which found that the rear yard inlet on Lot 163 was not properly placed to alleviate the probability of storm water ponding. He noted that in a letter addressed to surrounding property owners in July of 2003, Mr. Aitcheson informed them of the need to perform site work to help relieve storm water ponding, but work had not commenced as of August of 2003 because the necessary forms had not been returned by the adjacent property owners. On page 5 of the booklet Mr. Riggen presented, he said there was a graphic representation of the current grading along the rear property line of Lot 163 and a picture of the eastern corner of the property which showed a natural swale to which water would be channeled from Lots 140 and 141 and to the back areas of Lots 162 and 163. He noted that on page 6 was a full grading plan for the proposed home, with a close-up of the backyard area displayed on page 7, and said that the proposed grading, the new 10-inch easement the applicants would grant for the pipe, and a yard inlet with accompanying underground pipe would provide a channel for any ponding water to flow directly from the area to the existing storm culvert. He explained that the letter on page 11, which evidenced that the proposed plan had been reviewed by the County storm drain personnel and met with their approval, mentioned a stub-out that had been added to the final grading plan which would enable the neighboring property owners, if they wished, to tie future connections of offsite drains from their backyards into the proposed inlet to help channel water from their yards into the existing culvert to alleviate any further problems.

Regarding the issue of architecture and building height, Mr. Riggen explained that Wellington Subdivision was predominately a one-story rambler and split level development, but there were a number of two-story homes in the community. He noted that on page 8 of the presented booklet was a map centered on Bolling Drive with accompanying photographs of two-story homes located on Bolling Drive. He said that when compared to the cover rendering of the front of the proposed dwelling, the pictures showed it within the present architectural sampling of the neighborhood. Mr. Riggen said the proposed dwelling met the parameters of R-2 zoning which allowed mid-gable height elevations of 35 feet.

Regarding the issue of density, Mr. Riggen explained that although the majority of single-family homes in the subdivision had been built on double lots, there were numerous homes in the development built on single lots and he noted that there was a map showing existing single-lot homes on page 9.

Regarding the issue of developing wetlands, Mr. Riggen said page 10 contained a copy of a visual site evaluation which was performed by Alexandria Surveys International that found the site dry with no wet areas at the time of the inspection, and further evaluation found no wetland associated vegetation even though the grass in the area had not been cut for several months.

Mr. Riggen summarized by saying the request for the variance was generated by the presence of a sewer line 5.4 feet from the right property line, which required a 15-foot distance for any structure, and the 14.6-foot buildable lot dimension caused by the requirement restricted all reasonable use of the property. He noted that a variance was previously granted by the BZA in April of 1997. He said that the previously noted concerns of encroachment by bay overhangs into the existing storm drain easement had been addressed by moving the structure and shortening the bay overhangs. He stated that the proposed dwelling and accompanying grading plan, which had been developed in cooperation with the County Storm Water Management personnel, would improve storm water drainage along the rear of the property, and the dwelling's architecture was not radically different from existing homes and did not create a density pattern not already in existence in the subdivision.

Mr. Pammel noted that several comments had been entered into the record relative to building on a single lot and that one representation was that most of the lots contained one house built on two lots. He asked whether the applicants owned either Lot 162 or 164 on either side of the subject property. Mr. Riggen said they did not.

Mr. Hart asked Mr. Riggen to address whether the stub-out work was located on the subject property or someone else's property. Mr. Riggen replied that it was on the subject property. He said that looking from the front of the property, the inlet which would have stub-outs would go in the right rear corner and there would be no destruction of the inlet if the neighbors tied into the inlet to do drainage work in their backyards.

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

Mr. Beard moved to approve-in-part VC 2003-MV-081 for the reasons stated in the Resolution.

Ms. Gibb seconded the motion and stated that she would support the motion because the applicants had satisfactorily addressed the questions the BZA had earlier raised and that it appeared that every effort would be made to remedy the drainage issues. Regarding the issue of compatibility with the neighborhood, she said there could be difficulties with infill, but the applicants had presented photographs of other homes in the area that were located on one lot or had multiple stories, showing the proposed dwelling was compatible with the neighborhood.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.75 ft., bay windows 7.75 ft. and eave 9.25 ft. from side lot line. **(THE BZA APPROVED CONSTRUCTION OF DWELLING 10.6 FEET, BAY WINDOWS 9.75 FEET, AND EAVE 10.1 FEET 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. (Def. Dec. from 7/15/03) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2003; 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 applicants have met all the required standards for a variance.

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

## Ordinance:

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

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

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

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

1. This variance is approved for the location of a dwelling, as shown on the plat prepared by Bryant L. Robinson, dated February 12, 2003, revised through September 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. As approved by the Department of Public Works and Environmental Services, drainage improvements as shown on the Grading Plan dated June 27, 2003, shall be constructed prior to the issuance of a Residential Use Permit. These improvements shall include a stub-out for the future connection of offsite underdrains and roof drains.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1,

~ ~ ~ September 23, 2003, PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081, continued from Page 74

2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JASON HAMPEL & SARAH MALERICH, VC 2003-SU-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line. Located at 12108 Wayland St. on approx. 20,515 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 55.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jason Hampel, 12108 Wayland Street, Oakton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition, consisting of an attached garage with second-story living space above it, to be located 4.7 feet from the eastern side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 10.3 feet was requested.

Mr. Hampel presented the variance request as outlined in the statement of justification submitted with the application. He said the house had been built without a garage in the center of a narrow lot with a drainage easement to the rear and septic fields located in the front with the tank located on the right side of the house, leaving the left side as the only logical place to locate a garage. He stated that there had been approximately 30 garage additions built in the neighborhood. Mr. Hampel explained that he had consulted with his adjacent neighbor, involved him in the design process, and had a letter of his approval in terms of the concept plans.

Mr. Hammack asked why a second story was needed over the garage. Mr. Hampel replied they had attempted to minimize the footprint on the property by containing the modern master suite with large closets and bathroom they wanted in one structure with the garage, which also minimized costs of the foundation and roofing.

Mr. Hammack asked if there were any other configurations extending off the back of the property that could be made which would not require a variance or would require a lesser variance. Mr. Hampel said he had a stack of concept plans they had considered, but the rear drainage easement, the concrete stairwell leading up to the rear door and down to the basement, and the septic tank constricted locations in the rear. He said they had tried to step the addition back a few feet to make it consistent with the other side of the main house, brought the roofline down, and incorporated dormers to minimize the impact from the front.

Mr. Hart commented that in the photographs it seemed like part of the house was two stories and part was one story, with the one-story part to the right of the front door. He stated that 4.7 feet from the property line for a two-story addition had not frequently been approved by the BZA. He asked if there was any way the bedroom part of the addition could be relocated above the existing one-story portion of the house. Mr. Hampel replied that they had considered that, but the size of the space with the existing one-story roof was insufficient to include the bedroom and bathroom they wanted and would require additional construction costs in terms of removing the roof and finding new routes for the plumbing lines that would not be encountered in the proposed location above the garage.

Mr. Hart commented that the requested 23.3 feet wide and 29 feet long garage was several feet longer than those the BZA usually saw and wider than those the BZA had approved. He asked if there was any way the footprint of the garage could be reduced. Mr. Hampel replied that it could be possible. He said they had left 4.5 feet on the side to allow an adequate walking space, but if it were moved over another foot on the side, it would allow for a planting area.

Mr. Hart asked if any windows would be located on the side of the addition, to which Mr. Hampel answered no, but still being in the concept phase, the details such as that had not been determined. He said that side of the bedroom portion would be the bathroom and closets.

~ ~ ~ September 23, 2003, JASON HAMPEL & SARAH MALERICH, VC 2003-SU-103, continued from Page 75

Mr. Hammack noted that an office was shown on the sketch and asked what the office would be used for. Mr. Hampel said the existing office would be converted into the access to the bedroom. He explained that the area on the drawing that indicated a sitting room was originally going to be used as an office, but they did not want to have to walk through the office to access the bedroom, so they downsized the bedroom and incorporated the angle of the ceiling in the office to make the existing office a part of the bedroom.

Chairman DiGiulian called for speakers.

Richard Krause, 12015 Wayland Street, Oakton, Virginia, came forward to speak in opposition to the application. He explained that he and his wife had selected Valewood Manor in 1972 because of the trees and the spaciousness between the homes. He said some owners had added onto their homes, but to the best of his knowledge, most had adhered to the zoning requirements. Mr. Krause stated that the proposed variance of building within 4.7 feet of the side lot line would not be in keeping with the spaciousness between the homes and would infringe on the 15-foot setback zoning requirement. He said he was concerned that the approval of the variance would set a precedent and would result in a change of the character of the neighborhood by homes being located close together.

Mr. Hampel, in his rebuttal, noted that listed in the staff report were variances that had been granted in the area within 6.2 feet and 5.1 feet from the property lines. He said that while driving through the neighborhood, he had seen at least 30 garages, 10 of which had master bedroom suites above and many of which appeared closer than 15 feet from the property line. He explained that he had tried to keep the architecture of the addition consistent with the existing house by bringing the roofline down to the level of the first floor to minimize the visual impact and enhance the appearance of the house. Mr. Hampel said the addition would add value to the house so that he would not be at a competitive disadvantage in terms the house not having a two-car garage as opposed to the majority of the neighbors who had the benefit of the convenience and security of garage additions and the convenience of master bedroom suites above.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 2003-SU-103 for the reasons stated in the Resolution.

Mr. Pammel seconded the motion and noted that the two granted variances listed in the staff report the applicant had referred to were located in a court approximately one-third mile away from the subject property. Mr. Pammel said that with a cul-de-sac situation, usually there were unusual configurations of lots and other issues involved, and it would be unfair to equate the applicants' request to those two illustrations cited in the staff report.

Mr. Hart stated that he would support the motion, but thought the applicants had made a case of entitlement to some relief because the house was boxed in by the septic field taking up the whole front yard, the septic tank on the right side, and the storm drainage easement to the rear. He noted that the house had no garage, but said the problem was the size of the addition, with the possibility that the garage could be smaller, and the second floor over the garage had not been justified as an alleviation of a hardship as opposed to a convenience. He said he could have supported some request, but not a two-story addition of the proposed size and proximity to the property line.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JASON HAMPEL & SARAH MALERICH, VC 2003-SU-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line. Located at 12108 Wayland St. on approx. 20,515 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 55. 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

~ ~ ~ September 23, 2003, JASON HAMPEL & SARAH MALERICH, VC 2003-SU-103, continued from Page 76

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 23, 2003; and

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

1. The applicants are the owners of the land.
2. A two-story addition 29.0 feet in depth or length located 4.7 feet from the side lot line and 30 feet high at its peak is too high and has impact on the adjoining property.
3. The reasons for the second-story addition demonstrate a convenience by including an office and maximizing the size of the rooms, which maximizes the variance request.
4. The applicants have some constraints in where they could place the addition, but they also have some flexibility in extending out the rear, which would not require a variance of the requested size.
5. The roof has been brought down to try to make it appear less intrusive with less of an impact; however, the actual peak of the roof is higher than the roof on the house.
6. The proposed addition is almost as large as the existing two-story residence.
7. The applicant has not satisfied the nine required standards for a variance application.
8. The subject lot is one of the more uniform in size and doesn't seem to have unusual impacts that could preclude some other development of the property.
9. The character of the Zoning District would be changed by reducing the setback on one side.

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

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

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

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

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

Mr. Pammel seconded the motion, which carried by a vote of 4-2. Chairman DiGiulian and Mr. Beard voted

~ ~ ~ September 23, 2003, JASON HAMPEL & SARAH MALERICH, VC 2003-SU-103, continued from Page 77

against the motion. Mr. Hammack moved to waive the 12-month limitation for refiling an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1, 2003.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M. J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 9044 Patton Blvd. on approx. 1.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 82. (moved from 7/22/03, notices not in order) (Deferred for decision only from 9-9-03)

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

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically an attached two-car garage, 6.0 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 9.0 feet was requested. She noted that on September 9, 2003, the BZA had deferred decision for the requested variance and explained that the original proposal had included two driveways on the site, but the revised proposal showed a circular drive.

Ms. Gibb asked whether the proposed and existing driveways would be narrower. Susan Langdon, Chief, Special Permit and Variance Branch, stated that they both were 12-feet wide and would now be 9-feet wide.

Mr. Hammack asked whether the new proposal met the requirement limiting the amount of impervious surface. Ms. Shulenberger replied that it had been confirmed with the Zoning Administration Division that it did.

Ms. Kroll noted that she had previously presented to the BZA the justification for the granting of the variance that would allow the construction of a 13-foot wide by 37-foot deep garage, at which time concerns were raised regarding the use of the garage, the circulation of the vehicles on the property, and the granting of an additional driveway cut onto the Virginia Department of Transportation (VDOT) maintained road.

Regarding the use of the garage, Ms. Kroll reported that the applicant had applied for a variance to construct a garage on the property that he and his wife had acquired in good faith 35 years prior and that since 1968 they had not had the benefit of a garage or carport as several of their neighbors had. She explained that the applicant had two classic cars that were driven by the applicant several times per month which required interior storage that they desired to park in the garages, which would additionally allow the flexibility to house their everyday vehicles if differing needs required. She stated that the addition was critical for the applicant's ability to remain on the property.

Regarding the concerns raised about the appearance of two driveways entering the property and the additional driveway cut, Ms. Kroll noted that a revised variance plat had been submitted which showed a circular driveway reduced in width to nine feet, and she reported that the VDOT permit division had been consulted and had indicated having no issue with an additional driveway cut onto Patton Boulevard.

Ms. Kroll said the applicant had successfully worked to address the issues raised at the prior hearing, and she believed the application met the qualifications for a variance because the lot was exceptionally narrow, 100 feet wide and over 480 feet deep, with the original siting of the house equidistant from the property lines limiting the ability to construct a garage on the property. She stated that the addition of a garage was reasonable, and several other houses in the areas had garages or carports, so the request was not of a reoccurring nature. She noted that the applicant had worked to minimize the need for a variance by creating

~ ~ ~ September 23, 2003, J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086, continued from Page 78

a 13-foot wide garage and stated that a petition of support had been signed by the six most affected neighbors. Ms. Knoll stated that a strict application of the Ordinance effectively would unreasonably restrict the use of the property, which was already impeded by the house location, onsite Resource Protection Area, and flood plain, and said the variance would be in harmony with the spirit and purpose of Ordinance.

Mr. Hammack noted that the new plat showed the circular portion added to attach both driveways and asked if an extension would be left on the existing driveway where the applicant could park which the applicant did not intend to remove. Ms. Kroll replied that it was not the intent of the applicant to remove the extension, which would allow other cars to pull through the property on the circular driveway if one additional vehicle was parked on the extension.

Ms. Gibb noted that in the photographs it appeared that two vehicles could be parked abreast on the southeast side and that the original amount of asphalt was problematic and had increased with the revision. Ms. Kroll replied that in the area where the applicant was currently parking the vehicles, pavement would be removed because the entire driveway width had been reduced from the current 12 feet to 9.0 feet, and she said it would not be possible to parallel park two vehicles, as typically 8.5 to 9.0 feet would be needed to park a vehicle.

Ms. Gibb commented that the applicant could park in the circular driveway and back the classic vehicles out of the garage if the circular driveway was not needed and was for appearance only.

Mr. Hart said he was troubled by the potential impact from the long garage on the neighbor to the left and asked if any trees would have to be removed. Ms. Kroll replied that the majority of the trees were against the property line or on the neighbor's property, and they would remain, but one 10-inch oak tree on the applicant's property would be removed.

Mr. Hart commented that it was hard to tell exactly where the property line was located in relation to the fence and asked what the distance was from the property line to the neighbor's porch or carport. Ms. Kroll replied that the carport in that area was six or eight feet from the property line. Ms. Shulenberg said that the staff report indicated it was a distance of 10 feet to the carport according to the building permit. Ms. Kroll said the house location survey showed it was 8.7 feet.

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

Mr. Ribble moved to approve VC 2003-MV-086 for the reasons stated in the Resolution, and Mr. Beard seconded the motion.

Ms. Gibb commented that she would not support the motion. She said the subject lot was no different from any of the others on the street, it was a convenience, and all the driveways were bothersome. She added that one driveway would be fine, but the two and the part in the middle were too much.

Mr. Pammel indicated that he supported Ms. Gibb's comments, and he disagreed that the lot was unusually narrow because a 100-foot width was a standard frontage width for a lot in an R-2 District. He said the only feature that would appear to make it a narrow lot was the fact it was so deep because it had a drainage field to the rear.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 9044 Patton Blvd. on approx. 1.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 82. (moved from 7/22/03, notices not in order) (Deferred for decision only from 9-9-03) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ September 23, 2003, J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086, continued from Page 79

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the standards required for a variance, as stated by the applicant's representative.
3. The applicant's representative cited the narrowness of the lot.
4. The applicant's representative cited the questions that were answered in relation to VDOT allowing a second driveway.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Charles E. Powell, dated September 2003 as revised through September 15, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

~ ~ ~ September 23, 2003, J. CARLTON HOWARD, JR., TRUSTEE, VC 2003-MV-086, continued from Page 80

be obtained.

3. Notwithstanding note 13 on the plat, the dimensions of the addition shall be no greater than that shown on the plat.
4. 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. Beard seconded the motion, which **FAILED\*\*** by a vote of 3-4. Mr. Pammel, Mr. Hart, Ms. Gibb, and Mr. Hammack voted against the motion. Mr. Hart made a motion to waive the 12-month waiting period for refiling an application. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1, 2003. This date shall be deemed to be the final decision date of this variance.

\*\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a variance.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      HIGHVIEW PARK CHRISTIAN ASSEMBLY, SPA 79-A-109 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 79-A-109 previously approved for a church and child care center to permit change in permittee. Located at 4100 Hunt Rd. on approx. 1.35 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 19 and 19B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor Phil Thomas and Administrator Olga Lloydre replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to S-109-79, previously approved for a church and child care center, to permit a change in permittee from the Fairfax Community Church of God to the Highview Park Christian Assembly. No other changes were proposed with the application. The church building located on the subject 1.35-acre site seated 200, and there were 63 parking spaces located onsite. The change in permittee would continue child care center use for 57 children, operating between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. Staff concluded that the subject application was in harmony with the Comprehensive Plan and was in conformance with the applicable Zoning Ordinance provisions and recommended approval of SPA 79-A-109 with the adoption of the proposed development conditions contained in Appendix 1 of the staff report.

Pastor Thomas presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church wanted to continue the preschool that had existed and supported the community for 32 years with no additions or changes relating to the operation and their intent as a ministry in the community.

Chairman DiGiulian asked for clarification that the application was only to change the name of the permittee, to which Pastor Thomas replied affirmatively.

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

~ ~ ~ September 23, 2003, HIGHVIEW PARK CHRISTIAN ASSEMBLY, SPA 79-A-109, continued from Page 81

Mr. Pammel moved to approve SPA 79-A-109 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

HIGHVIEW PARK CHRISTIAN ASSEMBLY, SPA 79-A-109 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-109-79 previously approved for a church and child care center to permit change in permittee. Located at 4100 Hunt Rd. on approx. 1.35 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 19 and 19B. 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 23, 2003; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4100 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 David W. Avjean, dated July, 1981.
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 Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Parking shall be provided as depicted on the Special Permit. All parking shall be on-site.
6. Transitional screening and barrier requirements shall be modified and/or waived as shown on the Special Permit plat.
7. The maximum daily enrollment for the child care center shall not exceed 57 students.
8. The hours of operation for the child care center shall be limited to 7:00 a.m. to 6:00 p.m., five (5) days a week, Monday through Friday.

~ ~ ~ September 23, 2003, HIGHVIEW PARK CHRISTIAN ASSEMBLY, SPA 79-A-109, continued from Page 82

9. The maximum number of seats in the main area of worship shall be 200.
10. The applicant shall apply for a special permit amendment within six months of issuance of a Non-Residential Use Permit (Non-RUP) for the change in permittee to add the land area and uses associated with Lot 18 or the applicant will remove the parking area on Lot 18 and maintain the dwelling on Lot 18 for residential uses only.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit (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, this special permit shall automatically expire, without notice, six (6) months after the date of approval\* unless a new Non-RUP has been obtained. The Board of Zoning Appeals may grant additional time to obtain a new Non-RUP if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 23, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL D/B/A CAPITAL CHURCH, SPA 82-D-066-5 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-D-066 previously approved for a church and child care center to permit change in permittee. Located at 10233, 10235 and 10237 Leesburg Pi. on approx. 7.55 ac. of land zoned R-1. Dranesville District. Tax Map 18-2 ((7)) A, B and C.

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

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

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to SP 82-D-066-5, previously approved for a church and child care center, to permit a change in permittee from the Christian Fellowship Church to the International Church of the Foursquare Gospel, doing business as Capital Church. No other changes were proposed with the application. The church building located on the subject 7.55-acre site seated 725, and there were 386 parking spaces located onsite. The change in permittee would continue the child care center use for 99 children, operating between the hours of 6:30 a.m. and 6:30 p.m., Monday through Friday. Staff concluded that the subject application was in harmony with the Comprehensive Plan and was in conformance with the applicable Zoning Ordinance provisions and recommended approval of SPA 82-D-066-5 with the adoption of the proposed development conditions contained in Appendix 1 of the staff report.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the property had been used as a church since 1977, and the applicant, who had purchased the property earlier in the year and was currently holding services in Tysons, wished to continue the use and relocate to a better location which would allow them the opportunity to grow. She stated that the applicant had no objection to the development conditions and noted that the staff report recommended approval.

~ ~ ~ September 23, 2003, INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL D/B/A CAPITAL CHURCH, SPA 82-D-066-5, continued from Page 83

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

Mr. Hart moved to approve SPA 82-D-066-5 for the reasons stated in the Resolution.

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**REVISED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL D/B/A CAPITAL CHURCH, SPA 82-D-066-5 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-D-066 previously approved for a church and child care center to permit change in permittee. Located at 10233, 10235 and 10237 Leesburg Pi. on approx. 7.55 ac. of land zoned R-1. Dranesville District. Tax Map 18-2 ((7)) A, B and C. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 23, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The application is very straightforward.
4. There was a favorable recommendation from staff.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10237 Leesburg 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 Richard O. Spencer, dated August 1984, revised through May 7, 1990.
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 Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The land area where the trailers are depicted on the Special Permit plat shall remain landscaped open space.
6. All existing foundation plantings surrounding the location of the former trailers shall be retained. The four additional shrubs to be placed along the northern and southern sides of each former trailer site shall be maintained as a mixture of evergreen and flowering varieties subject to approval by the Urban Forestry Division and all plantings shall have a planted height of at least 36 inches. The Urban Forestry Division shall review all replacement plantings to ensure compatibility and viability with existing vegetation.
7. Transitional screening 1 shall be retained as previously required along the northwestern, southern and eastern boundaries of the parking lot on Lot C. Transitional screening of six (6) foot high trees and additional low evergreens shall be retained and maintained along these boundaries, as well as the eastern boundary line of the parking lot on Lots A and B. A six-foot high board-on-board fence shall be retained along the eastern, western and southern lot lines.
8. Along the northern boundary of the site the planted hedge shall be maintained parallel to the existing parking areas. In the area between the planted hedge and site's frontage to Route 7, ornamental trees or flowering shrubs shall be maintained. The species and density of replacement plantings shall be reviewed and approved by the Urban Forestry Division and shall be, at a minimum, one tree or shrub for every 20 linear feet of frontage to Route 7.
9. The maximum daily enrollment for the child care center shall not exceed 99 students.
10. The hours of operation for the child care center shall be limited to 6:30 a.m. to 6:30 p.m., five (5) days a week, Monday through Friday.
11. The maximum number of seats in the main area of worship shall be 725. All parking shall be on-site as shown on the Special Permit plat.
12. Interior and peripheral parking lot landscaping shall be retained and maintained in accordance with Article 13 of the Zoning Ordinance.
13. Parking lot lights for the parking on Lot C shall be no higher than eight (8) feet and shall be directed on-site. Any new outdoor lighting fixtures, except as noted above shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
14. No buses shall be used for storage on-site.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit (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, this special permit shall automatically expire, without notice, six (6) months after the date of approval\* unless a new Non-RUP has been obtained. The Board of Zoning Appeals may grant additional time to obtain a new Non-RUP if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 1, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 23, 2003, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3. (Deferred from 9/21/99, 11/9/99 and 11/28/00). (Def. From 3/27/01 and 9/25/01) (Deferred for decision from 9/24/02)

Chairman DiGiulian noted that a deferral request had been received regarding A 1999-HM-026.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that the deferral had been requested because staff had understood the appellant would be unable to attend the scheduled hearing; however, she said he was present.

Ralph C. Duke, 9935 Corsica Street, Vienna, Virginia, advised the Board that since the last session in which the appeal had been heard, he had worked with the neighbor located behind the subject property, Clarence Smith, 9948 Vale Road, Vienna, Virginia, and an engineer in an attempt to increase the subject property to a full acre.

To provide background concerning the appeal, Mr. Duke stated that he and his wife had bought the subject property in 1999, at which time they had done a title search. He said there were two houses located on the property at the time of their purchase, but shortly afterwards they had found that there was a violation in that the two houses were not in accordance with the zoning rule of having one house on an acre. Mr. Duke said that since that time they had been working with the County in trying to resolve the issue, which included speaking with Supervisor Cathy Hudgins in 2000. He explained that in the past year they had hired a consultant, Walter Hamilton, who helped them go through the process with the County, and they had come up with the solution of a boundary line adjustment. He said that in September of 2002 they hired an engineer, Chuck Huntley, to do the engineering work. Mr. Duke noted that he was in the same position as a developer in attempting to resolve the issue. He said Chuck Huntley's team had visited the site and proceeded with the engineering, for which he had been billed approximately \$9,000. Mr. Duke explained that a contract was written up by RGI Title reflecting Mr. Smith's agreement to sell property for \$22,000, but Mr. Smith had been hospitalized with a stroke, and after he was released from the hospital, the contract was signed. He said Mr. Smith had asked if his attorney, Charles Sloan (phonetic), could record the contract. Mr. Duke said Mr. Sloan was currently on vacation, but he would record the boundary adjustment at the end of the month.

Mr. Duke said this was an inherited problem. He said the property on which the second dwelling had existed for over 35 years was purchased in full faith, and he continued to be charged taxes on the property. He stated that the total cost spent thus far in attempting to resolve the issue was approximately \$32,000, while also trying to get four children through college.

Mr. Duke acknowledged that the case had previously been deferred, but said he understood the next step after the recordation of the boundary line adjustment was submission of the application to the County for the zoning.

Ms. Gibb asked staff to clarify if a boundary line adjustment creating two lots could be recorded if it did not meet the zoning requirements. Ms. Kinney, Zoning Administration Division, replied that it could be because the zoning issue was separate from the recordation.

Ms. Gibb asked if the appellant had someone advising him regarding the zoning. Mr. Duke replied that Walter Hamilton, who was a former County employee, was advising him.

Ms. Gibb asked if the appellant had some indication it would be rezoned. Mr. Duke replied that Mr. Hamilton had set up a meeting with the County. Mr. Duke said he knew a variance application would have to be submitted because one of the dwellings was too close to the property line, the land would have to be subdivided, and they would have to go through the same steps as a developer.

Ms. Gibb clarified that the steps would include receiving a variance approval, rezoning of the property, and gaining approval of a subdivision plat.

Ms. Stehman recommended the appellant speak with Zoning Evaluation to lay the plan out and get an estimate regarding the projected timing for the variance and rezoning process and the amount of the

~ ~ ~ September 23, 2003, RALPH C. DUKE, A 1999-HM-026, continued from Page 86

variances needed.

Mr. Beard asked why that had not been already done. Ms. Stehman replied that it could have been done earlier, but her suggestion dealt more with making certain everyone was on the same page.

Chairman DiGiulian asked the appellant to clarify that the boundary line adjustment would be done to add land area to his lot so it could be then be subdivided. Mr. Duke replied that was the process and explained that there had been two meetings with the County. He said that at the first meeting in 2000, he was told it could not be done, but he subsequently hired Mr. Hamilton, who researched the issue and advised the appellant that they could get a boundary line adjustment, and later received staff's recommendation at the second meeting that the appellant follow that route.

Ms. Gibb pointed out that there would be two subdivisions, a rezoning, and a variance. Chairman DiGiulian commented that it would take more than a year.

Mr. Pammel said the rezoning application would require a minimum lot size.

Ms. Stehman clarified that the boundary line adjustment would increase the size of the existing lot where the two dwellings were located; then there would be a subdivision of the lot to create two lots that would meet the R-2 requirements; and then following or concurrently there would be a rezoning to R-2.

Mr. Hart referred to a plat showing the boundary line adjustment and asked staff if it had been submitted and was currently under review, and if not, why it was not being reviewed. Ms. Stehman replied that it had been submitted with the deferral request by the appellant and that she would defer to him to speak to the status of it.

Mr. Hart asked the appellant why, if the plat was finished, the County was not reviewing it. Mr. Duke replied that Mr. Smith had requested that the title be given to Mr. Sloan to record the boundary line adjustment, which Mr. Sloan would do upon his return from vacation.

Chairman DiGiulian asked the appellant what length of deferral would be needed. Mr. Duke said he had been told that once a boundary line adjustment was submitted, it would require 90 days for that process, and then he would submit the other applications and was unaware of the time periods involved with those applications.

Ms. Kinney stated that the boundary line adjustment would require a minimum of 60 days; the rezoning process would be approximately six months; and the subdivision process would be a minimum of 60 days if it was considered a simple subdivision.

Mr. Pammel moved to defer decision on A 1999-HM-026 to September 28, 2004, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 23, 2003, (Tape 2), Scheduled case of:

9:30 A.M.        TERRI DRAHEIM (BREWER), A 2003-MA-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing two commercial vehicles to be parked on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 7103 Vellex La. on approx. 21,780 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((9)) 39.

Michael O'Connell (phonetic) indicated he would be appearing on behalf of the appellant and offered two support letters that were recently received by the appellant from the community.

Mike Adams, Zoning Administration Division, presented staff's position as set forth in the staff report. He stated that the appeal was of a determination that the appellant was allowing two commercial vehicles to be parked in an R-1 District in violation of Zoning Ordinance provisions. He reported that upon receipt of a complaint and following an inspection by the Zoning Enforcement Branch which revealed two commercial

vehicles with two open trailers attached parked on the property, staff issued a Notice of Violation, which was the subject of the appeal. Mr. Adams stated that each of the trucks had an empty weight of approximately 3,600 pounds, a gross weight of approximately 6,500 pounds, and a carrying capacity in excess of 1,500 pounds; therefore, the vehicles met the definition of commercial vehicles, which provides in relevant part that a commercial vehicle is any vehicle with a rated carrying capacity of 1,500 or more and any vehicle, regardless of capacity, which displays advertising letter thereon or which is licensed for hire. He said that the inspection revealed that each vehicle had an open trailer attached which contained landscaping and lawn equipment, the presence of which further supported the use of the vehicles for commercial purposes. He stated that the appellant was in violation of Part 16 of Section 10-102 of the Zoning Ordinance, which permits the parking of only one commercial vehicle on residentially zoned property.

Chairman DiGiulian commented that in the photographs the trucks looked like normal pickup trucks that could be seen in anyone's driveway and asked for clarification regarding what made the trucks commercial vehicles. Mr. Adams replied that their carrying capacities were 1,500 pounds, and one of the vehicles had a business tag logo on it listing a telephone number, making it a for-hire vehicle. Chairman DiGiulian commented that the Board had no photograph reflecting the logo on the vehicle.

Mr. Hammack asked Mr. O'Connell what relationship he had to the appellant. Mr. O'Connell replied that he was a personal friend who lived at the subject property, and he was an attorney licensed in the District of Columbia, but was appearing as a friend and representative and not as an attorney.

Mr. Hammack asked staff whether it was proper for Mr. O'Connell to represent the appellant given the disclosure requirements on variances and whether anything existed from the appellant indicating Mr. O'Connell could speak. Mr. O'Connell stated that the appellant had signed the papers appointing him as her representative when the appeal was filed.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that there was no affidavit requirement for appeals, and since Mr. O'Connell was appearing in the capacity as a representative and friend and was not representing himself as a professional, she thought it was proper, but she had not come across the situation before.

Chairman DiGiulian called the appellant to the podium to give her authorization. Terri Draheim, 7103 Vellex Lane, Annadale, Virginia, authorized Mr. O'Connell to speak on her behalf.

Mr. O'Connell presented the arguments forming the basis for the appeal. He drew the Board's attention to the aforementioned photographs attached to the staff report and said that when the appeal was filed, permission had been specifically withheld to enter on the premises for the purpose of inspection. He stated that the photographs could not have been taken anyplace other than on the grounds of the property because they were side views of the carport that was an obstructed view unless one stood on the property and said he pointed that out to let the Board know the nature of the violation was that one had to look for it.

Mr. O'Connell stated that the basis for the appeal was the definition that the appellant was cited for, any vehicle with a rated carrying capacity of 1,500 pounds, three-quarter tons, or more, and a vehicle containing advertising, and he noted that the photographs clearly demonstrated that there was no advertising on the vehicles. He said that the definition, if applied, would apply to any privately owned pair of pickup trucks parked on any property. He stated that based on the definition, there were 38 violations in the Wilburdale community that the appellant would be prepared to file citizen complaints on to have them investigated. Mr. O'Connell said the rated carrying capacity does not relate to commercial use or a business. He stated that the Administrative Code of the Commonwealth of Virginia was barren as to the question of what was a rated carrying capacity, and the Department of Motor Vehicles recognized gross vehicle weight rating and empty weight. He said that he had been told that staff for convenience subtracts the two to determine the rated carrying capacity. Mr. O'Connell said he realized that he was making a legal argument, but the appellant was required to come before the Board first. He said the appellant did not wish to invalidate the rule as any vehicle, regardless of use, being defined as a commercial vehicle, but it would not stand in court. He cautioned the Board that if any of the members had two pickup trucks parked on their property, they would be in violation.

Mr. Beard disclosed that he was a lay member on the Virginia State Bar Disciplinary Board and stated that what he was seeing bordered on legal advice and legal practice. Mr. O'Connell responded by saying he was

~ ~ ~ September 23, 2003, TERRI DRAHEIM (BREWER), A 2003-MA-031, continued from Page 88

appearing pro se.

Mr. Hammack asked if Mr. O'Connell had brought with him any of the definitions he had referred to for the Board to view. Mr. O'Connell said all he had brought was the definition contained in the citation letter, Part 3 of Article 20.

Mr. Hammack asked Mr. O'Connell to address the issue of the commercial tag on one of the vehicles. Mr. O'Connell did not respond. Mr. Adams stated that it said Green Turf with a telephone number on one of the trucks and also on the trailer hooked to the other truck.

Mr. Beard asked whether the appellant was incorporated. Mr. O'Connell replied affirmatively.

Mr. Beard asked how the vehicles were registered. Mr. O'Connell said he believed the vehicles were registered with the corporation, and he added that he was also part of the corporation. He said that what staff was referring to were vanity tags.

Mr. Beard asked Mr. O'Connell if he would agree that if a vehicle was registered in the name of a corporation, it was a commercial vehicle. Mr. O'Connell replied that he would not. He said the definition set forth in the Ordinance said any vehicle with a rated carrying capacity, and it did not relate to business use.

Mr. Beard asked staff's position regarding a vehicle registered to a corporation as a commercial vehicle. Ms. Stehman replied that it would generally be considered a commercial vehicle, but the definition in Article 20 would be the definition used, and it was quite explicit in that any vehicle with a rated carrying capacity of 1,500 pounds, three-quarter ton, or more was a commercial vehicle. She said the second phrase, "and any vehicle, regardless of capacity," referred to vehicles that had advertising on them.

Mr. Pammel asked Mr. O'Connell to address the issue of the open trailers containing landscaping and lawn care equipment that were not permitted as part of a home occupation. Mr. O'Connell replied that the trailer, as shown in the photograph, was not visible from the road. He said it was there and did contain equipment, but one would have to walk onto the property and look at it from a side view to see it.

Mr. Pammel noted that the Code said that an open trailer was not permitted.

Mr. Hart stated that he had not made any disclosure at the beginning of the hearing regarding any conflicts, and he asked Mr. O'Connell if he was a member of a law firm, to which Mr. O'Connell replied that he was not, that he was a sole practitioner and was not appearing as an attorney, that he owned part of the business and cohabited with the appellant, who had asked him to speak on her behalf.

Mr. Hart asked whether a home occupation permit was obtained for the business. Ms. Stehman replied that one was not obtained, but that it had been suggested by the zoning inspector. She stated that further research had determined that if the trailers were visible outside, they would not be allowed as part of the home occupation and would be deemed outside storage unless the trailers and the equipment were fully under cover.

Mr. Hart asked Mr. O'Connell why the visibility of the trailers was germane to the question of the violation if they were not permitted. Mr. O'Connell stated that his position was that if the vehicle were not visible by virtue of being parked in a garage, it would not constitute a zoning violation, and the trailer was not visible from the road. He noted that he had submitted letters from neighbors who supported the continued use. He said there was a sign in front of the house, and the house was beautifully maintained and landscaped and was probably the nicest house in the neighborhood.

Mr. Hart asked Mr. O'Connell whether a truck that had a 1,500-pound or more carrying capacity that had no lettering on it would not meet the definition or whether he was saying the definition was invalid. Mr. O'Connell replied that under the definition, if one assumed that the rated carrying capacity was the difference between the gross vehicle rate and the empty weight, any vehicle would qualify as a commercial vehicle, including two privately owned Suburbans, and the definition did not relate to business use.

As it had been adopted by the Board of Supervisors (BOS), Mr. Hart asked whether one would be constrained to go by what the definition said. Mr. O'Connell stated that the appellant was required to come

before the Board first to make the argument. He said that no one was interested in invalidating the definition, but that if an infraction existed, it was a minor infraction, and to challenge the regulation and make it unenforceable, which he said he believed was possible, would be overkill. He stated that the definition was clearly overbroad.

Mr. Beard asked staff to clarify whether if it were not visible, there would be no problem. Ms. Stehman replied that the landscaping and lawn care equipment would have to be undercover in a building, but a home occupation permit would be required.

Mr. Beard asked if a commercial vehicle out of public view was still a violation. Ms. Stehman replied affirmatively.

Chairman DiGiulian commented that he owned and drove a 1500 Chevrolet pickup every day, which he did not believe was a commercial vehicle and that the weight capacity did not make it a commercial vehicle. He stated that he also had a flatbed trailer that he used to carry hay for his horses, and he did not consider that a commercial vehicle, that they were personal vehicles that he used in his everyday life. He said he believed he had heard the statement that the flatbed trailer was not allowed. Ms. Stehman said the flatbed trailer was not a commercial vehicle.

Mr. O'Connell noted that there were a large number of commercial vehicles, including a front-end loader and an enclosed trailer, behind a fence two properties away from the appellant, for which the appellant had been told the BZA had granted an exemption as long as the vehicles were parked behind the fence. He said the vehicles egress through a side gate and across a yard.

Mr. Hammack asked whether Mr. O'Connell was denying that on the date of the inspection two of the trucks with the trailers containing lawn maintenance equipment were observed by the inspector. Mr. O'Connell replied that he had not seen the zoning inspector, so he did not know, but he would assume the zoning inspector would have filed on honest report.

Mr. Hammack asked whether the corporation routinely kept two pickup trucks with attached flatbed trailers at the residence. Mr. O'Connell replied that the appellant kept two pickup trucks at the residence and had more pickup trucks than two, but that they were personal vehicles.

Mr. O'Connell stated that his quarrel was that the definition was overly broad and not applicable.

Chairman DiGiulian called for speakers.

Thomas Wayne Mudd, 7105 Vellex Lane, Annandale, Virginia, came forward to speak in support of the appellant's position. He explained that he had run a business for 18 years and currently used a single three-quarter-ton truck and had never had a problem. He said the appellant's house was adjacent to his and was one of the most beautiful homes in the neighborhood. Mr. Mudd stated that none of the appellant's vehicles were visible, and her personal trucks had no lettering on them. He said there was lettering on one trailer, but the vehicles were parked under a carport in the back out of sight of anyone. He explained that the appellant had worked for the post office for many years and then had started her own business and was to be commended because people loved her business and the quality and honesty of her work. Mr. Mudd said the appellant was running a business out of her house, and it was not apparent, but there were other homes in the community that had dump trucks, bulldozers, and boats. He stated that he agreed that the rule was overbroad and should not be enforced. He said one neighbor out of 400 people had complained. He noted that the appellant helped the elderly and the young children in the neighborhood and did a lot for the community.

Mr. Pammel asked Mr. Mudd if he had a home occupation permit. He replied that he had both a business license and a home occupation permit, and his vehicle was a commercial vehicle.

Ms. Gibb asked whether having two pickup trucks was not allowed. Ms. Stehman replied that technically under the definition in the current Ordinance, any truck of the subject size would be a commercial vehicle.

Mr. Ribble commented that the Board had previously had similar cases concerning the carrying capacity, and he recommended the case be deferred to allow time for staff to look into past cases to determine what had

happened.

Chairman DiGiulian noted that there appeared to be additional speakers.

Mr. Hart said he would like to see the technical specifications of the vehicles as they had in a past case.

Ms. Gibb commented that she believed that the issue in the case where technical data had been provided was that the appellant had claimed that the vehicle was not that heavy, and in the current case the appellant had stipulated as to the weight.

Chairman DiGiulian said he agreed with Mr. Hart, and if the case was deferred, he would like to see the specifications.

Wayne Johnson, 7102 Vellex Lane, Annandale, Virginia, came forward to speak in opposition to the appellant's position. He presented photographs reflecting his house, the double-wheel trailers with Green Feet lettering on them containing landscaping equipment, the trucks with no markings, and the appellant's house. He stated that the truck and trailer with the equipment was visible from his front door. Mr. Johnson said the appellant's employees wearing company shirts gather at her property each morning. He said the appellant's vehicles, equipment, and activities had reduced the value of his property. He read from Section 82-5-7 that said any trailer or semi-trailer used for transporting landscaping or land care equipment, whether or not such trailer or semi-trailer is attached to another vehicle, and he stated that the trailers depicted in his photographs were clearly landscaping trailers that were not invisible.

Terri Draheim, the appellant, came forward to speak. She pointed out that in the photograph Mr. Johnson had presented, Mr. Mudd's work truck was parked in the driveway for access to install a new bathroom in her basement, and she said her vehicles were parked on the street for one day for that reason. She said there was another incident where her vehicles were parked on the street when she had her basement waterproofed to allow access for the workers to carry out buckets of concrete, and when the workers left in the evening, her vehicles were moved back onto her property. Ms. Draheim stated that the only reason her vehicles were parked on the street at times was to allow access to her home for improvements.

In response to Mr. Beard's questions regarding the number of employees the appellant had, how they got their work assignments and the equipment, Ms. Draheim indicated that she currently had three employees, who received their work assignments from her at her property where they came each day to pick up the equipment which they returned to her property at the end of each day.

Mr. Hammack asked Ms. Draheim whether the trucks were owned by the corporation, the name of the corporation, whether she was a shareholder in the corporation, and whether she had a business license and a home occupation permit, to which she replied that the trucks were owned by the corporation, Green Feet, Incorporated, which had a business license as an S corporation, and she was a shareholder and was unaware of the need for a home occupation permit until the neighbor's complaint.

Ms. Stehman commented that under the definition, the trucks were commercial vehicles and only one commercial vehicle was allowed per dwelling unit. She stated that a business was clearly being operated out of the home, which required a home occupation permit, and in order to obtain one, the appellant would be required to adhere to the standards for a home occupation permit, which included that there be no outside storage or display and permitted no employees to come to the home.

Mr. Hart asked whether the absence of the home occupation permit was an issue for the current hearing, to which Ms. Stehman replied that it was not part of the violation, although it was suggested to the appellant that she obtain one by the inspector, who was under the impression the appellant was in the process of doing so and had not included the absence of the permit in the citation.

Mr. Hart asked whether the violation included the two trucks or the two combinations of truck and trailer. Ms. Stehman replied that the two trucks stood as commercial vehicles, and the trailers supported the use of the trucks as commercial vehicles.

Mr. Hart asked whether the two trailers would constitute a violation without the trucks. Ms. Stehman replied that if the trailers were in conjunction with a home occupation with a permit, they would be in violation of the

~ ~ ~ September 23, 2003, TERRI DRAHEIM (BREWER), A 2003-MA-031, continued from Page 91

portion of the home occupation that prohibited outside storage or display and indicated they would have to be inside a garage or shed.

Mr. Hart clarified with Ms. Stehman that the issue for the current hearing was only the two vehicles.

Mr. O'Connell stated that he was familiar with when Mr. Johnson's photographs were taken, and he confirmed that the location of the vehicles therein was not something that occurred routinely and was due to the construction being done at the appellant's property at the time.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. He said that there did not seem to be any issue that the appellant had two vehicles on her property that appeared to meet the definition of a commercial vehicle in the Ordinance, and in addition there were photographs of one vehicle with signage on the side. He read from Permitted or Accessory Uses, stating that commercial vehicles in a residential district are limited to one commercial vehicle per dwelling unit in an R District. Mr. Hammack read another requirement, stating that a commercial vehicle parked in an R District shall be owned or operated only by the occupant of the dwelling at which it is parked, and he noted that there was testimony by the appellant that the vehicles were owned by a corporation and that employees come there. He said it was physically impossible for the appellant to operate two vehicles at one time, and the violation required her to remove one of the commercial vehicles and would allow her to retain one in the R District. If she had a home occupation, he said the use probably would not be permitted. Mr. Hammack said he thought there was adequate evidence and uncontested testimony to support the determination of the Zoning Administrator. Ms. Gibb and Mr. Pammel seconded the motion.

Mr. Beard stated that the photographs were very compelling, notwithstanding the special circumstance that was pointed out, but with the employees and equipment coming and going, he said it was definitely commercial activity, so he would support the motion.

Chairman DiGiulian stated that he would support the motion because the majority of the evidence indicated a commercial operation and commercial vehicles, including the signs on the trucks and trailers. He requested documentation from staff regarding how the carrying capacity of the vehicle was arrived at.

Mr. Hammack stated that he did not think the Board had to get to the issue of weight or carrying capacity, as they had in great detail in one case in the past, to act on the current violation.

Mr. Hart stated that he would support the motion. He noted that there had been testimony that a lot of similar activity was taking place in the neighborhood, and he said he hoped the County was being consistent in applying the same rules to everyone. He said that if the Board was to use a definition that embraced a commonly owned standard type of pickup truck as a commercial vehicle, an item for the work program might be to revisit the definition of commercial vehicles, given the popularity of large pickup trucks, to include a size threshold or usage issues.

Chairman DiGiulian called for the vote, and the motion passed by a vote of 7-0.

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~ ~ ~ September 23, 2003, (Tape 2), After Agenda Item:

Request for Reconsideration  
From Kevin R. Hildebeidel  
Regarding Dillian Lafferty, VC 2003-BR-083

Mr. Hart stated that in the documents Mr. Hildebeidel had suggested that the variance had been approved as modified, but with no development conditions, and he asked whether there were development conditions on the approval, to which Susan Langdon, Chief, Special Permit and Variance Branch, replied affirmatively.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ September 23, 2003, (Tape 2), After Agenda Item:

Approval of September 16, 2003 Resolutions

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:27 a.m.

Minutes by: Kathleen A. Knoth

Approved on: November 2, 2004

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 30, 2003. The following Board Members were present: V. Max Beard, Nancy Gibb, John DiGiulian, Paul Hammack, James Hart, James Pammel, and John Ribble.

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

~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MILTON & ARMIDA CORTEZ, VC 2003-MV-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.75 ft. with eave 23.75 from front lot line. Located at 6614 Quander Rd. on approx. 10,890 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 52.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Milton Cortez, 6614 Quander Road, Alexandria, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, presented the request as contained in the staff report. The applicants requested a variance to permit the construction of a dwelling to be located 24.75 feet with an eave 23.75 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet with eave extensions of 3.0 feet; therefore, variances of 5.25 feet and 3.25 feet were requested.

Mr. Hart asked staff why the adjacent property had a building set back line much closer to the street than the application property. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the people who issued the building permit erroneously determined that the front yard was a side yard; therefore, the plat referenced the side yard measurement in the front yard.

Mr. Cortez presented the variance request as outlined in the statement of justification submitted with the application. He said the proposed dwelling would be in character with the neighborhood.

Ms. Gibb asked what the lot to the west consisted of. Mr. Shriber explained the lot was vacant and could not be built on.

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

Mr. Hart moved to approve VC 2003-MV-111 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MILTON & ARMIDA CORTEZ, VC 2003-MV-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.75 ft. with eave 23.75 from front lot line. Located at 6614 Quander Rd. on approx. 10,890 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 52. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 30, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.

3. The building envelope on the lot was very wide and shallow.
4. The lot had recently been reclassified as a buildable lot as opposed to a non- buildable lot.
5. The variance request was reasonable for a lot with such extreme topographical conditions.
6. There would be no significant impact to the dwelling on the adjacent parcel because it was located much closer to the street than the proposed 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling, as shown on the plat prepared by Lawrence H. Spilman, III/Land Surveying Services, dated June 19, 2003, revised through July 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. Notwithstanding the height as depicted on the variance plat, the fence located in the front yard shall be reduced in height or removed from the property so as to comply with all Zoning Ordinance requirements.

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

~ ~ ~ September 30, 2003, MILTON & ARMIDA CORTEZ, VC 2003-MV-111, continued from Page 96

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        ATTILIO E. GORIUP AND TERESITA C. GORIUP, VC 2003-DR-104 Appl. under Sect(s).  
18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line.  
Located at 6652 Kirkley Ave. on approx. 12,000 sq. ft. of land zoned R-3. Dranesville  
District. Tax Map 40-2 ((9)) 62.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Attilio Goriup, 6652 Kirley Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 7.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 4.8 feet was requested.

Mr. Goriup presented the variance request as outlined in the statement of justification submitted with the application. He stated that he needed the addition to provide additional living space. He said the addition would be in character with the neighborhood. He stated that his neighbors had no problem with the proposed addition.

Mr. Hart asked the applicant to explain the layout of the proposed addition. Mr. Goriup replied the garage would be the basement of the level of the addition and above would be a dining room and living room.

Mr. Pammel asked the applicant if he could reduce the width of the proposed addition from 21.5 feet to 20 feet. Mr. Goriup explained that the interior dimension of the garage was 20 feet and it was not possible to reduce that dimension. He said he requested as minimal a variance as he could.

Mr. Pammel explained that the Board had only approved a minimal amount of variance requests for garages 20 feet in width.

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

Mr. Pammel moved to deny VC 2003-DR-104. The motion failed for a lack of a second.

Ms. Gibb stated that the applicant requested the smallest variance possible and the photographs of the proposed addition illustrated a minimal impact to the neighborhood. She said she was in favor of the application.

Ms. Gibb moved to approve VC 2003-DR-104 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ATTILIO E. GORIUP AND TERESITA C. GORIUP, VC 2003-DR-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 6652 Kirkley

~ ~ ~ September 30, 2003, ATTILIO E. GORIUP AND TERESITA C. GORIUP, VC 2003-DR-104, continued from Page 97

Ave. on approx. 12,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((9)) 62. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 30, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants provided testimony and supporting materials indicating compliance with the required standards for the granting of a variance.
3. The variance would impose a minimal impact on the neighboring property.
4. Twenty (20) feet is the minimum interior size for a garage.

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

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by Attilio E. Goriup, dated June 14, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ September 30, 2003, ATTILIO E. GORIUP AND TERESITA C. GORIUP, VC 2003-DR-104, continued from Page 98

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The ten-foot high shed shall be lowered to a height not greater than 8.5 feet, or shall be moved to a location where minimum required yards are met, prior to issuance of a building permit for the addition.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RUBIN SHEINBERG, VC 2003-DR-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. with eave 4.0 ft. from one side lot line and 6.0 ft. from other side lot line. Located at 1235 Providence Terr. on approx. 14,154 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((6)) 8.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rubin Sheinberg, 1235 Providence Terrace, McLean, Virginia, replied that it was.

Mr. Sheinberg requested a deferral to address several issues with his neighbors and because his wife could not be present at the hearing.

After discussion between the applicant, staff and speakers as to whether or not the case should be deferred and the Board decided to proceed with the hearing.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling to be located 5.0 feet with an eave 4.0 feet from one side lot line and 6.0 feet from another side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet and eaves are permitted to extend 3.0 feet in to minimum side yards; therefore, a variance of 7.0 feet for the dwelling and 5.0 feet for the eave was requested for one side lot line and a variance of 6.0 feet was requested for the other side lot line.

Mr. Sheinberg presented the variance request as outlined in the statement of justification submitted with the application. He stated that he wanted to construct a dwelling on the property with a bedroom on a lower floor because of his deteriorating health problems. He said he needed a three car garage to prevent any parking on the street because he had safety concerns for the children in the neighborhood. He said the location of the proposed home on the lot would provide maximum tree save area. He submitted photographs of other homes in the area that were larger than the proposed home and photographs of other homes in the area that had obtained variances for additions. He said the proposed home would be in character with the neighborhood and would not have any negative impact on the adjacent homes.

Mr. Hart asked the applicant for an elevation of the proposed home. Mr. Sheinberg stated that he had not prepared an elevation and referred to the photographs of similar homes in the area. Mr. Hart stated he was

not in favor of making any determinations regarding the application until he had seen an elevation of the proposed home.

Chairman DiGiulian called for speakers.

Dolores Robbins, 1231 Providence Terrace, came forward to speak in opposition. She stated that the application did not meet standards 4, 5, 6, 7, 8, and 9. She said the proposed home was too large for the property and would diminish the appeal of her home. She stated that she was not clear how the proposed home would be constructed without the removal of at least one tree on the property. She suggested that the applicant had already constructed several homes in the area and he was motivated by financial gain instead of extraordinary circumstances.

Henry Delima, 1227 Providence Terrace, came forward to speak in opposition. He explained that he had constructed his home within the required setbacks and he felt the applicant should have to do the same. He suggested that the applicant had constructed homes in the area and had not planted any screening on those properties. He stated that the applicant's prior homes had two car garages and that he didn't see a need for a three car garage.

Mr. Sheinberg, in his rebuttal, explained that he had constructed his first home in the neighborhood and then his brother had constructed one next door to him and then his brother passed away so he rented out that residence for a period of time and then sold it. He contended that he was not building these homes for profit. He stated that he had planted screening on the homes that he had constructed and he planned on planting trees for screening on the subject property.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that standards 4, 5, 6, 7, 8, and 9 were not satisfied. He said the design of the proposed home would be more of a convenience to the applicant than any alleviation of a hardship. He said the lot was narrow and there might have been circumstances in which some relief was warranted but not to the extreme that was proposed.

Mr. Beard stated that the applicant had opened the door to negotiating with the neighbors but he supported the motion.

Mr. Ribble moved to deny VC 2003-DR-105 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RUBIN SHEINBERG, VC 2003-DR-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. with eave 4.0 ft. from one side lot line and 6.0 ft. from other side lot line. Located at 1235 Providence Terr. on approx. 14,154 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((6)) 8. 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 30, 2003; and

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

1. The applicant is the owner of the land.
2. The proposed dwelling is too large for the property.
3. The applicant needs to redesign the proposed dwelling on the property.

~ ~ ~ September 30, 2003, RUBIN SHEINBERG, VC 2003-DR-105, continued from Page 100

4. The applicant did not meet variance standards 4, 5, 6, 7, 8, and 9.
5. The proposed dwelling would not be harmonious in the neighborhood.
6. The previous variances granted in the general vicinity were completely different from what was proposed.

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

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2003.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:00 A.M. VIJAY B. BHALALA, VC 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vijay Bhalala, 13549 Currey Lane, Chantilly, Virginia, replied that it was.

~ ~ ~ September 30, 2003, VIJAY B. BHALALA, VC 2003-SU-106, continued from Page 101

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 22.8 feet from the front line of a corner lot. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 7.2 feet was requested.

Mr. Bhalala presented the variance request as outlined in the statement of justification submitted with the application. He stated that he needed the garage addition to provide shelter for his vehicles.

Mr. Hart asked the applicant if a garage 18 feet in depth was large enough for him because it was somewhat shorter than most of the garages that the Board approved. Mr. Bhalala replied that he requested as minimal a variance as necessary because he was afraid the Board would not approve anything larger. He said he was sure that a depth of 18 feet was large enough to facilitate his needs.

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

Ms. Gibb moved to approve VC 2003-SU-106 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VIJAY B. BHALALA, VC 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 30, 2003; and

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

1. The applicant is the owner of the land.
2. The topography of the lot precluded any other location for the garage than what was proposed.
3. There would be no adverse impact on the adjacent properties.
4. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.

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

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

~ ~ ~ September 30, 2003, VIJAY B. BHALALA, VC 2003-SU-106, continued from Page 102

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Bryant L. Robinson, dated July 1, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-029 previously approved for a church and related facilities to permit increase in land area, increase in seats, building additions and site modifications. Located at 6426 Ox Rd. and 6401 Wolf Run Shoals Rd. on approx. 21.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 35, 36 and 36B. (Admin Moved from 12/17/02 1/28/03, 2/18/03 and 3/11/03 per appl.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Fox, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, stated that the case was deferred for decision only on June 24, 2003. The applicant provided staff a revised plat that addressed a number of issues that staff had. The

~ ~ ~ September 30, 2003, TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029, continued from Page 103

applicant reduced the size of the sanctuary from 22,500 square feet to 14,400 square feet which reduced the seating in the sanctuary from 1,000 seats to 900 seats, reduced the number of parking spaces from 330 to 300 and provided an increase in the undisturbed open space to over 50% of the site area which was a result of the building and parking reductions. The applicant also relocated a proposed force main from an area in the Environmental Quality Corridor, (EQC) to the perimeter of the EQC which provided a reduction to the wetlands encroachment. Staff was in support of the application.

Mr. Fox reiterated staff's presentation and requested that the Board approve the application.

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

Mr. Hammack moved to approve SPA 95-S-029 for the reasons noted in the Resolution.

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### REVISED

### COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-029 previously approved for a church and related facilities to permit increase in land area, increase in seats, building additions and site modifications. Located at 6426 Ox Rd. and 6401 Wolf Run Shoals Rd. on approx. 21.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 35, 36 and 36B. (Admin Moved from 12/17/02 1/28/03, 2/18/03 and 3/11/03 per appl. Req.) (def from 5/6/03 at appl. Req.) (def for dec only from 6/24/03) 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 30, 2003; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6426 Ox Road and 6401 Wolf Run Shoals 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 DDC Inc., and dated April 1, 2002, as revised through August 1,, 2003, 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

~ ~ ~ September 30, 2003, TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029, continued from Page 104

conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Transitional screening shall be provided as follows:
  - Existing vegetation located along the northern lot line and a portion of the eastern lot line, as depicted on the plat, and the area along the western lot line adjacent to the septic field associated with Phase II development shall be supplemented with additional plantings, species, size and location to be determined in consultation with the Urban Forestry Division, DPWES, to meet full Transitional Screening 1 requirements.
  - Transitional Screening 1 shall be provided along a portion of the southern lot line, as depicted on the plat.
  - Transitional screening requirements shall be modified to allow existing vegetation to satisfy the requirements along a portion of the southern lot line and the western lot line, except adjacent to the Phase II septic field, as depicted on the plat.
6. Upon issuance of the Non-Residential Use Permit (Non-RUP) for SPA 95-S-029, the maximum seating capacity in the main area of worship shall be limited to a total of 250 seats for Phase I and 900 seats for Phase II.
7. Parking shall be provided on-site as depicted on the plat. The parking spaces located on the western side of the driveway that crosses over the wetlands shall be removed to further minimize the wetland encroachment.
8. Foundation plantings and shade trees shall be maintained around the original church buildings and shall be planted around the new buildings associated with both Phases I and II to soften the visual impact of the structures. The species, size and location shall be determined by the Urban Forestry Division of DPWES.
9. The barrier requirement shall be waived along the western, eastern and portions of the southern and northern lot lines. Barrier D shall be provided along a portion of the southern and northern lot lines as depicted on the approved special permit plat. Along the southern lot line, the barrier shall continue to be located adjacent to the parking lot.
10. The applicant shall continue to provide a twenty-four (24) foot wide area along the eastern lot line south of the existing driveway for a future interparcel connection to Lot 33. The church shall construct that portion of the interparcel connection and grant appropriate public access easements if, and when, Lot 33 is required to construct an interparcel connection.
11. Stormwater management and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Overlay District, unless waived by DPWES. The applicant shall make every effort to combine stormwater management facilities and to avoid the use of underground facilities. However, In the event that the applicant chooses to provide underground stormwater management /BMP facilities, the applicant shall be required to submit and have approved by DPWES a maintenance agreement for all of the proposed SWM/BMP facilities prior to final approval of any site plans for the subject property.
12. The undisturbed open space tabulations shown on the plat shall not be reduced. The existing wooded area denoted on the special permit plat, including the Environmental Quality Corridor (EQC), shall not be disturbed. There shall be no clearing or grading of any vegetation except for dead or

dying vegetation, as determined by the Urban Forestry Division. There shall be no clearing or structures located in the EQC, other than the force main shown on the perimeter of the EQC, as depicted on the plat. The conservation easement shall be extended over the entire area of EQC.

13. Any proposed lighting shall be provided in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
- Bollard type lighting will be provided in any new parking areas.
- The lights shall be low intensity design, full-cut-off fixtures, which focus 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 the light and glare from projecting beyond the lot lines.
- The lights shall be controlled with an automatic shut-off device and shall be turned off when the site is not in use, except for security lighting directly adjacent to the building.
- There shall be no up-lighting of the proposed or existing building.

14. The limits of clearing and grading shall be no greater than as shown on the special permit plat and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. Irrespective of the limits shown, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES and shall not encroach into wetlands or the EQC, except as qualified by these conditions. The limits of clearing and grading for the proposed septic field to be located on the western side of the EQC shall be the minimum amount feasible as determined by DEWES. Prior to any land disturbing activities for each phase, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

15. A tree preservation and restoration plan shall be submitted to the Urban Forestry Division for review and approval at the time of site plan review. This plan shall designate the limits of clearing and grading as delineated on the special permit plat as modified by Development Condition 14 and all areas shown on the plat outside of the limits of clearing and to be preserved and labeled as "perpetually undisturbed open space". The restoration plan shall be developed with the intention of revegetating and restoring EQC located in the northern portion of the site to its natural habitat. The force main shown on the western side of the EQC to serve part of the Phase II development, shall be installed prior to the EQC restoration.

The restoration plan shall include the planting of saplings and evergreen seedlings, number, size and species to be determined by the Urban Forestry Division, within the perpetually undisturbed open space currently operating as a plant nursery. All man-made materials and non-native plant species, as determined necessary by the Urban Forestry Division, shall be removed prior to replanting in the restoration area.

16. Prior to site plan approval, a Phase I Environmental Site Investigation of Lot 36B shall be submitted to DPWES for review and approval in coordination with the Fire and Rescue Department, the Health Department, and other appropriate agencies as determined by DPWES. This investigation shall be generally consistent with the procedures described within the American Society for Testing and Materials document entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" as determined by DPWES in coordination with the reviewing agencies. Hazardous substances or petroleum products shall be removed in accordance with the recommendations of the Phase I environmental report, and to the satisfaction of DPWES. If

~ ~ ~ September 30, 2003, TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029, continued from Page 106

contaminants are detected in concentrations requiring remedial action, a remediation program shall be performed in accordance with all applicable Federal, State and County requirements. Sufficient documentation of completion of the remediation program (with the possible exception of long-term follow-up monitoring efforts) or an appropriate corrective action plan consistent with the proposed development, as determined by DPWES shall be provided to DPWES prior to site plan approval.

17. Signs may be permitted in accordance with the provisions of Article 12 of the Zoning Ordinance. There shall be no up-lighting of any signs.
18. Right-of-way located at the intersection of Wolf Run Shoals Road and Old Wolf Run Shoals Road, as depicted on the plat, shall be dedicated to the Board of Supervisors in fee simple at the time of site plan review for Phase I development, unless it is determined that the property is already dedicated right-of-way.
19. The proposed entrance to the property from Old Wolf Run Shoals Road shall be constructed with Phase II of the proposed development and shall meet VDOT entrance and sight distance requirements.
20. Old Wolf Run Shoals Road shall be improved to VDOT two-lane public street standards at the time of Phase II development, or the applicant may choose to vacate the entire width of Old Wolf Run Shoals Road and provide a two-way driveway at the time of Phase II development.
21. The operation of a plant nursery on Lot 36B shall cease upon commencement of Phase II construction.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:30 A.M. JOHN D. BOBOLSKY, III, A 2003-SP-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing an agriculture use to be established on property in the R-C District, which is located at Tax Map 67-2 ((1)) 42 and which does not meet minimum lot size requirements for the use, and is allowing the property to be used as a storage yard and junk yard, all in violation of Zoning Ordinance provisions. Located on the W. side of Popes Head Rd., approx. 700 ft. from its intersection with the Fairfax County Pkwy. on approx. 10,890 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 42.

This case was administratively moved to October 21, 2003, for notices.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:30 A.M. RADLEY AUTOMOBILES, INC., D/B/A RADLEY ACURA, A 2002-MA-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the vehicle sale, rental and ancillary service establishment authorized under Special Exception SE 85-M-086 in violation of certain conditions set forth in the special exception approval. Located at 5823 Columbia Pi. on approx. 1.86 ac. of land zoned C-8. Mason District. Tax Map 61-2 ((1)) 105. (moved from 5/14/02, 7/16/02, 1/7/03, 5/13/03 and 7/29/03 at appl req.)

Maggie Stehman, Deputy Zoning Administrator explained the appeal needed to be deferred for a period of 18 months to provide the appellants time to remove the car wash from the site and apply for and receive a Non-Rup. She said staff supported an indefinite deferral.

Mr. Ribble moved to indefinitely defer appeal A 2002-MA-005. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ September 30, 2003, (Tape 1), Scheduled case of:

9:30 A.M. FAI OLD CENTREVILLE LLC, A 2003-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the shopping center on property located at Tax Map 54-4 ((1)) 87C has frontage on only one major thoroughfare and, therefore, only one freestanding sign may be erected in accordance with Zoning Ordinance provisions, and that there is no nonconforming right to allow two freestanding signs to be located on the property. Located at 13810 Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 87C and 87F. (Def. from 6/10/03 & 7/8/03)

This case was administratively moved to October 21, 2003, for notices.

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~ ~ ~ September 30, 2003, (Tape 1), After Agenda Item:

Request for Additional Time  
Richard H. Rice, Jr., VC 00-V-049

Mr. Ribble moved to approve the additional time request. Mr. Pammel seconded the motion, which carried by a vote of 7-0. The new expiration date was July 18, 2004.

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~ ~ ~ September 30, 2003, (Tape 1), After Agenda Item:

Request for Reconsideration  
Jason Hampel and Sarah Malerich, VC 2003-SU-103

There was no motion, and the request for reconsideration was denied.

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~ ~ ~ September 30, 2003, (Tape 1), After Agenda Item:

Approval of September 23, 2003 Resolutions

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

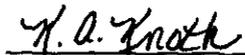
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~ ~ ~ September 30, 2003, continued from Page 108

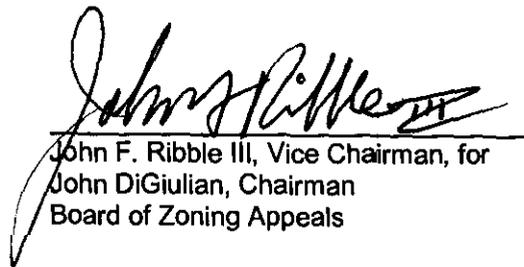
As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Lori M. Mallam

Approved on: November 30, 2004



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, October 7, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. V. Max Beard was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 7, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. AND STEFANIE V. HARDEE, VC 2003-MV-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.0 ft. with eave 6.2 ft. from side lot line and 12.0 ft. with eave 11.0 ft. from rear lot line. Located at 7201 Marine Dr. on approx. 16,195 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Hardee, 7201 Marine Drive, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a detached garage of 14 feet in height 7.0 feet with eave 6.2 feet from side lot line and 12 feet from rear lot line. A minimum side yard of 12 feet and minimum rear yard equal to the height of the structure (14 feet) are required; however, eaves may be permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.0 feet, 2.8 feet, and 2.0 feet, respectively, were requested.

Mr. Hardee presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was long and narrow, with the house sited in the center. He noted that the driveway ran up the left side of the property leading to a carport in the center of the backyard, which was in a decrepit condition. Given the shape of the rear yard with the cutoff of the back corner, he explained that the logical place to locate the new structure would be at the head of the driveway in the back corner. With the demolition of the current carport, he said it would result in a more contiguous backyard.

Mr. Hart asked whether the footprint of the proposed garage would be larger than that of the existing carport. Mr. Hardee replied that the garage would be approximately two feet wider and deeper.

Mr. Hart asked whether the applicant had considered locating the garage to the front of the house. Mr. Hardee explained that the property sloped substantially from the back to the front to the extent that it would not support grass covered by ivy. He said that locating the structure in the front would obscure the views and destroy the curb appeal.

Mr. Hart asked whether the bomb shelter was located above or below grade. Mr. Hardee stated that it was dug into the hillside with a small portion sticking up that was covered with several feet of soil.

Mr. Hammack asked why the garage could not be located in roughly the same position as the existing carport. Mr. Hardee replied that the current position of the carport divided the backyard into two small portions, and the proposed location for the garage would allow for an uninterrupted backyard.

Chairman DiGiulian called for speakers.

Colonel Thad Nosek, 7202 Marine Drive, Alexandria, Virginia, came forward to speak in support of the application. He said he was retired from the Corps of Engineers of the United States Army and had previously been a professional engineer, land surveyor, and commissioner and director of public works. He noted that he had been a 50-year resident of Fairfax County in the same location across the street from the applicants. He stated that he strongly endorsed the applicants' proposal as it would enhance the applicants' property, Fairfax County, and the appearance of the area.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-MV-110 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Pammel noted that the applicants had indicated in the justification included with the application that the combination of a drainage problem and marine clay had caused problems with respect to the existing carport and to place another structure in that location with the collapse of the retaining wall would not be feasible due to the costs involved, and with the new structure, the drainage problem could be corrected and the hydrostatic pressures on the existing house reduced.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. AND STEFANIE V. HARDEE, VC 2003-MV-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.0 ft. with eave 6.2 ft. from side lot line and 12.0 ft. from rear lot line. Located at 7201 Marine Dr. on approx. 16,195 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 19. 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 7, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have met the standards required for a variance.
3. Although the proposed location of the structure requires a variance, it's a better location than the existing structure.
4. Damage could be caused due to the condition of the current 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

~ ~ ~ October 7, 2003, JOHN R. AND STEFANIE V. HARDEE, VC 2003-MV-110, continued from Page 112

not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of a garage, as shown on the plat prepared by Rebecca L.G. Bostick, dated October 11, 1995, revised through June 11, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 7, 2003, (Tape 1), Scheduled cases of:

9:00 A.M. STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.6 ft. with eave 8.6 ft. and 9.1 ft. with eave 8.1 ft. from side lot line, fence greater than 4.0 ft. in height to remain in front yard of a corner lot and accessory structure to remain in the minimum required front yard. Located at 1168 Chain Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with SP 2003-DR-031).

9:00 A.M. STEVEN A. NEWMAN & JANICE NEWMAN, SP 2003-DR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 5.3 ft. with eave 4.3 ft. and dwelling 9.2 ft. with eave 8.2 ft. from side lot line. Located at 1168 Chain Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with VCA 89-D-065).

Chairman DiGiulian noted that VCA 89-D-065 and SP 2003-DR-031 had been indefinitely deferred.

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~ ~ ~ October 7, 2003, (Tape 1), Scheduled case of:

9:00 A.M. GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-030 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 1870 Foxstone Dr. on approx. 10,694 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-2 ((34)) 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. Tim Chesnutt and Gail Gordon, 1870 Foxstone Drive, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility with a maximum of 10 children on site at any one time and one employee in addition to the proprietor, with the hours of operation limited to 7:30 a.m. to 5:30 p.m., Monday through Friday. She stated that with the addition of one parking space to be constructed, the site would have three off-street parking spaces. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of the application, subject to the development conditions contained in the staff report. Ms. Stanfield noted that she and Ed Tobin, Zoning Enforcement Branch, had conducted site visits, and Mr. Tobin was present to answer questions of the Board.

Mr. Hart asked whether the handwritten notation on the plat regarding a 7,222-square-foot outdoor play area was correct in light of the entire property being 10,694 square feet. Ms. Stanfield replied that her understanding was that the play area would consist of the fenced area in the rear yard, but the dimensions had not been measured.

Mr. Chesnutt presented the special permit request as outlined in the statement of justification submitted with the application. He noted that he had worked in local government since 1985, throughout which he had been involved with services being delivered for youths, and was currently the division manager for youth services in Loudoun County. He explained that in preparing his presentation, he had thought about a number of issues including; community and the concept that it takes a village to raise a child; individual responsibilities within the concept of a community; the issue of change and how for some change can be threatening and produces fear and sometimes blind resistance, while others embrace, become a part of, and are excited by change; the ever growing need for more quality, affordable child care; organizing a parade of parents and children who had been a part of Koalaty (phonetic) House; and examining the issues of the neighbors and attempting to assign motives to their methods and hypothesizing about what their intent might be; however, after considering those issues, he said he decided the best thing he could do to help the Board with its deliberations was to narrow the focus to give an understanding of the context and environment surrounding the proposal.

Mr. Chesnutt stated that they had moved to Foxstone Drive in December of 2002 and moved the child care program to the residence in April of 2003. He explained that Ms. Gordon had begun operation with 12 children, with the understanding that it was consistent and in compliance with the State licensing regulations. He said they were subsequently contacted by Mr. Tobin and became aware of a second level of regulations affecting home-based child care, after which the number of children was lowered to 10 pending the outcome of the special permit request.

Mr. Chesnutt said he understood part of what the Board did was to evaluate the impact of the enterprise on the immediate neighborhood and determine whether the value added by enterprise was offset by any adverse impacts of its operations. He stated that Ms. Gordon and her family had resided in Fairfax County for over 2 years, and he discussed her qualifications. He said she had been a State-licensed child care provider for over 11 years, a frequent trainer of other child care providers to help them enhance their skills while acquiring mandatory continuing education credits, had earned a degree in recreation from the University of Maryland, and worked in child care for the Fairfax County SAC program and the Jewish Community Center before starting the business. Mr. Chesnutt stated that Ms. Gordon met or exceeded all the requirements of State licensing by her acquisition of annual continuing education credits and maintenance of CPR and first-aid certifications. He noted that she was a member of numerous professional associations, including the National Association of Education of Young Children, Northern Virginia Family Child Care Association, Infant and Toddler Association, and the USDA Food Program.

Mr. Chesnutt commented that the name of the preschool, Koalaty House, spoke volumes regarding Ms. Gordon and the program as a merger of the word "Koala" from Koala bear, to speak to a child-centered approach to the program, and tying in "quality," to speak to the adult perceptions of the services provided. He reported that the Fairfax County Office for Children had repeatedly and continued to refer new and prospective home care providers to Koalaty House as a model program, and parents were frequently

~ ~ ~ October 7, 2003, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-030, continued from Page 114

referred to Koalaty House by the Office for Children, knowing there was no available space, to assist parents in learning what to look for in their search for a program for their children. He stated that more than 100 Fairfax County youth had passed through Koalaty House over the years, and while operating in compliance with the State regulations, Koalaty House had maintained a full program of 12 children, usually with a waiting list composed of siblings, friends, and neighbors. Mr. Chesnutt said the fact that nearly all of the children who had come through the program had come from word-of-mouth or referrals reflected the high quality of the program.

In regard to logistics and concerns of the neighbors, Mr. Chesnutt stated that Foxstone Drive was a nice, quiet street and a wonderful place to live and raise children. He noted that the subject property was backed by a Fairfax County park property that included an easily assessable trail that was great for the children. He said that Foxstone Drive was designed as a residential street and was not designed to handle large volumes of traffic, but did provide for parking along both sides of the street. Mr. Chesnutt explained that there were two points of access, the main one being an intersection with Creek Crossing, five houses away from the subject property, and the other one being farther down the block, which linked back to Creek Crossing. He stated that 99 percent of the child care traffic came from and returned to the Creek Crossing intersection. As an example of the typical traffic patterns, Mr. Chesnutt said they had noted that on Thursday, October 2, 2003, nine families had come for child care, consisting of ten children in eight cars, with one family with two siblings walking to the center. He said between 7:30 a.m. and 9:45 a.m., there were nine visits with no more than two vehicles being on the site at any one time, and the same numbers occurred between 4:00 p.m. and 5:30 p.m., with an average time per visit of five minutes for parents dropping off or picking up children. He noted that Mr. Gordon had one assistant who used public transportation or received rides from family members.

Mr. Chesnutt stated that the success of the business had been attained and maintained with revenues based on the attendance of 12 children and explained that with a business plan limiting the number of children who could be served to 10, a 17 percent reduction in numbers, through efficiencies and fee increases, the business could remain viable; however, he said that limiting the attendance to seven children, which represented a 42 percent reduction, would effectively put Koalaty House out of business.

In closing, Mr. Chesnutt stated that they wanted to be good neighbors and wanted to comply with all the regulatory agencies. He said they were caught off guard by some of the concerns raised by the neighbors and respected and shared neighbors' desire to ensure the integrity of the neighborhood, but did not share their contention that the existence of a home-based child care program on Foxstone Drive would have an adverse effect on the quality of life. He stated that the program provided a highly valued service that was sorely needed and had established a track record of success and effectiveness, giving back to the community by helping to raise happy and healthy children and allowing parents to work without having to worry about the care their child was receiving.

Mr. Pammel commented that in the 12 years he had been a member of the Board, Mr. Chesnutt's presentation was one of the best he had heard from a person representing himself.

Chairman DiGiulian called for speakers.

David Willmore, 10635 Timberidge Road, Fairfax Station, Virginia, came forward to speak in support of the application. He stated that his daughter attended Koalaty House because they thought it was the best facility she could be in and offered the highest quality of care a child could receive. He said that in his search for child care, he found that the providers fell into two categories, very large ones that had many children with less individual care and not the highest quality service and grandmothers and mothers who took children in their spare time, but lacked training, education, and quality. Mr. Willmore explained that Koalaty House had been chosen because the owner was the primary caregiver, who had a first-class facility with a large space full of toys for the children and offered them high-level activities, with the number of children being small enough that his daughter got personal attention. He said the fee charged could be a lot higher and estimated that the number of facilities with the same attributes was very small. He stated that Fairfax County should give businesses like this an economic incentive to be in business. Mr. Willmore said that although it would benefit him to have fewer children because his daughter would receive more care, the service was better done with more children. He commented that his wife worked for a company in McLean that had a first-class child care facility onsite, but in spite of that, they had chosen Koalaty House because the level of

care had been much higher.

Mr. Hart gave a disclosure that he was currently doing work for Mr. Willmore's father and indicated that he would recuse himself from the public hearing.

Nancy Bush (phonetic), 2727 Reston Court, Herndon, Virginia, came forward to speak in support of the application. She stated that she had two older sons that she felt Ms. Gordon had helped raise by caring for them while she worked. Ms. Bush related that she had lived next door to Ms. Gordon when she had a daycare facility in a townhouse in Annandale and had shared a common backyard fence, and there had not been any noise or traffic problems. She said not only did Ms. Gordon provide a high quality of care to the children, she also provided a service to the parents in having a huge amount of experience and being available to answer parents' questions. She stated that it would be a great disservice to limit the number of children.

Jeanne Baily, 7814 Rebel Drive, Annandale, Virginia, came forward to speak in support of the application. She stated that two of her children had gone to Ms. Gordon's daycare. She commented regarding the services provided by Ms. Gordon to the children, the parents, and other childcare facilities and related that her sister had recently opened a childcare facility and Ms. Gordon had been instrumental in its start-up and offered training courses to other childcare providers.

Amy Knieriem, 6613 Bay Tree Lane, Falls Church, Virginia, came forward to speak in support of the application. She noted that she had two children for which Ms. Gordon currently was providing care. Ms. Knieriem said she had begun bringing her son to Ms. Gordon when the daycare was located two and a half miles from her home and currently spent two hours each day driving across the county to continue receiving the quality of care provided by Ms. Gordon. She explained that her son was asthmatic and she found it frightening to leave him with other people, but said Ms. Gordon had experience with asthmatic children and had treated her son with his nebulizer and given him medication when he had trouble breathing.

Brett Lieberman, 7412 Galanis Drive, Annandale, Virginia, came forward to speak in support of the application. He stated that his son had been cared for by Ms. Gordon for approximately four years. He said if Ms. Gordon wanted to open an assisted living facility for senior citizens or a residential drug treatment facility, there would be no criticism of it because state and federal laws allowed that, but to care for 10 children, she needed permission. Mr. Lieberman stated that Ms. Gordon was an excellent daycare provider, and the Board should expand the number to 10 children to meet the State Code. He said he was referred to Ms. Gordon by other daycare providers, who did not have space and said if they had young children, they would send them to her. He explained that he was no longer using Ms. Gordon's services due to the commute, but if he had another child, he would consider again making the commute. He added that his two-and-a-half-year-old son was quite upset that he was not allowed to attend the hearing to see Ms. Gordon.

Ken Osterlund, 1868 Foxstone Drive, Vienna, Virginia, came forward to speak in opposition to the application. He commented that it would be difficult to follow the emotional appeal and said he was not against daycare, but it was a zoning hearing, and the property was not adequate for a daycare center. He said the backyard of the subject property was similar to his and was 4,000 square feet or less. Mr. Osterlund noted that the request was for a business in a residential area. He said there were problems with noise, traffic, and safety, and it would result in a reduction in his quality of life. He stated that he had been a Fairfax County resident for 30 years, living in the current location for 25 years. Mr. Osterlund related that there was a brick pathway on which plastic vehicles went up and down all day long making loud noises resulting in his deck becoming uninhabitable when the children were outside. He advised the Board that he had brought photographs showing the small backyard. He noted that there was a wire going across the deck that was not properly guarded according to County code. Mr. Osterlund explained that the road was 29 feet, 9 inches wide, and with cars parked on each side, there was less than 15 feet to get an emergency or service vehicle through. He commented that there had been zoning changes to allow more houses to be built in the vicinity. Mr. Osterlund stated that this was not a case where a family would be there and their kids were going to grow up. He said he had children and had grown up and left, but the daycare center would be next to him constantly with 12 kids or more. He disputed that Ms. Gordon had one employee and said he had seen two. Mr. Osterlund noted that several neighbors had signed a petition and sent it to the Board and asked that the Board respect their privacy and good neighborhood that they had for so many years.

~ ~ ~ October 7, 2003, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-030, continued from Page 116

Eileen Kragie, 1876 Foxstone Drive, Vienna, Virginia, came forward to speak in opposition to the application. She said she understood a daycare center with seven children was allowed, but was opposed to the increase in the number of children. She commented that she was aware of the need for competent daycare, but she objected to the noise level and was concerned about the traffic issue. Ms. Kragie referenced a two-page petition signed by the neighbors and said many of the neighbors considered this to be a commercial business.

Mr. Chesnutt, in his rebuttal, stated that was one side of the fence had existed, but they had installed three additional sides that were in compliance with safety issues. He said that the wire referred to by Mr. Osterlund had met the requirements, but had been recently repaired because they were also unhappy with it.

Ms. Gibb asked where the proposed additional parking space would be located. Mr. Chesnutt replied that they would have to remove a tree, but it would be to the left side of the driveway. He said they had not yet spoken to a contractor to determine what would work best.

Ms. Gibb asked whether the applicants had read the development conditions and would comply with them. Mr. Chesnutt replied affirmatively and added that they had been operating with 10 children since they had come into contact with Zoning Enforcement and were not looking to increase that number, but rather to maintain that number.

Chairman DiGiulian closed the public hearing.

Mr. Pammel commented that there were good points germane to the issue before the Board on both sides of the argument. He noted that the provisions of the Comprehensive Plan called for these types of uses in residential districts up to a specific size under the special permit process, under which conditions were established that control the operation of the facility. Mr. Pammel said that generally these uses were minimal uses that had minimal impact on the community. He said there was a tendency of the community that is impacted to feel that it would have a significant impact, but experience has proven that they do not. He noted that the subject property was close to the entrance on Creek Crossing Road, and two-thirds of the community would not be impacted by traffic from the facility. Mr. Pammel stated that the traffic flow was not substantial. He pointed out that the staff report was favorable, and Ms. Stanfield had viewed the site and found no problems. Based on the presentation, Mr. Pammel said he would have to agree that this was a quality care facility and the type the County needed more of.

Mr. Pammel moved to approve SP 2003-HM-030 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-030 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 1870 Foxstone Dr. on approx. 10,694 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-2 ((34)) 27. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 7, 2003; and

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

1. The applicants are the owners of the land.
2. The subject property is located close to the entrance on Creek Crossing Road. Two-thirds of the community would not be negatively impacted by traffic from the facility.

3. The traffic flow from the facility is not substantial.
4. The activity at the facility only occurs during daylight hours.
5. The staff report was favorable and indicated staff had viewed the site and found no problems.
6. Based on the applicants' presentation, this is a quality care facility and is the kind the County needs more of, where quality care is given to a few students.
7. The applicants have complied with the stated standards for a home child care facility as set forth in Section 3-203 of the Zoning Ordinance.
8. The staff report indicates the application is in compliance with the Comprehensive Plan requirements.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1870 Foxstone Drive (10,694 square feet), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles E. Janson, dated December 5, 2002, revised by Timothy Chesnutt and Gail L. Gordon, dated through July 1, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation of the home child care facility shall be limited to a maximum of 7:30 a.m. to 5:30 p.m., Monday through Friday.
5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time with a maximum daily enrollment not to exceed 15 children.
6. The number of staff for the home child care facility shall not exceed one (1) employee in addition to the proprietor.
7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.
8. There shall be no signs associated with this use.
9. An additional third paved parking space shall be constructed in the front yard of the subject property, adjacent to the existing driveway.

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 establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the

~ ~ ~ October 7, 2003, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-030, continued from Page 118

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

Ms. Gibb seconded the motion, which **FAILED\*\*** by a vote of 3-2; **THEREFORE, THE APPLICATION WAS DENIED.** Chairman DiGiulian and Mr. Ribble voted against the motion. Mr. Hart recused himself. Mr. Pammel moved to waive the 12-month waiting period for refiling an application. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 15, 2003. This date shall be deemed to be the final approval date of this special permit.

\*\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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Ms. Gibb stated that had she thought there was opposition to the motion, she would have discussed it. She noted that the staff report was entirely positive, and by right, the applicant was allowed seven children. She said she did not understand what the issue was over three additional children that could be walking to the facility or coming with siblings.

Mr. Ribble commented that a complaint had been filed, and the request would double the size. He said it would be a continuum of 10 children during the day, a maximum of 15, which would be a constant noise factor, especially to the next-door neighbors.

Ms. Gibb stated that the Comprehensive Plan allowed for seven children.

Mr. Ribble stated that in view of the opposition, he had voted against the motion.

Ms. Gibb and Mr. Pammel commented that they were shocked.

Chairman DiGiulian called for the vote on the motion to waive the 12-month waiting period for refiling an application, which carried by a vote of 5-0.

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~ ~ ~ October 7, 2003, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. . . . . NAOMI C.B. HAGLER, VC 2003-PR-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lots 1 and 2 having a lot width of 25.0 ft. Located at 3009 Fairhill Rd. on approx. 3.02 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((1)) 27 and 49-3 ((6)) 178. (Moved from 9/9/03 at appl. req.)

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Lubeley, Emrich, and Terpak, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of two lots into two lots with proposed Lots 1 and 2 each having lot widths of 25 feet, where a minimum of 150 feet is required by Sect. 3-106 of the Zoning Ordinance, for the purpose of creating two single-family detached residential building lots. Proposed Lot 1 would have an area of 1.71 acres, and proposed Lot 2 would have an area of 1.3 acres. Standard 4 states that the strict application of the Zoning Ordinance would produce undue hardship. Standard 6 states that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property or that the granting of a variance will alleviate a clearly demonstrable hardship

approaching confiscation as distinguished from a special privilege or convenience sought by the applicant. Ms. Stanfield reported that the Zoning Administration Division had opined that the original legal lot width for Lot 178 could be reestablished through a number of means. The garage on Lot 177 could be removed. It was staff's understanding that the applicant intended to remove the garage on Lot 177, which had fallen into disrepair, as part of the proposal. Once the garage was removed, the lot lines could be reestablished and negate the necessity for a lot width variance for one lot. Staff, therefore, did not believe the applicant had met the standards. Standard 7 states that the authorization of the variance will not be a substantial detriment to the property. Staff was concerned that the location of the driveway to serve two homes immediately abutting the rear lot lines of existing homes would adversely affect the privacy and enjoyment of the existing dwellings. The location of the driveway 5.0 feet away from the site's western lot line did not provide an opportunity for adequate screening. In staff's view, the orientation of the houses with front yards facing the rear yards of adjacent properties was not generally consistent or in character with the surrounding community. Staff believed that the standard had not been met. Standard 9 states that the variance will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest. Staff was concerned that the proposed development would degrade water quality in the Environmental Quality Corridor (EQC) that extended along the western half of the site. In staff's view, the standard had not been met.

Mr. Hart asked where the EQC was located and what the disagreement was between staff and the applicant regarding its location. Ms. Stanfield indicated the position on the plat and said it was located in the area of the steep slopes where there was an extraordinary amount of existing vegetation and habitat.

Mr. Hart asked for confirmation that there would be a drop of 20 to 22 feet from the garage to the right side of the proposed house on the left and asked whether the house would be up on a pad or cut into the hill. Ms. Stanfield indicated that there would be a drop, and the second part of the question would have to be directed to the applicant.

Mr. Hart asked whether it would have to be shown if there was to be some kind of a retaining wall. Ms. Stanfield replied that it would not necessarily have to be shown.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She explained that the applicant was proposing the combination of two existing lots and the resubdivision into two lots that would have widths of 25 feet. She said she wanted it to be clear that the variance was not requesting an increase in the number of lots beyond that which was currently permitted. Ms. Strobel stated that the acreage of the two lots was approximately three acres, and each proposed lot would contain more than an acre. She explained that a unique condition that merited the granting of a variance was created by a number of existing conditions and physical constraints. She noted that Lot 178, which did not meet current requirements for lot size or width, was long and narrow and had been created by a previously recorded subdivision plat, and Lot 27 was encumbered by existing easements that included a floodplain easement and utilities. Ms. Strobel pointed out that there was an existing sanitary sewer line that crossed the property that did not have the benefit of a recorded easement, which she said would be corrected with the submission of a subdivision plat if the property was resubdivided. She noted that Lot 27 did not have access to a public street, which was a situation that existed at the time of the applicant's purchase and was not created by the applicant. She stated that a strict application of the Ordinance would preclude reasonable development of the properties and would produce undue hardship because the applicant would be unable to construct two single-family homes that were consistent with the existing zoning and the surrounding area. Ms. Strobel indicated that it was unusual for a lot created by a prior subdivision to fall short of meeting current requirements and for a lot in excess of two acres to lack public street frontage. She stated that it was a reasonable expectation to be able to build two homes on two lots, and the applicant's proposal was reasonable, especially when the two lots comprised three acres and were zoned R-1.

Ms. Strobel explained that the proposed layout of the two lots maximized tree preservation and preserved an environmentally sensitive area. She said the applicant's engineer had originally prepared a plat that deleted the floodplain line, but staff had raised the issue of the EQC. She pointed out that the EQC policy was a policy that had been established by the County, not an Ordinance requirement, and was not found within any of the Fairfax County regulations. Ms. Strobel commented that the staff report was confusing because it sounded like the EQC was a regulation, which it was not and would not come into play in a by-right subdivision. She stated that the applicant wanted to work with the County, had an onsite meeting, and had

~ ~ ~ October 7, 2003, NAOMI C.B. HAGLER, VC 2003-PR-093, continued from Page 120

prepared a plat where the EQC line was located based on the Comprehensive Plan requirement having to do with the percentage of the steep slope, which was submitted to the County and was deemed to be technically correct, but the County had asked for some additional area because it had some discretion in measuring the EQC using a subjective judgment. She said a revised plat was prepared illustrating a conservation easement that covered a large portion of the property, which the applicant believed was consistent with the onsite walk and conversations with the County, and said she was surprised by some of the text in the staff report. Ms. Strobel stated that the applicant could not increase the EQC preservation area and maintain two buildable lots.

Regarding staff's suggestion that the property could be developed with a single-family dwelling, Ms. Strobel said it would not be the best result for the property, and there would be no protection of the EQC. She explained that the property could be developed by cutting down a number of the trees, and there would be no restrictions on preserving the area if it was developed by right. She presented a plan prepared by the engineer reflecting a by-right development, which she stated was not an unrealistic presentation, and she pointed out that the adjacent property had been developed and included a tennis court and a pool.

With respect to the driveway, Ms. Strobel stated that it could not be located any closer to the west due to the EQC line, and in order to provide some type of screening, she proposed a development condition that provided evergreen shrubs located between the driveway and the adjacent residential-developed properties to provide additional screening. She submitted two letters of support prepared by residents along Fairhill Drive.

Ms. Gibb asked how the lot ended up being landlocked. Ms. Strobel replied that she did not know and added that it was an existing condition when the applicant purchased the property.

Ms. Gibb asked if it was known how long the landlocked condition existed and why the applicant bought a landlocked piece of property. Ms. Strobel replied that the individual had also owned Lot 178 and believed that access could be provided in that manner. She said Lot 178 was purchased at the same time as Lot 27.

Mr. Pammel asked when Lot 177 had been purchased and whether it was owned by the same owner. Ms. Strobel replied that she did not know when it was purchased. She confirmed that it was the same owner and said she could ask the representative of the property owner, but believed it had been purchased previously.

Mr. Pammel asked why Lots 177 and 178 could not be combined for purposes of a dwelling and access to one lot to the rear. Ms. Strobel stated that the applicant had a disabled son who lived in the current house on Lot 177, and the applicant desired the ability to continue to provide the dwelling for him. She added that with respect to staff's suggestion of relocating the existing garage, while it was in disrepair, the owner intended to repair it and bring the property back into compliance by doing an equal land exchange between Lots 177 and 178, leaving the garage intact.

Mr. Hart asked what year Lot 27 was created. Ms. Strobel replied that she was unsure, but she would consult with the property owner's representative during testimony.

Mr. Hart commented that he would be interested in knowing whether Lot 27 ever had access to the north. Ms. Strobel said her understanding was that it had been one lot as Lot 27, and the property to the north had frontage along Dogwood. She said it had been divided into two parcels, one with an existing house that fronted on Dogwood and the second one which was part of the subject application.

Mr. Hart asked whether the applicant had acquired the property from the person who had done the division. Ms. Strobel replied that she did not know how many changes of title there had been, but knew that it was in its current condition at the time of the applicant's purchase.

Mr. Hart said he agreed that a lot of the subject size that did not have access to a public street could be an extraordinary condition, but added that if someone previously had intentionally caused that to occur, it would be a countervailing factor to consider. He indicated he would be interested in why Lot 27 would have been created without any street frontage.

Mr. Hart commented that on the map presented there appeared to be a drop of over 20 feet from the left to the right across the footprint of the house on the left, and he asked whether the house would be build up on a

pad or cut into the hill and how it would work with the limits of clearing and grading. Ms. Strobel stated that she would defer those questions to Charles Huntley, Jr., who was the person who prepared the plan, but she said a possible retaining wall was shown in the area, there would be some grading of the property, the house would be designed as a walkout condition, but the limits of clearing and grading would be honored.

Mr. Huntley confirmed that the house would have an in-ground basement with a walkout and would be located into the hill. He stated that there would probably be a need for a small retaining wall, and a possible wall location was shown along the one side of the driveway.

Mr. Hart asked whether it would be cut out at the high side and built up on the low side. Mr. Huntley replied that the basement would be dug into the side of the slope, creating a walkout condition toward the floodplain.

Mr. Hart commented that if the footprint of the house was dropping more than 20 feet, it would be more than a walkout basement and said he was trying to understand whether there would be a large platform constructed on the side of the hill. He said it sounded like there would be cutting into the hill on the garage side, and there would not be a retaining wall down from the area. He asked whether the limits of clearing and grading would be acceptable. Mr. Huntley replied affirmatively and added that he had prepared plans reflecting the grading on both lots around the houses and offered them to the Board. Ms. Strobel confirmed that a copy of the grading plan could be provided to the Board.

Mr. Hart asked whether the issue referenced in the staff report regarding tree save areas not being delineated had been resolved with the conservation easement or whether additional areas were being discussed. Ms. Strobel said she understood that staff thought the EQC limits and conservation area should be larger, but that if that happened, there would no longer be two buildable lots. She stated that with the recordation of the conservation easement, the trees would be preserved, and none would be cut down unless they were dead or dying.

Mr. Hart asked staff to address the issue. Mary Ann Welton, Planning Division, environmental planner, stated that the conservation easement would protect the trees in perpetuity if written that way, but she had not been satisfied with the EQC delineation provided by the applicant.

Mr. Hart asked whether a larger area than the applicant had shown was desired by the County, to which Ms. Welton replied affirmatively and added that it was due to the slopes being steeper than 15 percent adjacent to the RPA and the stream valley. Ms. Strobel commented that the engineer had used the formula in the Fairfax County Comprehensive Plan to create the delineation of the EQC.

Mr. Hart stated that he could see the area on the plat where the conservation easement was located, but did not understand the boundary closer to the older homes at the bottom of the drawing and whether it was something other than the RPA line. Ms. Stanfield indicated the conservation easement on the drawing, and Mr. Hart asked whether the RPA line was wider than that, to which Ms. Stanfield replied that it was substantially wider. Ms. Strobel added that the limits of clearing and grading were much smaller.

Mr. Hart asked what would be done about storm water management if there was no waiver. Ms. Strobel replied that if a certain percentage of the site was preserved as undisturbed, a credit could be given. Mr. Hart commented that it was an issue referenced in the staff report, and if he understood Ms. Strobel's answer regarding why there was no storm water facility depicted, it was because enough trees would be saved to allow a credit, and it would not be required. Mr. Huntley confirmed Mr. Hart's understanding and added that a waiver would be requested. He explained that the amount of runoff generated by the two houses would be insignificant considering it was sitting on the floodplain, the conservation easement, which would result in BMP credits, along with some bioretention or a rain garden on the lots.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that it must be understood that there was a difference between the BMP requirements and the detention or storm water management requirements. She said the BMP requirements were frequently met by the preservation of plant material regarding the runoff and the phosphorous, but the retention requirements were not necessarily met by that, so a pond could still be required.

Mr. Hart asked where a pond or detention area would be located if the waiver was not granted. Ms. Strobel stated that when creating one lot or two houses, it was typical to receive a waiver of storm water

~ ~ ~ October 7, 2003, NAOMI C.B. HAGLER, VC 2003-PR-093, continued from Page 122

management. Mr. Hart asked whether, in the event the waiver was not granted and nothing was referenced in the development conditions regarding the issue, the applicant would have to resubmit or it would be located anywhere, which could include the taking of trees. Mr. Huntley stated that there were several areas and the property was large enough that it could easily support a pond, but that it had been his experience that the amount of runoff generated from two houses would not qualify for a pond because there would not be enough water to go into the pond, particularly in light of the fact that it was sitting on a floodplain.

Mr. Hart asked whether that would change the limits of clearing and grading. Mr. Huntley replied that it was possible that Lot 2 might have to be opened up somewhat to the lower side on the property. Ms. Strobel added that it would not interfere with the conservation easement.

Ms. Gibb noted that the plat reflected "possible limits of clearing and grading," and she asked whether the approval of the plat meant anything in light of the word "possible." Ms. Stanfield replied that there was a development condition that tied into the limits of clearing and grading as shown on the plat, which would supersede the notation.

Chairman DiGiulian called for speakers.

The following speakers spoke in opposition to the application: Charles Hougland, 2946 Fairhill Road, Fairfax, Virginia; Deirdre Gilligan, 2949 Fairhill Road, Fairfax, Virginia; David Trenary, 8633 Dogwood Lane, Fairfax, Virginia; Saysha Raper, 2953 Fairhill Road, Fairfax, Virginia; Pat Trenner, 3000 Fairhill Road, Fairfax, Virginia; and John Laney, 2456-C South Walter Reed Drive, Arlington, Virginia, speaking on behalf on his mother, Mary Laney, 3001 Fairhill Road, Fairfax, Virginia.

The speakers' main concerns dealt with the following: The effects on the wildlife inhabiting the property; water runoff issues; floodplain issues; safety issues regarding construction traffic and retaining wall failure; privacy issues regarding the location of the driveway within five feet of the property line and the proposed homes being located facing the backyards of existing homes; the issue of the development being on protected land with a stream running through it; the issue of the proposed development removing vegetation on a steep grade that was currently preventing erosion and excess sediment from running into the stream; EQC issues; RPA issues; the proposed structures not being in character with the existing neighborhood; and negative impacts to the community.

Mr. Hougland also stated that his knowledge was that the property had always been landlocked. He explained that his house had been built in 1938, and he had built an addition subsequent to his purchase, at which time he had gotten plats of the land which indicated that the area to the rear on the subject property had never been on a street and was developed without provisions to enter the lot. He said the lot with the garage had been changed with ten feet being taken from Lot 178 and added to Lot 177 in order to make the lot wider and build the garage. Mr. Hougland commented that he had seen the creek that meandered through the property come over its banks and spread 50 to 75 feet wide.

Mr. Trenary also presented a petition signed by neighbors in opposition to the application.

Mr. Laney also stated that his mother had lived at her property for 32 years and related that when the Haglers bought the land, they had only wanted to buy a portion of it, but had been told they had to buy all of it or none and had bought it knowing some of it was not buildable. He said that other people who had bought property in the area had done so with the understanding that there would be no building in the back of the subject area because the builders and realtors they dealt with had stipulated to that effect saying it was floodplain and the County would not allow it. He stated that he had offered to buy the land from Mrs. Hagler in 1990 because it was located adjacent to his parents' house, had done due diligence and been told by the County that building in that area would be a severe detriment to the community environmentally and as a hazard to the residents.

Ms. Strobel, in her rebuttal, stated that with respect to the character of the area, it was in a transition, and there were both small and large homes. She presented a grading plan for the property to the north of the subject property which reflected the size of the home, the tennis courts located there, and the amount of grading that was done. She stated that when the property was purchased by the applicant, it was in its landlocked condition, and it was the intent of the owner to access the property through Lot 178. She said the property had some issues with respect to the floodplain, the EQC, and the steep slopes, but was privately

~ ~ ~ October 7, 2003, NAOMI C.B. HAGLER, VC 2003-PR-093, continued from Page 123

owned and developable, and the owner deserved to have two buildable lots from the two lots that currently existed.

In response to questioning by Ms. Gibb regarding the plan reflecting the swimming pool and tennis courts, Ms. Strobel stated that it was a by-right plan that could currently be done with one house with access through Lot 178, and the frontage would be sufficient because it was an existing recorded lot with demonstrated access, and the County would be required to issue a building permit.

Ms. Gibb asked for staff's position regarding the proposed by-right plan that included the swimming pool, tennis courts, and removal of all the trees. Ms. Stanfield replied that Lot 27 could contain one house only if the lot line for Lot 178 was reestablished, but currently was not buildable.

Ms. Gibb commented that she felt the applicant was saying, "Give us what we want or we will do something a whole lot worse." Ms. Strobel said she was suggesting that the lot was buildable and it could be a worse condition if it was a by-right development. Ms. Langdon said that what was shown on the plan was a possibility; however, it showed intrusions into the RPA and other conditions for which the applicant would have to receive exceptions from the County, and there were other areas on the lot that were not within the RPA that could be built on.

Mr. Pammel asked about the necessary 10 feet if the applicant did not intend to relocate the garage. Ms. Strobel replied that there could be an equal exchange of property between Lots 177 and 178 to bring it into compliance with the provisions of the County for subdivisions that were created before the 1978 Zoning Ordinance.

In response to questioning by Mr. Hammack regarding the variance for the garage, Ms. Strobel said she was suggesting that if the lots were brought into the same land area that they were prior to the subdivision in accordance with Section 2-405 of the Ordinance, they would be considered the grandfathered lots.

Mr. Hammack asked why the Board was hearing this when the applicant did not have the frontage for a two-lot subdivision until something was done. Ms. Strobel said her understanding from speaking with representatives of Fairfax County was that it would all be corrected at one time with a new subdivision plat. She referenced a letter from Jack Reale, Zoning Administration Division, stating that the properties could be brought back into compliance. Mr. Hammack said that should be done before the Board considered the subject application. He said he did not consider the application to be mature at the current time and stated that the Board was being asked to approve a variance based on a 40-foot frontage for a subdivision into two lots with the one lot to be subdivided for the frontage requirements not currently being a buildable lot. A brief discussion ensued regarding the appropriateness of the Board currently hearing the variance request based upon future events that had not taken place.

Mr. Hammack asked why Mr. Reale had not checked the legality of Lot 27. Ms. Stanfield explained that two letters had been submitted in two different timeframes. She said one of the letters which requested information had cited an incorrect tax map number regarding a Lot 27 on a different tax map page, the resultant information was useless, and the information request was not resubmitted.

Mr. Hammack asked why the County would approve a subdivision in 1938 with a lot like Lot 27 that he would consider an outlot if it was not buildable. Ms. Stanfield said she did not know how the lot was formed.

Ms. Langdon commented that if the applicant added the land of Lot 177 to result in the land being again in its original configuration, it would allow one house to be built, and a subdivision or lot width variance would not be needed. She said that Zoning Evaluation Division staff had not suggested the applicant come before the Board for a subdivision variance. Ms. Strobel confirmed that she had spoken with representatives of the Engineering Division because it was a subdivision issue. She said she would have no objection to a resubdivision being a condition of approval. A brief discussion ensued regarding the requirements involved with an equal land exchange and whether a public hearing would be required or it would be done through a minor lot line adjustment through the submission of a plan to the Department of Public Works and Environmental Services.

Mr. Pammel stated that in order to make it a buildable lot, it would have to have a full 50-foot frontage as it was recorded, and following Ms. Strobel's theory, the lots could be juggled and frontage could be reduced to

~ ~ ~ October 7, 2003, NAOMI C.B. HAGLER, VC 2003-PR-093, continued from Page 124

25 feet with something taken from the rear of another lot. Ms. Strobel explained that the Zoning Ordinance said as long as no additional lots or outlots were created, there was no increase to the maximum density, and the resultant lot lines did not create any new or aggravate any existing noncompliance, it could be done as a minor lot line adjustment and was permitted.

Mr. Hart asked if a boundary line adjustment was done by right without a public hearing, the garage stayed in its current location and there was no need for a variance for the garage, whether the boundary line adjustment would be between Lot 178 and Lot 2. Ms. Strobel replied that it would be between Lots 177 and 178.

A lengthy discussion ensued amongst the Board members, staff, and the applicant's agent regarding the proposed location of the boundary line adjustment; the buildability of the existing and proposed pertinent lots; whether the lots would be in compliance as a result of proposed boundary line adjustments; which lots were included in the hearing advertisements and whether the lots should have been designated as lots or outlots; the dimensions of the frontages of the existing and proposed pertinent lots; the configuration of the pertinent lots at the time of their creation and the changes to the lots that subsequently occurred.

Ms. Strobel indicated on the drawings the proposed orientation on the homes and the directions the homes would be facing.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 2003-PR-093 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NAOMI C.B. HAGLER, VC 2003-PR-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lots 1 and 2 having a lot width of 25.0 ft. Located at 3009 Fairhill Rd. on approx. 3.02 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((1)) 27 and 49-3 ((6)) 178. (Moved from 9/9/03 at appl. Req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 7, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has not satisfied 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

~ ~ ~ October 7, 2003, NAOMI C.B. HAGLER, VC 2003-PR-093, continued from Page 125

adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 6-0. Mr. Hammack made a motion to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 7, 2003, (Tape 2), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-A-007 previously approved for church to permit building addition and site modifications. Located at 8800 Braddock Rd. on approx. 15.31 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((4)) 1 and 70-3 ((1)) 5 and 5B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Lubeley, Emrich, and Terpak, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, the applicant's agent, replied that it was.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to SP 85-A-007, previously approved for a church, to permit construction of an addition to the existing school consisting of 18,928 square feet with 6,858 square feet of cellar space to provide additional space for a cafeteria and special programs and modifications to the existing parking lot, including the construction of a travel way leading to the rear of the existing building and proposed addition and the addition of 11 parking spaces. Mr. Sherman noted that the applicant had submitted a revised plat with a final revision dated September 18, 2003, and stated that it should be referenced in proposed Development Condition 2. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and

~ ~ ~ October 7, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3, continued from Page 126

recommended approval of the special permit amendment subject to the proposed development conditions contained in the staff report.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said that Holy Spirit Catholic Church had been a part of the community since it was established in 1964, was constructed prior to the requirement of the Fairfax County Zoning Ordinance to obtain a special permit, and a school was approved on the property in 1965. She stated that there would be no changes in the sanctuary seating capacity of 1,400 seats or the number of students enrolled in the school of 500. Ms. Strobel explained that the proposed modifications were necessary to enhance the existing school facilities, and the addition would allow for a science lab, a music room, an art room, an expanded media center, and an elevator for handicapped students. She reported that the resulting Floor Area Ratio (FAR) would be .125, which was less than the .15 FAR permitted for Non-Residential Uses in the R-1 District.

Ms. Strobel noted that the staff report indicated an approval recommendation and stated that the applicant was in agreement with the development conditions, with the exception of Development Condition 13, which required the provision of interparcel access with Parkwood Baptist Church. She suggested that the interparcel access was not needed because the entrance to Parkwood Baptist Church was at a traffic signal, and Holy Spirit Catholic Church had two access points, one on Braddock Road and one on Woodland Way, which exited at a traffic signal on Braddock Road. She noted that a waiver of the interparcel access was granted to Parkwood Baptist Church by the Department of Public Works and Environmental Services (DPWES) on May 10, 2000, and the justification submitted in the waiver that both sides had access and parishioners would not be going between the properties still currently existed. Ms. Strobel provided an alternative development condition, but suggested the development condition be waived.

Ms. Strobel submitted letters of support from surrounding property owners and stated that the limits of clearing and grading had been modified to avoid the disruption of existing trees on the site, leaving a buffer between the subject property and adjacent residential properties.

A discussion ensued amongst Mr. Hart, staff, and the applicant's agent with respect to development conditions regarding interparcel access, the viability of an interparcel access condition standing alone on only one party, whether the Board had the authority to waive the condition or whether the waiver could only be granted by DPWES, and whether traffic flow problems would occur that the interparcel access would relieve. It was determined that the interparcel access was a Zoning Ordinance requirement in the site plan section, which could not be waived by the BZA and would have to be provided by the applicant or waived by DPWES at the time of site plan. Ms. Strobel reported that Parkwood Baptist Church had indicated to her it was not in favor of an interparcel access. She stated that if the development condition was approved as proposed by the applicant, a waiver would have to be obtained by DPWES, which she believed would be granted. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the development condition should be as proposed by staff or deleted, but regardless the applicant would have to apply for a waiver. It was determined that if the BZA deleted the condition, the applicant would not be relieved of the requirement to obtain a waiver.

Chairman DiGiulian called for speakers.

The following speakers spoke in opposition to the application: FengJu Zhang (phonetic), no address given; Joe Henderson, 5005 Margaret Court, Annandale, Virginia; Ellen Snyder, 8701 Margaret Lane, Annandale, Virginia; and Zhen Ma, 5105 Fleming Drive, Annandale, Virginia, who read a letter from Ting Dai, 5103 Fleming Drive, Annandale, Virginia.

The speakers' main concerns dealt with the following: The location of the driveway in close proximity to the adjacent properties with insufficient buffering; traffic safety issues and resultant pollution; water runoff issues; property value issues; the unnecessary removal of mature trees and vegetation in the area of the baseball field; noise issues as a result of the truck turnaround in the area of the existing dumpster and other traffic; reductions to the quality of life of adjacent property owners; the potential of the road and parking lot bringing unwanted persons to the rear of the school; and the lack of a proposed storm water management system.

~ ~ ~ October 7, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3, continued from Page 127

Mr. Hart received confirmation from staff that the limits of clearing and grading would not be changed so as to intrude farther into the wooded area beyond the existing fence near the baseball field; that the waiver of the barrier requirement proposed to be carried forward was supported by staff; that there would be no vehicular access from the end of Fleming Drive; that clearing and grading would be required in the area near the end of Fleming Drive to correctly direct storm water, and the applicant would be required to restore the area; and that if the barrier requirement was not waived, a fence would be required in the area at the end of Fleming Drive.

Ms. Gibb asked why the barrier had been previously waived. Mr. Sherman replied that the screening was sufficient with established vegetation, and to build a barrier might have a negative impact on the vegetation.

Ms. Gibb asked whether some of the screening would be removed in order to install the in-ground piped storm water system. Mr. Sherman explained that the storm water system would be located under the road, and Development Condition 10 would require supplemental planting in the area where the limits of clearing and grading required for the storm water management improvements entered the existing screening adjacent to Fleming Drive.

Ms. Strobel, in her rebuttal, indicated that the neighbors had been invited to a meeting at the church, but attendance had been sparse, and it was the applicant's impression that there were no concerns about the application. She emphasized that the limits of clearing would not be changed, the existing vegetation would be preserved, and the existing chain-link fence would remain. She said the applicant had asked for a waiver of the barrier requirement as a 25-foot area of transitional screening of existing vegetation and supplemental planting was being provided, but a fence could be proposed that would preclude any traffic. Ms. Strobel noted that alternative locations were considered for the road behind the cafeteria, but had concluded the proposed location made the most sense for loading purposes and other needs. With respect to the noise from the area of the dumpster, she explained that there was a substantial distance of over 300 feet between the dumpster and adjacent property line, which included existing vegetation and differing grades, and noted that she had spoken with Ms. Snyder about the issue. She indicated Patrick Kessler (phonetic), who had prepared the plan, was present to answer any questions of the Board.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 85-A-007-3 for the reasons stated in the Resolution, with modifications to the development conditions as reflected in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-A-007 previously approved for church to permit building addition and site modifications. Located at 8800 Braddock Rd. on approx. 15.31 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((4)) 1 and 70-3 ((1)) 5 and 5B. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 7, 2003; and

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

1. The applicants are the owners of the land.

~ ~ ~ October 7, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3, continued from Page 128

2. The applicants presented testimony showing compliance with the required standards for a special permit.
3. The facility has existed for a long time.
4. There are detailed development conditions which limit the impact on the surroundings.
5. The staff report recommends approval of the application.
6. This is an improvement of an existing facility with no increase in enrollment.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8800 Braddock Road (15.31 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 May, 2003, updated through September 18, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 1,400 seats in the main place of worship.
6. The maximum enrollment for the school of general education shall be 500.
7. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site. The parking provided on the property shall be redesigned to meet the minimum requirements of the Public Facilities Manual.
8. The hours of operation of the activity center for the school shall be 8:30 a.m. to 3:00 p.m., Monday through Friday, and from 8:00 a.m. to 10:00 p.m. daily for parish functions.
9. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet.
10. Transitional screening shall be modified as shown on the Special Permit Plat. In those areas where the limits of clearing and grading encroach into areas of Transitional Screening, planting shall be provided to meet the requirements of Transitional Screening 1, as determined by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). All plant material shall be maintained in a healthy condition. Any dead or dying plant material shall be replaced with like kind, subject to the approval of DPWES.

~ ~ ~ October 7, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 85-A-007-3, continued from Page 129

11. The barrier requirement shall be waived as shown on the Special Permit Plat, with the exception of the area adjacent to Lot 360, the dead-end stub of Fleming Drive, and Lot 361.
12. A tree preservation and planting plan shall be submitted to the Department of Public Works and Environmental Services (DPWES) including the Urban Forestry Division for review and approval at the time of site plan review and shall be implemented. The plan shall depict the limits of clearing and grading as delineated on the special permit plat. It shall provide for the preservation of all vegetation located outside of the limits of clearing and grading. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction.
13. The Braddock Road exit shall be closed with a movable gate at all times, except from 4:00 p.m. Saturday until 7:30 p.m. Sunday. Right turns from Braddock Road onto church and school property may be permitted at all times.
14. The applicant shall provide 102 feet of dedication from the existing centerline of Braddock Road in fee simple to the Board of Supervisors at the time of site plan approval or upon demand, whichever occurs first.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 15, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ October 7, 2003, (Tape 2), Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02 and 4/30/02) (Def. for Dec. Only from 6/4/02 9/10/02 and 2/4/03) (admin moved from 5/6/03)(def from 5/20/03 for decision only)

Chairman DiGiulian gave a disclosure that his office had prepared the plats for the subject property and indicated that he would recuse himself from the public hearing.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the junkyard portion of the appeal had been resolved, and the storage yard part remained outstanding. She explained that the neighboring property owner had admitted he was responsible for the condition of the subject property and was to appear in court on October 17, 2003. She proposed the appeal decision be

~ ~ ~ October 7, 2003, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 130

deferred to December 16, 2003, to allow time for the court process to go forward.

There were no speakers to address the issue of a deferral of the decision.

Mr. Pammel moved to defer decision on A 2001-LE-023 to December 16, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, but indicated the Board's decision being made on that date was not by implication part of the motion. Mr. Hart indicated evidence might need to be taken. The motion carried by a vote of 5-0. Chairman DiGiulian recused himself from the hearing, and Mr. Beard was absent from the meeting.

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~ ~ ~ October 7, 2003, (Tape 2), Scheduled case of:

9:30 A.M. JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that appellants purchased an affordable dwelling unit without obtaining a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and are not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 7818 Liberty Spring Ci. on approx. 1,732 sq. ft. of land zoned R-20, HC and CRD. Mt. Vernon District. Tax Map 102-1 ((42)) 144.

Vice Chairman Ribble noted that a deferral of A 2003-MV-034 had been requested.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that there had been an administrative error in the notices; therefore, the hearing could not go forward; however, she noted that the appellants' attorney had requested a deferral in the hope of resolving the issue with the Fairfax County Department of Housing and Community Development. She stated that staff supported a deferral and proposed a deferral date of January 6, 2004, to which the appellant had agreed.

There were no speakers to address the issue of a deferral.

Mr. Hammack moved to defer A 2003-MV-034 to January 6, 2004, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ October 7, 2003, (Tape 2), After Agenda Item:

#### Approval of September 30, 2003 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Hammack moved that the Board of Zoning Appeals (BZA) retain Brian McCormack with respect to the appeal by the Board of Supervisors of the BZA's determination regarding West Lewinsville Heights Citizens Association, Stephen L. Sulzer, Leonard N. Berman, Daniel J. Wolkenstorfer, Donald N. Huff, Robert Rosenbaum, A 2003-DR-030. Mr. Pammel and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Pammel moved that the Board of Zoning Appeals (BZA) endorse the reappointment of James Hart to a full term on the BZA. Mr. Ribble and Ms. Gibb seconded the motion, which carried by a vote of 5-0-1. Mr. Hart abstained from the vote, and Mr. Beard was absent from the meeting.

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~ ~ ~ October 7, 2003, continued from Page 131

As there was no other business to come before the Board, the meeting was adjourned at 11:44 a.m.

Minutes by: Kathleen A. Knoth

Approved on: December 21, 2004

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 14, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; Paul Hammack; James Hart; James Pammel; and John Ribble.

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

~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN K. & REIKO K. BRISCOMBE, VC 2003-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. with eave 2.0 ft. from one side lot line and 10.4 ft. from other side lot line. Located at 6703 McCrea Pl. on approx. 18,808 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 24. (Deferred for decision only from 9-9-03)

Lindsay Shulenberger, Rezoning and Special Exception Branch, explained that the case was deferred for decision only from September 9, 2003, and the applicant was present to present a revised proposal.

Mr. Briscoombe proposed to scale down the previously proposed two-story structure to a single-story structure to be located 3.0 feet from the side property line at the closest point. He said the roof had been reconfigured to be tapered at each end and would be approximately 20 feet lower than what was previously proposed. He reiterated that the property narrowed significantly from the rear to the front, and as a result, the proposed addition could not be located in any other location on the property. He submitted an elevation of the proposed addition to the Board. Mr. Briscoombe explained that the purpose of the request was to provide adequate room for his son to maneuver his walker while entering and exiting the home and his vehicle.

Chairman DiGiulian called for speakers.

Sonja Motz, 6704 McCrea Place, Falls Church, Virginia, came forward and submitted a letter in opposition to the application. The issues mentioned in the letter were that the proposed structure would not be in character with the neighborhood, the proposed addition would be more of a convenience than alleviating a hardship, and all of the properties in the neighborhood shared the same constraints.

Mr. Briscoombe, in his rebuttal, stated that all of the neighbors, including the owners of the property which would be most affected by the proposed addition, had submitted letters of support. He said Ms. Motz was the only person in the neighborhood who did not support the variance request.

Mr. Beard asked the applicant if the neighbors in support had seen the elevation of the proposed addition. Mr. Briscoombe replied that they had.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he could not support the variance request because a structure 3.1 feet from a side lot line with an eave that was closer and that was approximately 63 feet in length was too much of an impact on the adjacent neighbor on Lot 23, whose home was located approximately 17 feet from the proposed structure. He said the applicant could propose a reconstruction of the carport or other configurations, but instead proposed to replace the carport with an enclosed garage of significant height to extend it all the way to the rear to result in a variance for a length of 63 feet along the property line. He stated that although the construction proposed by the applicant was very handsome in appearance and the elevation was very nice, it still increased the bulk a great deal even with the corners of the roof cut at an angle in an attempt to decrease it. He said the right side of the proposed structure infringed too far on the side lot line, and the size of the addition would change the character of the neighborhood. He stated that denial of the application would not impose a hardship approaching confiscation because there was room to the rear of the property which would allow some additional construction or an additional room.

Mr. Hart stated that he agreed with Mr. Hammack's observations and suggested the applicant try to configure something with the existing garage.

Mr. Hammack moved to deny VC 2003-MA-101 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

BRIAN K. & REIKO K. BRISCOMBE, VC 2003-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. with eave 2.0 ft. from one side lot line and 10.4 ft. from other side lot line. Located at 6703 McCrea Pl. on approx. 18,808 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 24. (Deferred for decision only from 9-9-03) 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 14, 2003, and

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

1. The applicants are the owners of the land.
2. A structure 3.1 feet from a side lot line with an eave even closer and approximately 61 feet in length, which causes too much of an impact on the adjacent neighbor on Lot 23 whose home is located approximately 17 feet from the proposed structure.
3. The applicant could reconstruct the carport or propose other configurations but instead proposes to replace the carport with an enclosed garage of significant height and extend it to the rear to result in a variance for a length of 61 feet along the property line.
4. The construction proposed by the applicant is very handsome in appearance and the elevation is very nice, but it still increases the bulk a great deal.
5. The right side of the proposed structure infringes too far on the side lot line to approve.
6. The size of the proposed addition would change the character of the neighborhood.
7. Denial of the application would not impose a hardship approaching confiscation because there is room to the rear of the property which could allow additional construction or an additional room.

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.

~ ~ ~ October 14, 2003, BRIAN K. & REIKO K. BRISCOMBE, VC 2003-MA-101, continued from Page 134

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 2003.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. AMY C. YOUNTS, VC 2003-MV-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.1 ft. from side lot line. Located at 1612 Lafayette Dr. on approx. 8,100 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 601.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Amy Younts, 1612 Lafayette Drive, Alexandria, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, presented the request as stated in the staff report. The applicant requested a variance to permit the construction of an addition to be located 11.1 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 0.9 feet was requested. Mr. Shriber explained that the playground equipment would be removed from the property to satisfy the Zoning Ordinance requirements.

Ms. Younts presented the variance request as outlined in the statement of justification submitted with the application. She explained the home was a WWII rambler that she purchased in 1994. She stated that the home currently was in violation of the Zoning Ordinance, and the proposed addition would not extend outside the current footprint of the home. She said the lot was narrow from the front to the rear. She said her home was the only one in the neighborhood without a second-story addition, and the proposal would be in character with the neighborhood. She submitted an elevation of the proposed addition.

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

Mr. Ribble stated that he was familiar with the area, and the proposed variance would be in character with the neighborhood.

Mr. Pammel moved to approve VC 2003-MV-107 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AMY C. YOUNTS, VC 2003-MV-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.1 ft. from side lot line. Located at 1612 Lafayette Dr. on approx. 8,100 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 601. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ October 14, 2003, AMY C. YOUNTS, VC 2003-MV-107, continued from Page 135

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony and exhibits indicating compliance with the required standards for the granting of a variance.
3. The existing structure is already located 11.1 feet from the side lot line and the need for the variance is to construct a second story.
4. The lot is narrow and has converging lot lines towards the rear.

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

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

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

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

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

1. This variance is approved for the location of a second story addition, as shown on the plat prepared by Bryant L. Robinson/Alexandria Surveys International, LLC, dated June 25, 2003, revised through August 22, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

~ ~ ~ October 14, 2003, AMY C. YOUNTS, VC 2003-MV-107, continued from Page 136

be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the height as depicted on the variance plat, the play area equipment shall be removed, reduced in height or relocated so as to comply with the Zoning Ordinance requirements.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      AIMAN AND CAROLYN ARAFAT, VC 2003-DR-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. with eave 7.8 ft. from side lot line, deck 8.8 ft. from side lot line, another addition 11.9 ft. from side lot line and covered deck 7.9 ft. from side lot line. Located at 1450 Buena Vista Ave. on approx. 7,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7)) (3) 16 and 17.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Aiman and Carolyn Arafat, 1450 Buena Vista Avenue, McLean, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the request as stated in the staff report. The applicants requested a variance to permit the construction of an addition to be located 8.8 feet with an eave 7.8 feet from the side lot line. A minimum side yard of 12 feet is required; however eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.2 and 1.2 feet were requested. The applicants requested a proposed balcony to be attached to the addition to be located 8.8 feet from the side lot line; therefore, a variance of 3.2 feet was requested for the balcony. The applicants requested an addition to be located 11.9 feet from the side lot line; therefore, a variance of 0.1 feet was requested. The applicants requested a covered porch to be located 7.9 feet from the side lot line; therefore, a variance of 4.1 feet was requested.

Mr. Arafat presented the variance request as outlined in the statement of justification submitted with the application. Mr. Arafat explained that they purchased the home in 1995, had a child since that time, and needed additional living space. He submitted photographs illustrating several large homes that had been constructed in the area and said the proposed additions would be in character with the neighborhood. He stated that the neighborhood was in support of the variance request.

Mr. Hammack asked the applicant if the proposed addition would extend farther into the setback than the existing home. Mr. Arafat replied that it would not.

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

Mr. Hart moved to approve VC 2003-DR-115 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

AIMAN AND CAROLYN ARAFAT, VC 2003-DR-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. with eave 7.8 ft. from side lot line, deck 8.8 ft. from side lot line, another addition 11.9 ft. from side lot line and covered deck 7.9 ft. from side lot line. Located at 1450 Buena Vista Ave. on approx. 7,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7)) (3) 16 and 17. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 14, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The neighborhood consists of shotgun/railroad car lots and each lot is only 25 feet wide.
4. The neighborhood is in transition and the proposed additions would not change the character of the neighborhood.
5. The proposed additions are no closer to the side lines than the existing structure.
6. The impacts of the additional construction would not be significant.

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

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

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

~ ~ ~ October 14, 2003, AIMA AND CAROLYN ARAFAT, VC 2003-DR-115, continued from Page 138

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

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

1. This variance is approved for the location of Addition "A", a balcony, Addition "B", and a porch, as shown on the plat prepared by Bryant L. Robinson, dated May 28, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN E. MIKULA AND MARY ELLEN KERWIN-MIKULA, VC 2003-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.3 ft. from rear lot line. Located at 3616 Old Vernon Ct. on approx. 15,579 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((29)) 13.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Bergoffen, agent, 226 Reinekers Lane, Suite 290, Alexandria, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the request as stated in the staff report. The applicants requested a variance to permit the construction of an addition to be located 21.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 3.7 feet was requested.

Mr. Bergoffen, agent for the applicants, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was shallow and trapezoidal in shape, and as a result, there was no other area on the site to construct the addition other than the proposed location. He stated that there were nine letters of support from adjacent neighbors included in the staff report. He stated that the proposed addition would be in character with the neighborhood.

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

Mr. Ribble moved to approve VC 2003-MV-112 for the reasons noted in the Resolution.

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~ ~ ~ October 14, 2003, KEVIN E. MIKULA AND MARY ELLEN KERWIN-MIKULA, VC 2003-MV-112, continued from Page 139

**COUNTY OF FAIRFAX, VIRGINIA**

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

KEVIN E. MIKULA AND MARY ELLEN KERWIN-MIKULA, VC 2003-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.3 ft. from rear lot line. Located at 3616 Old Vernon Ct. on approx. 15,579 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((29)) 13. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 14, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is exceptionally shallow and extraordinarily shaped.

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

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

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

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

~ ~ ~ October 14, 2003, KEVIN E. MIKULA AND MARY ELLEN KERWIN-MIKULA, VC 2003-MV-112, continued from Page 140

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by Harold A. Logan, dated May 12, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried 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 22, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MICHELLE DUNCAN, SP 2003-SU-034 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of addition 13.7 ft. from side lot line. Located at 15410 Meherrin Ct. on approx. 17,302 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 154.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Duncan, 15410 Meherrin Court, Centreville, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as stated in the staff report. The applicant requested a modification to minimum yard requirements for certain R-C lots to permit the construction of a second story addition to be located 13.7 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 6.3 feet was requested.

Ms. Duncan referred to her husband, Robert Duncan, to present the special permit request as outlined in the statement of justification submitted with the application. Mr. Duncan explained that the property was originally zoned R-2 and was grandfathered in 1982 to be subject to R-C zoning regulations. He stated that there were several similar special permits that had been granted in the neighborhood. He said the proposal was for a second story over the garage, and he submitted an elevation of the proposed addition. He said the home was the smallest in the neighborhood, and the proposed addition would be in character with the neighborhood.

Chairman DiGiulian called for speakers.

Mike Thomas, the applicant's contractor, came forward to speak in support of the application. He stated that he was the applicant's contractor, and he was in support of the application.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2003-SU-034 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHELLE DUNCAN, SP 2003-SU-034 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of addition 13.7 ft. from side lot line. Located at 15410 Meherrin Ct. on approx. 17,302 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 154. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 14, 2003; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The proposed addition will be within the existing footprint of the home so there will not be any further intrusion into a side yard.
7. The house is angled in such a way that only the front corner requires a modification because it is angled away from the side yard.

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

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

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

1. This Special Permit is approved for the location of an addition shown on the plat prepared by Stephen T. Palmer, dated October 27, 1995, revised by Michelle Duncan through September 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

~ ~ ~ October 14, 2003, MICHELLE DUNCAN, SP 2003-SU-034, continued from Page 142

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 14, 2003.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2003-DR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a contractor's office and shop and a storage yard and has erected structures without Building Permit approval on property in the R-1 District, all in violation of Zoning Ordinance provisions. Located on the W. side of Merchant La., approx. 500 ft. S. of Ramshorn Pl. on approx. 21,746 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 124C. (Deferred from 9-9-03)

Mr. Hart made a disclosure, but stated that it would not affect his ability to participate in the hearing.

Maggie Stehman, Deputy Zoning Administrator, explained that the appellant had taken steps to bring the property into compliance.

Lynne Strobel, agent for the appellant, withdrew the appeal.

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~ ~ ~ October 14, 2003, (Tape 1), Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (deferred from 4/15/03)

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7901 and 7828 Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/03)

Mr. Hart made a disclosure, but stated that it would not affect his ability to participate in the hearing. Mr. Beard and Chairman DiGiulian recused themselves from the hearing.

Vice Chairman Ribble asked staff if they were in support of the deferral request. Maggie Stehman, Deputy Zoning Administrator, Zoning Administration Division, replied they were in support of a deferral to January 6, 2004. She said the appellants were taking steps to bring the property into compliance with the submission of two special exception applications.

There were no speakers to the issue of deferral.

Mr. Hammack moved to defer A 2002-LE-031 and A 2002-LE-001 to January 6, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard recused themselves from the hearing.

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~ ~ ~ October 14, 2003, (Tape 1), After Agenda Item:

Approval of October 29, 2002 Minutes

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

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~ ~ ~ October 14, 2003, (Tape 1), After Agenda Item:

Approval of BZA meeting dates for the first six months of 2004

Mr. Ribble moved to defer decision regarding this after agenda item to October 21, 2003. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 14, 2003, (Tape 1), After Agenda Item:

Request for Additional Time  
Trustees of the Church of the Apostles, SPA 99-Y-046

Mr. Hart moved to approve 18 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 7-0. The new expiration date was April 18, 2005.

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~ ~ ~ October 14, 2003, (Tape 1), After Agenda Item:

Request for Reconsideration  
Gail L. Gordon and Timothy J. Chesnutt, SP 2003-HM-030

There was no motion; therefore, the request was denied.

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~ ~ ~ October 14, 2003, (Tape 1), After Agenda Item:

Approval of October 7, 2003 Resolutions

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

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

Minutes by: Lori M. Mallam

Approved on: November 9, 2004

Kathleen A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 21, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM AND LUANNE TURRENTINE, SP 2003-SU-032 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5013 Marshall Crown Rd. on approx. 7,581 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 55-1 ((21)) 61.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dr. Luanne Turrentine, 5013 Marshall Crown Road, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a home professional office for a psychotherapy practice to serve one or two clients per session with a maximum of ten sessions per week. The proposed hours of operation were 8:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 3:00 p.m. on Saturdays. Therapy would be provided by the applicant only. Approximately 134 square feet of the approximately 2,700-square-foot dwelling was proposed to be utilized for the home professional office. The existing garage provided two parking spaces for the dwelling, and the existing paved driveway provided two additional parking spaces. No physical changes or new construction was proposed for the site. Staff concluded that the proposed home professional office was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of the home professional office subject to the proposed development conditions.

Dr. Turrentine presented the special permit request as outlined in the statement of justification submitted with the application. She stated that being a licensed clinical psychologist, she had been attracted by the covenants of Fair Lakes Crossing, which indicated the possibility of establishing a home office, and had moved into the neighborhood in February of 2001. She explained that because she planned to see only two clients a day, renting office space would be cost prohibitive. Dr. Turrentine said that her clients would park in the driveway, and there would be minimal disruption to the neighborhood. She explained that her clientele would consist of mildly to moderately mentally ill individuals, with her focus of treatment being persons with chronic medical illnesses, such as diabetes, heart disease, or cancer, who experienced depression or anxiety and needed help adjusting to the diagnoses, for which she would provide therapy such as stress management, coping skills, and couples therapy. She stated that her clients would range in age from children to the elderly, but she would not be seeing severely mentally ill persons or anyone from the psychotic population, such as pedophiles.

Ms. Gibb asked the applicant if she had seen the letters the Board had received from neighbors regarding their concerns about the nature of the applicant's clients. Dr. Turrentine replied that she had, and she explained that issues she anticipated addressing with her clients were adjustments to physical illnesses that required adapting to different lifestyles and dietary changes. In response to questioning by Ms. Gibb, Dr. Turrentine indicated that she had made a conscience decision not to treat anyone in the home office who was psychotic. She explained that although there would be only one or two visits each day, the proposed operating hours would provide flexibility for clients to come in before or after work or school and said she understood that she would be limited to two clients per visit.

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

Mr. Pammel moved to approve SP 2003-SU-032 for the reasons stated in the Resolution.

Ms. Gibb seconded that motion and stated that she supported the motion based on the positive staff report and the applicant's testimony regarding the number of limits and the type of clientele. She commented that there were restrictive covenants that affirmatively allowed home offices in the subject subdivision which provided constructive notice to neighbors that an office may be allowed.

Mr. Hart stated that he would support the motion. He said he had visited the site and had not observed anything that indicated a potential hazardous traffic situation, which had been an issue raised in the neighbors' correspondence. He noted that the subject property was two houses away from the end of a court where townhouses were located and said that if there was an existing situation, it appeared to relate to the traffic from the townhouses, but the incremental effect of ten visits a week would not change anything on the street.

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## COUNTY OF FAIRFAX, VIRGINIA

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

WILLIAM AND LUANNE TURRENTINE, SP 2003-SU-032 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5013 Marshall Crown Rd. on approx. 7,581 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 55-1 ((21)) 61. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 2003; and

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

1. The applicants are the owners of the land.
2. The applicant gave a clear indication of the type of clients that would be treated; mildly to moderately affected individuals who would not be of danger to the community, but none of a serious or psychotic nature.
3. Visits with two clients a day would not impact the neighborhood to any extent and would be in line with residents typically having visitors.
4. Staff recommended approval of the application subject to the Development Conditions listed below as it does conform to the policies, goals, and guidelines of 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 Sect(s). 8-907 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5013 Marshall Crown Road (7,581 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 Alexandria Surveys International, LLC dated June 26, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions.

~ ~ ~ October 21, 2003, WILLIAM AND LUANNE TURRENTINE, SP 2003-SU-032, continued from Page 146

Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum hours of operation of the home professional office shall be limited to 8:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 3:00 p.m. on Saturdays.
6. The maximum number of employees shall be limited to one (1) on-site at any one time, and shall be the applicant only.
7. The area utilized for the home professional office shall not exceed 134 square feet.
8. The dwelling that contains the home professional office shall also be the primary residence of the applicant.
9. Parking shall be limited to (2) spaces in the garage for the dwelling and two (2) spaces in the driveway for the Home Professional Office. All parking shall be on-site as shown on the special permit plat. The parking spaces in the garage shall be kept for the parking of family automobiles and not used for storage or converted to living space.
10. Sessions shall be limited to a maximum of two people (clients), and there shall be no more than two clients on site at any one time. The maximum number of sessions shall be limited to ten (10) per week.
11. Evergreen trees that are a minimum of 6 feet tall at the time of planting shall be provided along the southern property line of the subject parcel between the driveway and the property line. The evergreens shall be planted a maximum of 12 feet apart.
12. There shall be no signage associated with the home professional office.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ October 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M.       STEPHEN M. LABAS, VC 2003-MV-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from side lot line. Located at 1951 Martha's Rd. on approx. 16,879 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 159.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephan M. Labas, 1951 Martha's Road, Alexandria, Virginia, replied that it was and requested that the 8-day waiting period be waived.

~ ~ ~ October 21, 2003, STEPHEN M. LABAS, VC 2003-MV-116, continued from Page 147

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition located 14.2 feet from the eastern side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 0.8 feet was requested.

Mr. Hart asked for clarification whether the yard toward Bray Lane was a side yard as opposed to a front yard. Ms. Stanfield confirmed that it was a side yard.

Mr. Hart stated that in other cases involving a paper street, the yard was generally considered a front yard, and he asked if there was something special about the subject case that made it a side yard. Ms. Stanfield responded that staff's understanding was that if the street was graveled or paved, the yard would be considered the front yard, but if it was not developed, it was not considered the front yard. She said that in the subject case it did not appear to have the potential of ever being developed.

Mr. Labas presented the variance request as outlined in the statement of justification submitted with the application. He stated that the original drawings were prepared in 1951 or 1952, and the paper road had never been developed and was currently an overgrown wooded area. He said there were homes located behind his property, and there was no potential for the paper street to become an actual street. He noted the proposed addition would encroach only eight inches into the 15-foot setback, and the setback was adjacent to the wooded area.

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

Mr. Hammack moved to approve VC 2003-MV-116 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Ribble stated that he would support the motion regardless of whether the yard was considered a front or side yard.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN M. LABAS, VC 2003-MV-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from side lot line. Located at 1951 Martha's Rd. on approx. 16,879 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 159. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 2003; and

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

1. The applicant is the owner of the land.
2. Although not vacated, Bray Lane cannot be developed, and its current condition allows it to be treated as a side yard instead of what otherwise would be a front yard.
3. The applicant requested a very modest variance to a side lot line that abuts a 50-foot wooded area.
4. There would be no impact on the neighborhood.

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

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

~ ~ ~ October 21, 2003, STEPHEN M. LABAS, VC 2003-MV-116, continued from Page 148

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a one-story addition, shown on the plat prepared by George M. O'Quinn, dated June 21, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES III AND JOYCE E. LANSBURGH, VC 2003-MV-113 Appl. under Sect(s). 18-401 of

the Zoning Ordinance to permit construction of additions 8.4 ft. with eave 7.9 ft. and chimney 5.9 ft. from one side lot line and 10.0 ft. with eave 9.5 ft. and deck 10.0 ft. from other side lot line. Located at 10809 Greene Dr. on approx. 21,800 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((2)) 49.

Mr. Hart gave disclosures, but indicated he did not believe his ability to participate in the case would be affected.

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 Lansburgh, 10809 Greene Drive, Lorton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition located 10 feet with an eave 9.5 feet and a deck 10 feet from the southern side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet and decks less than 4.0 feet in height are permitted to extend 5.0 feet into the minimum side yard; therefore, variances of 10 feet, 7.5 feet, and 5.0 feet, respectively, were requested. She noted that revised affidavits were distributed to the Board.

Mr. Lansburgh presented the variance request as outlined in the statement of justification submitted with the application. He noted that variances originally were requested to both the north and south, but after reviewing the variance criteria, they had decided to request only the variance to the south, as that addition would meet their minimum requirements, and had withdrawn the request for the variance to the north. He explained that the purpose of the proposed 15.8-foot wide, two-story addition, which would leave a 10-foot side yard, was to add living quarters for his 84-year-old mother, who could no longer live alone. Mr. Lansburgh stated that his home was one of the smallest homes in the Harbor View development and would not accommodate another person, especially with the potential future need for a live-in nurse.

Mr. Lansburgh explained that because his mother had three hip and two knee replacements, she could not climb stairs, and an elevator was necessary, which was included in the plans and would give her access to all levels of the house and the street. He said the plan would provide his mother space, privacy, and independence, important elements of quality of life. He stated that according to the architect, the only option to locate an elevator to meet the access requirements was the first bay of the existing carport, and an elevator that would accommodate a wheelchair and another person would take up more width than the first bay. Mr. Lansburgh said that adding onto the existing carport to the south would allow them to add the elevator and continue to park their two cars under cover. He explained that they had tried to keep the encroachment as small as possible, and the living quarters for his mother above the carport, garage, and kitchen would include a bedroom, a wheelchair accessible bathroom, a small bedroom for a nurse, and a small living area overlooking the water.

Mr. Lansburgh stated that over half of the lot was a severely sloping hill and designated wetlands, which represented a hardship and was an extraordinary condition which was not shared by any other lot in the subdivision, and the proposed plan would allow the small usable, reasonably level backyard to remain. He said that building to the south in the back and maintaining the required setback was not an option due to the slope of the lot and the location of three existing trees they wished to preserve to avoid further erosion of the sloping hill and because it would not accommodate an elevator with the required access. He stated that the architect they hired specialized in colonial architecture, and with the proposed addition, the house would be consistent in style and size with those in the immediate neighborhood.

Mr. Lansburgh indicated that he had consulted with all of the neighbors regarding their plans, and with the exception of one, the neighbors were enthusiastic supporters, had endorsed their plan, and had submitted letters. He stated that they had twice met with the Tankersleys, who lived to the south and had voiced an objection to the plan, to see if there was anything that could be done to make the addition more acceptable, but had been rebuffed at each effort. He said the Tankersleys' objection was because the reduction of the side yard would reduce the future sale value of their vacant lot and their home, but if the size of their vacant lot was examined, their vacant lot was larger than the subject lot and had more level, usable land. Mr. Lansburgh presented a photograph taken from his deck and said the vacant lot was level beyond where his yard was sloping, gave them more options for future house placement, and would allow a house more than

~ ~ ~ October 21, 2003, JAMES III AND JOYCE E. LANSBURGH, VC 2003-MV-113, continued from Page 150

40 feet from the subject house. He said the substantial investment made in his property would increase the value of all the properties in the immediate neighborhood. He explained that the Tankersleys also objected because their enjoyment of peace and quiet would be hampered, but because there was an existing fence six-foot in height surrounding his property and a treed and planted barrier between the two lots which would remain, he said their peace and quiet would not be changed. He presented photographs of the views from his and the Tankersleys' front doors.

Mr. Hart asked whether the existing shed behind the white fence would be removed. Mr. Lansburgh stated that it would be relocated to the back.

Mr. Hart asked whether the trees around the shed would remain, to which Mr. Lansburgh replied affirmatively.

Chairman DiGiulian called for speakers.

Mike Looney, 10806 Greene Drive, Lorton, Virginia, came forward to speak in support of the application. He stated that he lived across the street from the subject property, had reviewed the plans, and was in agreement with the addition.

William Tankersley, 10817 Greene Drive, Lorton, Virginia, came forward to speak in opposition to the application. He presented a letter from a neighbor who had lived in his house for 32 years which said he was faced with the same problem, but had built in the back of his house to avoid bothering his neighbors. Mr. Tankersley stated that he had lived in his house for 31 years, and the applicants had been there four to six years. He said the addition would provide independent living quarters for two on the south side and further expansion on the north side, and the linear dimensions of the additions required invading the 20-foot setback on either side. He explained that he bought his home with an option to purchase Lot 50A and had exercised the option shortly afterward as an investment in a waterfront property and because Lot 51A was a narrow lot. Mr. Tankersley stated that the variance request was ill conceived and unnecessary because the addition could be built in the back, and it did not take into account his concerns. He said he was notified a few days before the variance was filed because the applicants expected there would be some objections. Mr. Tankersley said he was not impressed with the letters from other people because his lot was the most affected property. He reported that when he asked Mr. Lansburgh why the addition could not be built in the back, Mr. Lansburgh said he would have to remove a tree. Mr. Tankersley said that the removal of a tree being considered more important than the rights of a neighbor was a value judgment. He explained that the Lansburghs had said they were impelled to seek a variance because Lot 50A was a vacant lot, but was his front lawn. He reported that Mr. Lansburgh's mother had written to him asking if he would sell his lot. He said he had told her it was not for sale at the time, and in the future they would want to sell the entire property, not just the one lot. Mr. Tankersley said the area was pleasant with most houses usually having more than 40 feet between them with woods, flowers, and a creek, and he wanted to protect it. He said that although it might be regarded as a single-family residence, with the additions on both sides, it sounded to him like an apartment.

Mr. Lansburgh, in his rebuttal, stated that the plans had been thought out, the north addition had been dropped, and the addition to the south had been minimized. He explained that when they had purchased the house, they did not anticipate they would have a third or fourth person living with them. He stated that family was extremely important, and it was necessary to care for one's loved ones. Mr. Lansburgh said it was not possible for them to move, and he was asking for ten feet in the only logical place to put the addition on the home as it was built originally.

Mr. Hart asked whether the lot would be called an interior lot under the Zoning Ordinance, to which Ms. Stanfield replied affirmatively.

Mr. Hart asked whether it was correct that the minimum lot width for an interior lot in the R-E District was 200 feet. He noted that the subject lot was considerably less than that and asked why the subject lot was so small for the R-E District. Ms. Stanfield stated that the construction predated the 1978 Zoning Ordinance.

Mr. Lansburgh commented that when the property was purchased, they had no indication they were purchasing a substandard lot in its size, and the lot was similar to other lots in the area.

~ ~ ~ October 21, 2003, JAMES III AND JOYCE E. LANSBURGH, VC 2003-MV-113, continued from Page 151

Mr. Hammack asked what the side setback was when the subdivision was recorded in the 1950s. Ms. Stanfield replied that she did not know.

Mr. Pammel said that prior to the 1959 Zoning Ordinance, everything in the County was zoned either suburban residential or rural, and rural was one half acre. He said that was why there were half-acre lots, because it complied with the Zoning Ordinance in the 1950s prior to the 1959 Zoning Ordinance.

Mr. Ribble asked if the applicants had any subdivision covenants which had building restriction lines. Mr. Lansburgh said he was not aware of any.

Ms. Gibb asked whether it was everyone's thinking that the lot was a rural residential zoned half-acre lot that required a 100-foot minimum lot width. Chairman DiGiulian stated that they had 100 feet.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve-in-part VC 2003-MV-113 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES III AND JOYCE E. LANSBURGH, VC 2003-MV-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.4 ft. with eave 7.9 ft. and chimney 5.9 ft. from one side lot line **(THE APPLICANT WITHDREW THIS REQUEST)** and 10.0 ft. with eave 9.5 ft. and deck 10.0 ft. from other side lot line. Located at 10809 Greene Dr. on approx. 21,800 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((2)) 49. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 2003; and

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

1. The applicants are the owners of the land.
2. This was a difficult case which was improved with the applicants' deletion of their request regarding the addition to the north side of the house.
3. The subject lot is currently zoned R-E, which is 2 acres and 200 feet of frontage, but the lot is only approximately ½ acre with a total of approximately 100 feet of frontage. The lot is significantly smaller than the Ordinance currently establishes for an R-E District.
4. The subject lot is heavily impacted by the following constraints:
  - A) A significant portion of the rear yard is underwater.
  - B) There is a very severe slope.
  - C) The usable area of the lot is toward the front and doesn't extend far behind the existing structure.
5. The hardship expressed by the applicants regarding the placement of an elevator and maintaining a parking area under roof for two vehicles meets the criteria for a variance.
6. With the existing fence, the tree preservation, and the testimony given, the request meets the criteria for a variance.
7. Although going 10 feet with a 2-story addition may not be appropriate on all lots in this area, based on the record of this case, the criteria for a variance was satisfied.

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

~ ~ ~ October 21, 2003, JAMES III AND JOYCE E. LANSBURGH, VC 2003-MV-113, continued from Page 152

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

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

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

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

1. This variance is approved for the location of a two-story addition and deck located along the southern lot line, as shown on the plat prepared by Nicholas Diffenbaugh, dated July 22, 2003, as revised through October 7, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. NANCY A. FETTERER, VC 2003-DR-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 1533 Longfellow Ct. on approx. 15,988 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((21)) 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. Nancy Fetterer, 1604 Dunterry Place, McLean, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition located 9.8 feet from the side lot line. The addition would replace the existing carport and screened porch with a two-story addition creating additional family and living space. A minimum side yard of 12 feet is required; therefore, a variance of 2.2 feet was requested.

Ms. Fetterer presented the variance request as outlined in the statement of justification submitted with the application. She explained that the variance was being requested to add a combination family/dining room by enclosing an existing screened porch and to add a garage by enclosing the existing carport. She noted that the existing cement was in a deteriorated condition and the structure was currently being supported by lolly (phonetic) columns.

Mr. Ribble asked whether the addition would be located closer to the lot line than the existing structure. Ms. Fetterer indicated that it would not and that there would be no change in the current dimensions.

Chairman DiGiulian called for speakers.

Paul Slattery, 1535 Longfellow Court, McLean, Virginia, came forward to speak in support of the application. He stated that the current condition of the carport and sun porch was such that he was concerned about its stability. He said he had reviewed the proposed designs, and after the removal of the belfry and flying buttresses, it conformed to the neighborhood. Mr. Slattery stated that he had no problem with the proposed addition and was unaware of any other neighbors who had complaints.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-DR-114 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY A. FETTERER, VC 2003-DR-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 1533 Longfellow Ct. on approx. 15,988 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((21)) 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 October 21, 2003; 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 standards required for a variance.
3. The applicant is replacing an existing structure with something more substantial and upgrading her home.
4. The proposed addition will be no closer to the lot line than the existing structure.

~ ~ ~ October 21, 2003, NANCY A. FETTERER, VC 2003-DR-114, continued from Page 154

5. Considering the topography of the subject lot, the proposed location is the only place to locate the addition.

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

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

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

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

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by L. Carl Gardner, Jr., dated February 3, 2003, revised through July 21, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

~ ~ ~ October 21, 2003, NANCY A. FETTERER, VC 2003-DR-114, continued from Page 155

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 21, 2003, (Tape 1), Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 per appl. req)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 per appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 per appl. req)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to December 9, 2003, at the applicants' request.

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~ ~ ~ October 21, 2003, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. JOHN D. BOBOLSKY, III, A 2003-SP-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing an agriculture use to be established on property in the R-C District, which is located at Tax Map 67-2 ((1)) 42 and which does not meet minimum lot size requirements for the use, and is allowing the property to be used as a storage yard and junk yard, all in violation of Zoning Ordinance provisions. Located on the W. side of Popes Head Rd., approx. 700 ft. from its intersection with the Fairfax County Pkwy. on approx. 10,890 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 42. (Admin moved from 9/30/03 for notices).

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report. She explained that the appeal was of a determination that the appellant was allowing an agricultural use to be established on a lot in the R-C District that did not meet the minimum lot size requirements for the use and was allowing the property to be used as a storage/junkyard in violation of Zoning Ordinance provisions. She reported that during an inspection on March 27, 2002, a large coop and approximately two dozen hutches housing rabbits and gamecocks and an excessive amount of outdoor storage, including hundreds of linear feet of lumber, a dumpster, junk vehicles, hundreds of hubcaps, and piles of trash, junk, and debris were observed. A second inspection occurred on July 16, 2003, and no changes had been observed.

Ms. Collins explained that although the adjacent Lot 31 was not a part of the appeal, it was impossible to discuss the violations on the subject lot without recognizing the impact the activities on Lot 31 had on the subject property. She said that since there was no fence separating the two lots, it appeared that the junk/storage yard and agricultural uses on Lot 31 had encroached onto the subject lot to the point where it was impossible to discern where one lot ended and the other one began. She reported that there had been little, if any, effort by the owner or the occupants of Lot 31 to bring that lot into compliance with the County regulations, and as a result, the County had sought a motion for declaratory judgment and injunctive relief to remedy the violations on Lot 31. Ms. Collins said the junk and debris that had encroached onto the subject lot included hubcaps and other auto parts, lumber, signs, old clothing and clothing accessories, a fuel tank, bicycles, an inoperable pickup truck, cabinets, a riding lawnmower, a stove, radiators, furniture, small appliances, and various other junk and debris.

Ms. Collins stated that junk and storage yards were permitted only in limited industrial districts and were not permitted on the subject property. She said that agricultural uses were permitted on lots containing at least five acres, but the subject property contained only 10,890 square feet. She stated that the two dozen hutches used to house gamecocks and rabbits that were observed and signs advertising rabbits for sale were evidence that the rabbits were being raised as a commercial enterprise. Ms. Collins said the appellant seemed to acknowledge that the presence of junk, debris, and animals on his property was a violation of the Zoning Ordinance. She added that while his circumstances with regard to the property were unfortunate since the activities on Lot 31 had encroached on his property, property owners were ultimately responsible for what occurred on their property.

Ms. Gibb asked whether the subject property was landlocked. Ms. Collins replied that there was a small portion located on Popes Head Road in front of Lot 31, but the triangular area behind Lot 31 that was involved in the appeal was landlocked.

Ms. Gibb asked how the inspectors accessed Lot 42. Ms. Collins responded that they walked along a dirt road and were able to access the subject property.

Ms. Gibb asked who owned the dirt road. Ms. Collins said she was not sure who the owner was.

Ms. Gibb commented that the subject case seemed similar to another case that was located on Cinderbed Road where the Dowdy-Hunter trustee said it was not them doing it, and they could not get to their property to clean it up because they would have to go over either floodplain or some else's property and did not have permission, and there was a scary next-door neighbor. She said the Board had deferred the case a number of times, and it currently was in court.

Chairman DiGiulian asked whether Lot 31 was the subject of a violation notice. Ms. Collins replied that Lot 31 had also received a notice of violation, but they had not appealed the notice, and the County had filed a motion with the Circuit Court.

Mr. Hart asked whether anything else had happened with Lot 31 other than the case being filed. Ms. Collins said the information had been given to the County Attorney's Office within the prior two weeks, and she did not believe they had done anything yet.

Mr. Hart asked whether the case would involve the Lot 31 owners' activities on both lots or just on Lot 31. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that thus far the case that had gone to the County Attorney's Office only involved Lot 31. She said she thought the two cases could ultimately be joined, but administratively since there was an appeal, the appeal was brought forward, and depending on the outcome of the appeal, the subject case could begin to travel with the Lot 31 case.

Mr. Hart commented that in the Hunter case, the Board had deferred the decision on the inaccessible property until the neighbor, who was under a court order, cleaned it up, and he asked why the subject case was not a similar situation. Joe Bakos, Zoning Enforcement Branch, Zoning Administration Division, stated that there were some similarities between the subject case and the Hunter case the Board had referred to, but that in the Hunter case there was an agreement between Mr. Cifuentes and the County Attorney's Office to include the Hunter-Dowdy site with the properties for which Mr. Cifuentes had been cited.

~ ~ ~ October 21, 2003, JOHN D. BOBOLSKY, III, A 2003-SP-033, continued from Page 157

Mr. Hart asked whether there were business permits or other permits for any of the activity on either lot. Ms. Collins replied that she was unaware of any.

Ms. Gibb asked whether there was any encroachment onto Lot 36. Ms. Collins replied that the Zoning Administration Division had not been informed that there was any encroachment onto other adjacent lots.

Ms. Gibb asked whether there was a fence or any obvious boundary between Lots 36 and 42. Mr. Bakos explained that a GIS overlay map had been used to identify approximately where the property boundaries were located, which had a margin of plus or minus six feet, so conceivably there was an encroachment northward.

The appellant, John Bobolsky, 46942 Fairhills Court, Sterling, Virginia, presented the arguments forming the basis for the appeal. He stated that he had purchased the subject property sight unseen in 1987 at an auction and had never set foot on the property. He said that in April of 2003 he had gotten in the vicinity of the property and was met outside by one of the family members living on Lot 31. Mr. Bobolsky said he understood that the people on Lot 31 were mentally handicapped to some extent and would not acknowledge that Lot 42 belonged to the appellant and that it was absurd that he was being given the zoning violation when it was physically not possible for him to have caused it.

Mr. Bobolsky said he wanted to see the situation resolved, but he physically did not have access to the property and had been threatened by the people on Lot 31 and was in fear of his own personal safety. He stated that he would be more than willing to begin the process of returning all the stuff to Lot 31 if he had clear and unfettered access. He said that no one, including the County, had been able to make any progress with regard to the situation involving both lots, and he did not see how anything was going to change until the situation on Lot 31 was resolved. Mr. Bobolsky said one of the zoning inspectors, Beck Halsted, had warned him that he should not go on the property. He explained that depending on how the litigation went, as possible solutions maybe people who had to do community service could become involved or he could contact a waste management company to see if they wanted a free dumpster. He stated that he wanted to help resolve the situation, but his hands were tied and he did not know how or what to do because he had a family and could not risk his personal safety to go pick up trash, especially trash for which he was not responsible.

Mr. Bobolsky read from the last paragraph of page 6 of the staff report and said he did not understand how writing him a zoning violation helped the situation. He stated that he had no idea how much stuff was on the property because the closest he had been was approximately 50 feet to what he imagined was the property line. He asked that the zoning violation be removed from his property and incorporated into the litigation with Lot 31 or that the Board grant an indefinite continuance. Mr. Bobolsky stated that he took exception to the wording that the appellant was allowing the agricultural use. He said the only thing that he had allowed to happen on his property was a utility easement that the County had purchased from him in the early 1990s. He reported that he had written a letter to Doris Douglass-Heath, who had the family on Lot 31 as her charges, advising her that he did not intend to be responsible and offered to help her if he could.

Mr. Hammack asked whether the appellant admitted that the violations were occurring. Mr. Bobolsky replied that he had found out about them in April of 2003, but due to the volume, it had been ongoing for a long time.

Mr. Beard asked the appellant to confirm that he had tried to remedy the situation, but he was fearful for his safety, which Mr. Bobolsky confirmed and said he had even considered giving the property to the Heaths.

Mr. Beard said it sounded like an adverse possession. Mr. Bobolsky said he thought adverse possession took place after 20 years. Mr. Hart said it was 15 years, but one could not adversely possess against the Commonwealth, and the deed from the governor would raise questions about that. He advised Mr. Bobolsky that he needed to get a lawyer immediately to get some guidance and deal with his issues regarding Lot 31. He said it was not a situation where the appellant should sit passively and let it continue.

Mr. Hammack commented that one of the reasons the cooperation of the Board was being extended in the Hunter case was because they had retained counsel and had been aggressively trying to resolve the matter.

Mr. Ribble asked whether the appellant was current on his taxes for the subject property, to which the appellant answered affirmatively.

~ ~ ~ October 21, 2003, JOHN D. BOBOLSKY, III, A 2003-SP-033, continued from Page 158

Mr. Hammack stated that because the appellant had admitted that the violations were taking place, there was no basis for the appeal, and the Board could find the appellant in violation. He agreed that the appellant should seek an attorney, ask for a deferral of the Board's decision, and come back with a plan.

Mr. Hart asked whether the appellant had initiated any court action to either determine rights of access or to enjoin the activity on the property. Mr. Bobolsky replied that he had not and did not know where to begin.

Mr. Hart asked whether the appellant had a copy of the letter he had written to Ms. Heath. Mr. Bobolsky replied that he did and presented the letter to the Board.

Mr. Hart asked whether the appellant owned any of the other surrounding lots. Mr. Bobolsky said he did not.

Mr. Hart asked whether, other than the letter written to Ms. Heath, the appellant had taken any action directing the people on Lot 31 to not use his property. Mr. Bobolsky explained that he had gone to the property with a neighbor of his, who was a commercial real estate broker, and were met by an older male member of the Heath family. He said he told the male he was there to look at his property and showed him the plat map, but the male said it was his property. He advised the male that he was mistaken and that they were encroaching on his property. Mr. Bobolsky said the male then went into the house and came back out with two other big, dirty, and roughly dressed males, at which time they left.

A brief discussion ensued between Ms. Gibb and the appellant regarding the time frame the appellant would need to consult an attorney, the rights and obligations that accompanied owning property, and the liability of the owner if someone was using the property improperly. Ms. Gibb said she would support a motion for a deferral to allow time for the appellant to get some legal aid, but she could not find the Zoning Administrator was in error. She suggested the appellant consult a real estate/land use lawyer and explained that the appellant was responsible for what occurred on his property. She said the fact that the appellant did not have access to the property was a mitigating factor; however, by taking no action, the appellant had, in effect, allowed the activities to take place.

Mr. Beard said the County should resolve the situation on Lot 31 and then address the situation with the appellant and his property and that a deferral was in order. Mr. Bobolsky said he agreed with Mr. Beard and added that he did not think adding another lawyer would further the situation.

Mr. Hammack explained that the appellant had filed an appeal of a notice of violation, and the Board could only find that the zoning inspector cited the appellant correctly or incorrectly, and noted that there were implications to the appellant either way. He said the Board could not give the appellant legal advice, and the Board was suggesting he seek an attorney.

Chairman DiGiulian called for speakers.

Jean Lyons, 11604 Popes Head Road, Fairfax, Virginia, came forward to speak. She said her driveway ran beside the Heath property, and she passed what she described as an "ungodly mess" every day. She stated that the Heaths were not easy to deal with and did make threats. Ms. Lyons explained that she had tried to help the Heaths, who could not read, and had fed them many times. She said she thought the County was solely responsible for the Heaths and should do something for the safety and health of the neighbors. She said the Heaths should be brought before a judge to see the condition of the people so that something could be done, otherwise they would junk up the neighborhood.

Mr. Hammack commented that the County was making an effort to try to clean up difficult areas, and the subject case was a way to attempt to resolve property being used in ways in violation of the Zoning Ordinance.

Mr. Beard commented that the length of time in terms of years that it has taken the County to deal with the situation should be emphasized.

In closing comments, Ms. Collins stated that although it was a unique situation and unfortunate for the appellant, the violation did exist on the appellant's property, and Section 18.901 of the Zoning Ordinance required that a property owner respond and clear the violation.

~ ~ ~ October 21, 2003, JOHN D. BOBOLSKY, III, A 2003-SP-033, continued from Page 159

Chairman DiGiulian closed the public hearing.

Mr. Pammel asked for clarification that the owners of Lot 31 were not the Heaths. Ms. Collins stated that the owner of Lot 31 was Doris Heath-Douglass, and the tenants on the property were relatives of hers. She explained that Ms. Heath-Douglass had an aunt who was charged with taking care of the relatives, and she had promised her aunt when she died that she would continue to take care of them, so she allowed them to live on the property.

Mr. Pammel asked what the connection with Rudy's Hauling Service was. Ms. Collins replied that Rudy's Hauling Service hauled junk to the property, which the Heaths would then sell in front of the house. She said that Rudy's had also received a notice.

Mr. Beard asked whether Ms. Heath-Douglass had been contacted by the County. He said she would be ultimately responsible. Mr. Bakos replied that she was one of the respondents in the request made for a lawsuit against the property.

Ms. Gibb moved to defer decision on A 2003-SP-033 to April 20, 2004, at 9:30 a.m. She stated that the County had shown there were violations, and the appellant did not dispute that; however, there were extenuating circumstances regarding the lack of access and the threats from the neighbors. She said the deferral would allow the County to proceed against Ms. Heath-Douglass and allow the appellant to work with the County, consult an attorney, and join in the lawsuit, if necessary. Mr. Ribble seconded the motion.

Chairman DiGiulian indicated that whether the appellant hired an attorney or not would not matter to him and that there was some reason to think the County was putting pressure on the appellant to try to resolve the problem on Lot 31 due to the length of time the problem had existed. He said the County should pursue the Lot 31 situation.

Mr. Hammack said he agreed that the County should pursue the Lot 31 situation, but thought the appellant should get an attorney and get actively involved in trying to resolve the situation. Mr. Hammack indicated that he would support the motion with an amendment to the motion to request a status report in six weeks on whether the suit against Ms. Heath-Douglass had been filed by the County Attorney and whether the appellant had consulted an attorney and what actions were being taken by the appellant, if any. Ms. Gibb and Mr. Ribble accepted the amendment to the motion.

Mr. Beard commented that it sounded like the Board was pressuring the appellant to get an attorney and did not see where that was relevant at this current juncture.

Mr. Hart indicated that he would support the motion. He stated that whether the appellant had an attorney or not would not necessarily change what the Board would do on the appeal. He said he did not see the situation as the County would be effectively using the appellant to clear up Lot 31, but the appellant would be well served to seek advice regarding issues such as his responsibilities and liabilities as the owner of the property concerning the cleanup of hazardous materials, such as batteries and rusty barrels, and whether there were easements or right-of-ways pertaining to his lot because he might have rights of which he was unaware.

Mr. Hammack stated that it was the appellant's choice as to whether or not he got an attorney, and the Board could not require it.

Chairman DiGiulian called for the vote, and the motion carried by a vote of 7-0.

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~ ~ ~ October 21, 2003, (Tape 2), Scheduled case of:

9:30 A.M. FAI OLD CENTREVILLE LLC, A 2003-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the shopping center on property located at Tax Map 54-4 ((1)) 87C has frontage on only one major thoroughfare and, therefore, only one freestanding sign may be erected in accordance with Zoning Ordinance provisions, and that there is no nonconforming right to allow two freestanding signs to be located on the

~ ~ ~ October 21, 2003, FAI OLD CENTREVILLE LLC, A 2003-SU-023, continued from Page 160

property. Located at 13810 Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 87C and 87F. (Def from 6/10/03 and 7/8/03.) (Admin moved from 9/30/03 for notices).

Chairman DiGiulian noted that A 2003-SU-023 had been administratively moved to January 13, 2004.

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~ ~ ~ October 21, 2003, (Tape 2), After Agenda Item:

Request for Reconsideration  
Brian K. & Reiko K. Briscoombe, VC 2003-MA-101

Mr. Hart indicated that if the Board had not previously waived the 12-month waiting period for refiling an application, he would move to waive the waiting period.

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the 12-month waiting period had not been waived, and the applicant was present to speak, if the Board desired.

Mr. Pammel commented that one of the issues the Board had not addressed was regarding the variance on the side of the property where the existing structure was in violation of the Zoning Ordinance. He said the proposal was to add onto the second story without further encroachment, and the Board's action precluded that. Chairman DiGiulian said he believed that staff would be able to handle the issue administratively. Mr. Pammel said that would only apply to the first floor, but the second floor addition would not be covered, which he asked staff to confirm. Ms. Langdon confirmed that Mr. Pammel was correct. Mr. Pammel said he would like to hear from the applicant regarding the points raised.

Brian Briscoombe, 6703 McCrea Place, Falls Church, Virginia, presented a document that he said addressed many of the issues raised at the previous hearings on September 9, 2003, and October 14, 2003. He noted that Mr. Beard and Ms. Gibb expressed approval of the entire variance as it was originally proposed, and Mr. Hammack and Mr. Hart indicated they had concerns about only the second story. Mr. Briscoombe stated that they had submitted an application on October 14, 2003, for a single-story addition. He said that Mr. Pammel had consistently stated that he opposed anything less than five feet from the property line for even a one-story garage. In deference to Mr. Pammel's concerns, Mr. Briscoombe said that although it would not meet all their needs, they were prepared to narrow the proposed width of the one-story garage to 12 feet, which would leave at least five feet between the outer wall of the proposed garage and the property line. He summarized the possible points of agreement reflected in the document, including the issue pointed out by Mr. Pammel regarding the proposed construction above the area where the existing structure was in violation.

A discussion ensued among the Board members and staff regarding whether reconsideration could be granted or the 12-month waiting period could be waived and a new hearing scheduled following the submission of a new application, during which Mr. Hart moved to approve the request for reconsideration. Mr. Pammel made a substitute motion to waive the 12-month waiting period for refiling an application. Mr. Hart withdrew his motion. Mr. Hammack seconded Mr. Pammel's motion, which carried by a vote of 7-0.

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~ ~ ~ October 21, 2003, (Tape 2), After Agenda Item:

Approval of BZA meeting dates for the first six months of 2004  
(Deferred from 10/14/03)

Mr. Hammack moved to approve the meeting dates reflected in the memorandum dated October 7, 2003, from Kathleen A. Knoth. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 21, 2003, (Tape 2), After Agenda Item:

Approval of October 14, 2003 Resolutions

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:07 a.m.

Minutes by: Kathleen A. Knoth

Approved on: January 18, 2005

*K. A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 28, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; Paul Hammack; James Hart; and John Ribble. Mr. Pammel was absent from the meeting.

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

~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. AMERICAN LEGION POST 162, INC., VC 2003-MV-099 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 8210 Legion Dr. on approx. 4.94 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 10 and 11A. (In association with SE 2003-MV-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. William Strawsburg, 1602 Pinewood Court, Woodbridge, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit a fence 6.0 feet in height to remain in the front yard. A maximum fence height of 4.0 feet in a front yard is allowed; therefore, a variance of 2.0 feet was requested.

William Strawsburg presented the variance request by reading the statement of justification submitted with the application.

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

Mr. Hart moved to approve VC 20-03-MV-099 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AMERICAN LEGION POST 162, INC., VC 2003-MV-099 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 8210 Legion Dr. on approx. 4.94 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 10 and 11A. (In association with SE 2003-MV-021). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. This is an unusual property with the back of the facility fenced.
4. The fence is set back from the street and has existed on the property for many years.
5. The variance will have no adverse impact on the neighborhood.

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

~ ~ ~ October 28, 2003, AMERICAN LEGION POST 162, INC., VC 2003-MV-099, continued from Page 163

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

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

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

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

1. This variance is approved for the fence height and location shown on the Special Exception/Variance (SE/VC) Plat entitled "American Legion Post 162, Inc", prepared by The Engineering Group, Inc., dated February 6, 2003, as revised through October 7, 2003, 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. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP A. AND CHARLOTTE D. SECHLER, VC 2003-DR-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. with eave 24.0 ft. from front

~ ~ ~ October 28, 2003, PHILIP A. AND CHARLOTTE D. SECHLER, VC 2003-DR-11R, continued from Page 164

lot line. Located at 1833 MacArthur Dr. on approx. 23,234 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((28)) 3.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip Sechler, 1833 MacArthur Drive, McLean, Alexandria, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of an addition to the dwelling 25.0 feet with eaves 24.0 from the front lot line. A minimum front yard of 35 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 10.0 feet and 8.0 feet, respectively, were requested.

Mr. Sechler presented the variance request as outlined in the statement of justification submitted with the application. He submitted photographs of the existing home and an elevation of the proposed addition which illustrated the location of the addition with relation to the "paper street" adjacent to the property.

There was discussion between the Board, the applicant, and staff as to the origination of the "paper street," and it was determined that the street would never be constructed.

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

Mr. Hammack moved to approve VC 2003-DR-117 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP A. AND CHARLOTTE D. SECHLER, VC 2003-DR-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. with eave 24.0 ft. from front lot line. Located at 1833 MacArthur Dr. on approx. 23,234 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((28)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003; and

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

1. The applicants are the owners of the land.
2. The lot is truncated and the house is sited at an angle to what would be the front lot line.
3. The property is affected by a "paper street."
4. The variance will have no adverse impact on the neighboring properties and will be in character with the neighborhood.
5. The applicants provided testimony indicating compliance with the required standards for the granting of a variance.

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

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

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

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

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

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

1. This variance is approved for the location of a porch addition, as shown on the plat prepared by William E. Ramsey, dated June 18, 2003, revised through July 29, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. MOTZ, VC 2003-HM-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 4.0 ft. from side lot line. Located

~ ~ ~ October 28, 2003, JOHN R. MOTZ, VC 2003-HM-126, continued from Page 166

at 1685 Drewlaine Dr. on approx. 36,414 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((35)) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John R. Motz, 1685 Drewlaine Drive, Vienna, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a two-story detached garage/workshop 5.0 feet with eaves 4.0 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 15.0 feet and 13.0 feet, respectively, were requested.

Mr. Motz presented the variance request as outlined in the statement of justification submitted with the application. He explained that he needed an additional garage for storage because he had no storage in his home or his existing 3-car garage. He stated that he would use the proposed garage to house one of his four vehicles and as a workshop.

Mr. Hart asked if there would be electricity to the proposed garage. Mr. Motz replied there would be electricity, heat, and air-conditioning in the proposed garage.

Mr. Hart asked if there would be a second level to the proposed garage. Mr. Motz explained there would be a second level with a bathroom.

Mr. Hammack asked what direction the proposed garage would face regarding the home on adjacent Lot 6. Mr. Motz explained the garage would face the front of the home on Lot 6.

Mr. Hammack asked if the applicant would be using any saws or loud machinery in the garage. Mr. Motz replied that he would.

Mr. Hart asked if the applicant would be opposed to relocating the proposed garage into the backyard in such a way that would not require a variance. Mr. Motz explained that his property was not set up to allow the construction of the garage in any other location.

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

Mr. Ribble stated that the variance request was out of convenience instead of to alleviate a hardship. He said the size of the garage was too large, and the proposed location was not approvable. He suggested that the applicant attempt to relocate the garage to an area on the property that would not require a variance.

Mr. Ribble move to deny VC 2003-HM-126 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. MOTZ, VC 2003-HM-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 4.0 ft. from side lot line. Located at 1685 Drewlaine Dr. on approx. 36,414 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((35)) 5. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003, and

~ ~ ~ October 28, 2003, JOHN R. MOTZ, VC 2003-HM-126, continued from Page 167

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

1. The applicant is the owner of the land.
2. The variance request is for a convenience as opposed to a hardship.
3. The proposed garage is too large to be approved.
4. The applicant should attempt to relocate the proposed garage to a more favorable location on 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
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 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 November 5, 2003

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RALPH E. AND THERESA M. MARSTON, VC 2003-MV-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered deck 7.6 ft. from side lot line and addition 6.0 ft. from floodplain. Located at 2100 Farrington Ave. on approx. 4,752 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((14)) (A) 77B.

~ ~ ~ October 28, 2003, RALPH E. AND THERESA M. MARSTON, VC 2003-MV-120, continued from Page 168

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Royce A. Spence, agent, 7297-A Lee Highway, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a covered deck 7.6 feet from a side lot line and to permit construction of a two-story addition 6.0 feet from a floodplain. A minimum side yard of 10 feet and a minimum distance of 15 feet for a dwelling to be located adjacent to a floodplain are required; therefore, variances of 2.4 feet and 9.0 feet, respectively, were requested.

Mr. Spence presented the variance request as outlined in the statement of justification submitted with the application. He explained that the floodplain precluded the location of the proposed addition in any other place than the proposed location. He said the applicants worked with County staff to address any issues related to the floodplain and worked diligently to request the most minimal variance as possible.

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

Ms. Gibb moved to approve VC 2003-MV-120 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RALPH E. AND THERESA M. MARSTON, VC 2003-MV-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered deck 7.6 ft. from side lot line and addition 6.0 ft. from floodplain. Located at 2100 Farrington Ave. on approx. 4,752 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((14)) (A) 77B. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The proposed addition is no closer to the side lot line than the existing house.
4. The impact of the variance is very minimal with relation to the flood plain.
5. The applicants sought guidance from the County to deal with any issues regarding the Resource Protection Area.
6. The applicants worked to request as minimal of a variance as possible.
7. The covered deck consists of a small landing six feet in width with stairs and a roof which will have minimal impact on the neighborhood.

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

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

~ ~ ~ October 28, 2003, RALPH E. AND THERESA M. MARSTON, VC 2003-MV-120, continued from Page 169

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

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

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

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

1. This variance is approved for the location of a covered deck and addition shown on the plat prepared by Bryant L. Robinson, dated April 30, 2003, as revised through August 11, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DAN AND WENDY LEMIEUX, VC 2003-PR-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line such that side yards at 11218 Cranbrook La. on approx. 20,005 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 46-2 ((20)) 52A.

~ ~ ~ October 28, 2003, DAN AND WENDY LEMIEUX, VC 2003-PR-122, continued from Page 170

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dan and Wendy Lemieux, 11218 Cranbrook Lane, Oakton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a one-story family room addition to be located 10 feet from a side lot line such that side lot lines total 30.8 feet. A minimum side yard of 12 feet and minimum total side yards of 40 feet are required; therefore, variances of 2.0 feet and 9.2 feet, respectively, were requested.

Mr. Lemieux presented the variance request as outlined in the statement of justification submitted with the application. He explained that the lot was unusually shaped, and its configuration precluded the addition to be located in any other area. He said his growing family needed additional living space. He submitted an elevation of the proposed addition.

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

Mr. Beard moved to approve VC 2003-PR-122 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAN AND WENDY LEMIEUX, VC 2003-PR-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line such that side yards total 30.8 ft. Located at 11218 Cranbrook La. on approx. 20,005 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 46-2 ((20)) 52A. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 2003; and

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

1. The applicants are the owners of the land.
2. The variance is justified because of the uniqueness of the lot situation.
3. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.

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

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

~ ~ ~ October 28, 2003, DAN AND WENDY LEMIEUX, VC 2003-PR-122, continued from Page 171

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Rice Associates, dated June 17, 1997, as revised by Dan Lemieux through August 13, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      STEPHEN D. MACLEOD, VC 2003-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 3.9 ft. from rear lot line. Located at 8820 Fort Hunt Rd. on approx. 11,745 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((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. Stephen D. MacLeod, 8820 Fort Hunt Road, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage of 13 feet in height 5.0 feet with eave 3.9 feet from the rear lot line. A minimum rear yard equal to the height of accessory structures is

~ ~ ~ October 28, 2003, STEPHEN D. MACLEOD, VC 2003-MV-118, continued from Page 172

required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 8.0 feet and 6.1 feet, respectively, were requested.

Mr. MacLeod presented the variance request as outlined in the statement of justification submitted with the application. He submitted an elevation of the proposed garage and explained that he had worked to provide the most minimal variance request as possible. He said he had planted trees to screen the proposed garage from the adjacent property. He stated that the proposed garage would be architecturally compatible with the existing home. He said he had full neighborhood support.

Mr. Hammack asked the applicant why he needed a garage of the proposed large size. Mr. MacLeod explained that he wanted to park his cars and his three motorcycles in the garage in staggered positions, and he had measured exactly how much space he would need to do it.

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

Mr. Hammack stated that the variance request was out of convenience instead of to alleviate a hardship.

Mr. Hammack moved to deny VC 2003-MV-118.

Mr. Hart asked the applicant if he would be willing to reduce the size of the proposed garage. Mr. MacLeod indicated that he would be willing to reduce the depth of the proposed garage.

Mr. Hart made a substitute motion to defer decision regarding VC 2003-MV-118 to December 2, 2003, at 9:00 a.m.

Mr. Pammel stated that the proposed garage measured one half the size of the existing home and said he would support the motion to defer the application if the applicant came back to the Board with a proposal for a smaller garage.

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

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-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 dwelling to remain 11.0 ft. from side lot line, deck to remain 10.1 ft. from side lot line and shed to remain 2.9 ft. with eave 2.0 ft. from rear lot line and 2.8 ft. with eave 1.8 ft. from side lot line. Located at 1603 Concord Pl. on approx. 8,645 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 2. (Concurrent with VC 2003-MV-119).

9:00 A.M. BRUCE AND MARY KATE SPAINHOUR, VC 2003-MV-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.6 ft. with eave 26.9 ft. from front lot line and 11.0 ft. from side lot line. Located at 1603 Concord Pl. on approx. 8,645 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 2. (Concurrent with SP 2003-MV-033).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce and Mary Kate Spainhour, 1603 Concord Place, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, presented the special permit and variance requests as contained in the staff report. The applicant requested a special permit to allow reductions to the minimum yard requirements based on error in building location for several structures. The dwelling was located 11 feet from the side lot line, requiring a reduction of 1.0 foot. A deck was located 10.1 feet from the side lot line, requiring a reduction of 1.9 feet. A shed of 11.4 feet in height was located 2.9 with eave 2.0 feet from the rear lot line, requiring reductions of 8.5 feet and 6.4 feet. The shed was also located 2.8 feet with eave 1.8 feet from the

~ ~ ~ October 28, 2003, BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-033 and VC 2003-MV-119, continued from Page 173

side lot line, requiring reductions of 9.2 and 7.2 feet. The applicant also requested a variance to permit the construction of two additions, a one-story entrance addition to be located 27.6 feet with eave 26.9 feet from the front lot line, requiring variances of 2.4 and 0.1 feet, and a second-story addition to be located 11 feet from the side lot line, requiring a variance of 1.0 foot.

Mr. Spainhour presented the requests as outlined in the statements of justification submitted with the applications. He explained that the errors in building location existed when they purchased the property and were discovered when they applied for the variance. He said the property was oddly shaped, and the proposed additions could not be located in any other areas. He said they were in need of more living space, and building up in elevation would be in character with the neighborhood.

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

Mr. Hart moved to approve SP 2003-MV-033 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-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 dwelling to remain 11.0 ft. from side lot line, deck to remain 10.1 ft. from side lot line and shed to remain 2.9 ft. with eave 2.0 ft. from rear lot line and 2.8 ft. with eave 1.8 ft. from side lot line. Located at 1603 Concord Pl. on approx. 8,645 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 2. (Concurrent with VC 2003-MV-119). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003; and

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

1. The applicant presented testimony indicating compliance with the required standards for the granting of a special permit.
2. The house has existed on the property since 1951.
3. The amount of the error is minimal and has not had any adverse impact on the adjacent properties in the past and will not in the future.
4. The deck is set back from the street and there will be no significant impact on the adjacent properties.
5. It would be a hardship for the owners to move the structures the short distance needed to comply with the Zoning Ordinance.
6. The shed has existed on the property for at least ten years and no neighbors had complained about its location.
7. There is a question to whether or not the shed could physically be moved because it is secured into the ground.
8. The photographs submitted indicate that there is no need to move the shed.

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

~ ~ ~ October 28, 2003, BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-033 and VC 2003-MV-119, continued from Page 174

result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

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

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

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

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

- 1. This Special Permit is approved for the location of the dwelling, deck and shed as shown on the plat prepared by R.C. Fields, Jr., dated June 10, 2003, revised through August 5, 2003, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to approve VC 2003-MV-119 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE AND MARY KATE SPAINHOUR, VC 2003-MV-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.6 ft. with eave 26.9 ft. from front lot line and 11.0 ft. from side lot line. Located at 1603 Concord Pl. on approx. 8,645 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (7) 2. (Concurrent with SP 2003-MV-033). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ October 28, 2003, BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-033 and VC 2003-MV-119, continued from Page 175

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 28, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The property is oddly shaped because the front set back is pushed back due to the bulb of the cul-de-sac in the front yard.
4. The existing home has existed since 1951.
5. The applicants' plan to extend straight up from the existing footprint will not cause any adverse impact on the adjacent properties.
6. The elevations indicate that the variance will not change the character of the neighborhood.
7. The proposed variance is the logical and appropriate way to extend the home.

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

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

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

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

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

1. This variance is approved for the location of the one story entrance addition and second story addition, as shown on the plat prepared by R.C. Fields, Jr., dated June 10, 2003, revised through August 5, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ October 28, 2003, BRUCE AND MARY KATE SPAINHOUR, SP 2003-MV-033 and VC 2003-MV-119, continued from Page 176

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RONNIE GOLLEHON, VC 2003-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 2 lots with proposed Lot 27B having a lot width of 22.26 ft. Located at 6917 Cherry La. on approx. 1.24 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((7)) 27. (moved from 7/22/03 and 9/30/03 at appl. 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. William M. Baskin, 301 Park Avenue, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a lot width variance to permit the subdivision of one lot into two lots with Lot 27-A having a lot width of 169.88 feet and Lot 27-B having a lot width of 22.26 feet. A minimum lot width of 100 feet is required. Lot 27-A would consist of 26,167 square feet and Lot 27-B would consist of 27,728 square feet.

Mr. Sherman explained that the Zoning Ordinance required that a variance application must meet all nine standards as enumerated in the Ordinance in order to be granted, and he indicated, as outlined in the staff report, that staff did not believe the application met eight of the nine standards. He stated that the applicant did not provide any details regarding proposed limits of clearing and grading, areas of tree save, location of structures or facilities to meet storm water management and best management practices requirements. Without this information, Mr. Sherman said it was not possible to evaluate the potential impacts on the surrounding neighborhood.

Mr. Baskin, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the narrowness of the lot limited the applicant's reasonable use of the property because only one home could be constructed. Mr. Baskin stated that the lot in question was exempt from any restricted covenants regarding subdivision. He said a lot width variance would allow the construction of two homes on the property. Mr. Baskin stated that a pipestem configuration would allow for maximum tree save and would be less of an impact on the neighborhood.

Mr. Hart asked why the applicant had not provided staff with the requested information. Mr. Baskin explained that he did not encourage the applicant to go through the expense of obtaining the documents when it would not make a difference in staff's position regarding the variance. He suggested that the Board defer the application to allow the applicant time to obtain the information that staff requested.

Mr. Hart asked if the applicant had considered subdividing the property in a sideways configuration as opposed to what was proposed. Mr. Gollehon replied that the current configuration provided more tree save area.

~ ~ ~ October 28, 2003, RONNIE GOLLEHON, VC 2003-MA-070, continued from Page 177

Mr. Hart asked staff if the applicant could construct three houses by right on the property. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the property would not meet the density requirements to construct three houses by right.

Chairman DiGiulian called for speakers.

Elliott Roberts, 6921 Cherry Lane, Annandale, Virginia, came forward to speak in support of the application. He stated that he had no objection to the variance request, and he was in favor of a pipestem configuration.

The following citizens came forward to speak in opposition:

Tom and Susan Gause, 6900 Oak Court, Annandale, Virginia; Jim Rauch, 6913 Cherry Lane, Annandale, Virginia; Sue McWilliams, 4905 Kingston Drive, Annandale, Virginia; Barbara Eckert, 4501 Hillbrook Drive, Annandale, Virginia; Sara Denby, 4505 Hillbrook Drive, Annandale, Virginia; Helen Winter, no address given; David and Josephine Tenus, 6912 Oak Court, Annandale, Virginia; and Carolyn Rauch, 6913 Cherry Lane, Annandale, Virginia.

The following concerns were presented by the citizens:

The pipestem configuration would change the character of the neighborhood and set a precedent to subdivide other lots in the neighborhood in a similar fashion. The construction equipment and runoff from the proposed homes would damage adjacent properties. The proposed homes would be significantly higher than the surrounding homes, and there would be no privacy for the adjacent homeowners. There were other lots in the area that shared the same characteristics as the subject property. The long-time citizens wanted to preserve the beauty of the neighborhood and requested that the Board deny the application.

Mr. Baskin, in his rebuttal, stated that many of the issues that were raised by the citizens could be assuaged if they were provided with an elevation of the proposed homes. He requested a deferral to allow the applicant time to look at other options for subdividing the property and to meet with the citizens.

Mr. Ribble moved to defer decision on VC 2003-MA-070 to January 20, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hart was not present for the vote, and Mr. Pammel was absent from the meeting.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 4.

Chairman DiGiulian noted that A 2003-MV-037 had been administratively moved to December 9, 2003, at 9:30 a.m.

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~ ~ ~ October 28, 2003, (Tape 1), Scheduled case of:

9:30 A.M. YOUNG K. LEE AND YOUNG A. LEE, A 2003-PR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants' property consists of a single lot. Located at 10414 Miller Rd. on approx. 2.12 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((2)) 1.

Tom Nelson, Department of Public Works and Environmental Services (DPWES) presented the request as contained in the staff report. The appeal was of a determination that the appellants' property consisted of a

~ ~ ~ October 28, 2003, YOUNG K. LEE AND YOUNG A. LEE, A 2003-PR-042, continued from Page 178

single lot as opposed to three separate lots. It was staff's position that the lots were never legally subdivided. He explained that he had done a thorough title search on the property and had not found any information indicating that the lots had been legally subdivided. He said the lots were created in 1944 by metes and bounds. Mr. Nelson said that having established that these three lots did not exist, the question of the lots being buildable became moot, and it was the position of the Director of DPWES that this was an appeal of the director's determination. He stated that the property in question was not legally subdivided and as such was not within the authority of the BZA to consider.

There was discussion between Mr. Nelson and the Board regarding his involvement, and Mr. Nelson explained that in approximately March of 2003 the Board of Supervisors amended the Subdivision Ordinance to provide a means by which lots that were created in a suspect manner could be validated through the Subdivision Ordinance, and the Department of Planning and Zoning and the Department of Public Works and Environmental Services created a process whereby property owners could submit requests to ask if properties could be validated, at which time he became involved in the process. Margaret Stehman, Zoning Administration Division, said that although her department was charged with being the principal responder to the requests prior to the amendment by the Board of Supervisors, their principal focus was on whether or not lots met the Zoning Ordinance provisions under Section 2-405 of the Zoning Ordinance, and they frequently had coordinated with DPWES relative to the subdivision issues that were involved.

There was conversation between the Board, staff, and John Foster, County Attorney's Office, as to whether or not the BZA had jurisdiction under the Virginia Code to hear appeals related to the Subdivision Ordinance. The BZA believed they had jurisdiction to hear the appeal and went forward with the public hearing.

The Board requested that Mr. Nelson describe the process he went through to determine the appellants' property consisted of one lot, and Mr. Nelson explained that he searched the land records starting with the current record and worked his way back and determined that the lot was created in 1944 by a metes and bounds description. He said the tax map showed dashed lines, which was an indication that there was some question as to how they were created.

Mr. Baskin, agent for the appellants, explained the process he went through to research the plat. He stated that the tax records with the County reflected that there were three separate lots and suggested that the reason for the dashed lines on the plat was because at some point the owner of the property wanted a consolidated tax bill. He said the lots were created five years prior to the first Subdivision Ordinance. He contended that the County had believed all along there was three separate parcels and did not investigate the properties until he requested confirmation regarding the number of lots.

Ms. Gibb stated that she had seen property separated by dashed lines and the lots were defined as separate and individual lots.

There was discussion between the Board, staff, and Mr. Foster regarding how the property was depicted in the metes and bounds description, the circumstances surrounding the 1944 Deed conveyance, whether or not the plat was filed in the County mapping office, the stakes in the corners of the lots indicating a separation of the lots, and the 22 lots referenced in the staff report making up the 32.9 acres which was originally recorded. The Board decided that there needed to be more research done on the parcels before any determination could be made.

Chairman DiGiulian called for speakers.

Richard Alpin, 2965 Oakborough Square, came forward to speak in opposition. He stated he was a member of the Oakborough Square Homeowners Association. He read a statement indicating support of staff's position that the property was one parcel.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to continue appeal application A 2003-PR-042 to January 20, 2003, at 9:30 a.m., to give staff time to research the property and report their findings to the Board. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hart was not present for the vote, and Mr. Pammel was absent from the meeting.

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~ ~ ~ October 28, 2003, (Tape 1), After Agenda Item:

Approval of October 21, 2003 Resolutions

Mr. Ribble made one correction to the Resolutions.

Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Lori M. Mallam

Approved on: November 30, 2004

K.A. Knoth

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 4, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. NIIBEN AND JEANNE AYIVORH, VC 2003-SP-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from side lot line. Located at 5805 Herbert St. on approx. 24,750 sq. ft. of land zoned R-1. Springfield District. Tax Map 79-1 ((4)) 3.

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

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition, specifically a garage with a room above, 15.1 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 4.9 feet was requested.

Mr. Beach presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because the family needed more living space and a place for their vehicles.

Mr. Beard asked for information concerning an elevation of a riser of the addition or a side view. Mr. Beach replied that he did not have one available. Also in reply to another question by Mr. Beard, he said windows would be located on the side of the addition.

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

Mr. Pammel moved to approve VC 2003-SP-121 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NIIBEN AND JEANNE AYIVORH, VC 2003-SP-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from side lot line. Located at 5805 Herbert St. on approx. 24,750 sq. ft. of land zoned R-1. Springfield District. Tax Map 79-1 ((4)) 3. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicants are the owners of the land.
2. The property is similar to in an R-2 District, which has less of a side yard requirement than the R-1 District.
3. The lot has a frontage of 110 feet, which does not meet the requirements of the R-1 District under today's standards.
4. The request for a 15-foot setback is a very reasonable request for the subject application.
5. The applicants have met the standards as prescribed 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a two story addition/garage, as shown on the plat prepared by Robert E. Beach, dated October 2, 1995, revised through August 14, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November

~ ~ ~ November 4, 2003, NIIBEN AND JEANNE AYIVORH, VC 2003-SP-121, continued from Page 182

4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JULIE M. AND JOHN C. DAVID, VC 2003-DR-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. from rear lot line. Located at 1500 Basswood Ct. on approx. 16,058 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-2 ((14)) 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 David, the applicant, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened patio addition 22.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 2.7 feet was requested.

Mr. David presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because the house was built on an angle and they wanted to construct a 12-by-16-foot screened porch. He pointed out that the variance requested was 0.5 to 2.7 feet on the corner of the proposed porch. He said he knew of no opposition to the application.

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

Mr. Hart moved to approve VC 2003-DR-127 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JULIE M. AND JOHN C. DAVID, VC 2003-DR-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. from rear lot line. Located at 1500 Basswood Ct. on approx. 16,058 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-2 ((14)) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicants are the owners of the land.
2. The subject lot is irregularly shaped, being shallow and wide.
3. One corner of the addition extends 2.7 feet into the minimum yard when placing the addition at the rear of the house.
4. There would not be a significant negative impact by placing the addition in the proposed location.
5. There was no opposition to the application.
6. The request is fairly modest.
7. The house is set back further from the street than it needed to be.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of a screened patio, as shown on the plat prepared by Dwight R. Stonerook, dated June 27, 2003, revised through August 11, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DELOS G. WILLMORE, VC 2003-SP-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of railroad tracks and wall greater than 7.0 ft. in height in rear yard. Located at 11521 Fairfax Station Rd. on approx. 4.70 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((1)) 17.

Mr. Hart gave a disclosure and indicated that he would recuse himself from 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. Delos Willmore, the applicant, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 180 feet from a railroad track and a fence 8.0 feet in height in the rear yard. A minimum distance from a railroad track of 200 feet is required; therefore, a variance of 20 feet was requested for the dwelling. The maximum permitted height of a fence in a rear yard is 7.0 feet; therefore, a variance of 1.0 foot was requested for the fence.

Mr. Willmore presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because his family needed more living and parking space. He displayed a drawing on the viewgraph showing the small triangular shape currently available to build on.

In response to Ms. Gibb's question, Mr. Willmore said the wall on the drawing would not necessitate the removal of any trees and would likely be made of termite-treated plywood covered in ivy.

Ms. Gibb asked what the policy was concerning a soundproofed home. Mr. Shriber replied that it was based on the environmental policy of the Comprehensive Plan that required outdoor noise mitigation for anything that would exceed 65 dB DNL, averaged over 24 hours. He said the applicant's own noise study indicated that one of the measurements would exceed that, and because it was a noise study for train traffic, a single incident could be greater than that. He said the soundproofing was for the safety and welfare of the owner and was consistent with the policies of the Comprehensive Plan.

Mr. Willmore responded to Mr. Hammack's question concerning his comment that there had been an identical variance granted on the property in 1986. Mr. Hammack asked Mr. Willmore if he had one. He said he did, but did not have it with him. Susan Langdon, Chief, Special Permit and Variance Branch, displayed a copy of the 1986 approved plat on the overhead.

Chairman DiGiulian noted that a letter of opposition had been submitted by Stephen Sacks. Mr. Willmore said he had not seen it and asked to look at it.

Chairman DiGiulian called for speakers.

William Delvecchio, 11517 Fairfax Station Road, Fairfax Station, Virginia, came forward to speak in opposition to the application. He objected to the possibility of removing trees he considered to be a natural noise barrier. He stated that an eight-foot noise barrier would be an eyesore and would not be as effective as a natural buffer. He said the proposed location of the driveway would intensify the danger of traffic at the intersection of Penny Lane and Fairfax Station Road, and because a school bus stop was located at that site, children would be placed in grave danger.

Mr. Ribble pointed out that Mr. Willmore had stated that no trees would be removed and the fence would be aesthetically pleasing. He asked Mr. Delvecchio if that was acceptable to him, and Mr. Delvecchio replied in the negative, stating that the proposal would not be consistent with the homes in the neighborhood.

In his rebuttal, Mr. Willmore addressed Mr. Sacks' letter and Mr. Delvecchio's comments. He said they did not pose adequate arguments with respect to the sound wall and the possibility of a train derailment. He said he was willing to work with his neighbor concerning the proposed fence and stressed that he would not be removing any trees other than those necessary to allow him to build the addition.

Mr. Pammel noted that Mr. Sacks resided over three miles west of the property, on the other side of Colchester Road, and his property did not back up to the Norfolk Southern Railroad tracks.

Chairman DiGiulian closed the public hearing.

~ ~ ~ November 4, 2003, DELOS G. WILLMORE, VC 2003-SP-133, continued from Page 185

Mr. Hammack moved to approve VC 2003-SP-133 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DELOS G. WILLMORE, VC 2003-SP-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of railroad tracks and wall greater than 7.0 ft. in height in rear yard. Located at 11521 Fairfax Station Rd. on approx. 4.70 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((1)) 17. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the nine required standards for a variance application.
3. The lot has an unusual configuration, being a long, narrow lot adjacent to railroad tracks.
4. There was a prior variance granted for the subject lot, which was allowed to expire.
5. There were no changes since the prior variance approval which would justify not granting it a second time.
6. The variance request regarding the normally required 200-foot setback from the railroad tracks is minimal and is justified due to the narrowness of the lot and the acoustical treatment required of the building.
7. The fence was required in the prior variance approval.
8. Staff and the acoustical engineer recommend a 1-foot variance to permit an 8-foot fence for noise mitigation purposes based on current state-of-the-art technology for measurement of decibels and the impact on property and the persons who occupy property, thus being a health and safety factor.
9. The fence will be approximately 180 to 200 feet away from Fairfax Station Road, so there will be no immediate impact on neighbors.
10. The additional one foot in fence height will not impact on the character of the neighborhood.

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

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

~ ~ ~ November 4, 2003, DELOS G. WILLMORE, VC 2003-SP-133, continued from Page 186

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

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

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

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

1. This variance is approved for the location of a dwelling and sound wall, as shown on the plat prepared by Holmes Smith, dated May 24, 2003, revised through July 18, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The limits of clearing and grading shall be established to protect all portions of Lot 17 not necessary for construction of the proposed dwelling, drainfield, sound wall and driveway.
4. In order to reduce interior noise to a level of approximately DNL 45 dBA, construction of the dwelling shall employ the following acoustical treatment measures:
  - a. Exterior walls shall have a laboratory sound transmission class (STC) of at least 39.
  - b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20 percent of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed façade, then the glazing shall have an STC rating of at least 39.
  - c. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society of Testing and Materials (ASTM) to minimize sound transmission.
5. In order to reduce exterior noise levels below DNL 65 dBA, a noise attenuation structure shall be provided in accordance with the recommendations of the submitted acoustical survey. The wall shall be architecturally solid from the ground up with no gaps or openings. The structure must be of sufficient height to adequately shield the impact area from the source of the noise.

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

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN L. AND PAMELA F. LESLIE, VC 2003-MV-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line and deck to remain 0.0 ft. from rear lot line. Located at 9501 Ferry Harbour Ct. on approx. 20,004 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((6)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Erika Byrd, McGuire Woods LLP, 1750 Tysons Boulevard, McLean, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 6.5 feet from the side lot line and deck, specifically a concrete patio, to remain 0.0 feet from the rear lot line of a corner lot. Minimum side and rear yards of 15 feet are required; however, the deck is permitted to extend 20 feet into the minimum required rear yard, but no closer than 5.0 feet to the rear lot line; therefore, variances of 9.5 feet for the addition and 5.0 feet for the deck were requested.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Ms. Byrd presented the variance request as outlined in the statement of justification submitted with the application. She said the addition was requested because the applicants wanted to build a garage addition to improve their home. She said a small encroachment was necessary because the property was a corner lot and had an unusual shape. She stated that the applicants had met with their neighbors and discussed their plans. Ms. Byrd said there were no objections to the proposed construction. She noted that several letters of support had been submitted, and she submitted an additional three for the record.

Mr. Pammel said he disagreed with Ms. Byrd's definition of modest and asked if her clients would be willing to reduce the size of the proposed garage from 26 feet to 22 feet. Ms. Byrd explained that the applicants were planning to build a mother-in-law suite above the garage with an elevator shaft to be built at the rear of the garage, which would necessitate the wider than usual garage.

Mr. Ribble, referring to the letter of justification, noted that the garage would be 86 square feet and asked if that met the variance. Mr. Byrd replied that it did.

Mr. Hammack, referring to the mother-in-law suite, indicated that the proposed garage would be 17.5 feet in height and asked how the suite could be built. Ms. Byrd introduced the architect, Tom French, who said the height had been calculated in standard fashion from the zoning, which was to the mid point of the roof plane; therefore, the suite would be located under the slope of a steep roof. He said the plans were smaller than the footprint under it, as a requirement of living under the slopes of a roof, and would be a story-and-a-half structure. With respect to the garage space, he indicated that the width would include part of a service area, including a laundry room and a powder room, that were part of the 26 feet, and as a result the actual width of the parking area of the garage was approximately 23 feet. He also stated that to enable the contractor to install the nine-foot wide doors, 26 feet was needed. Mr. French said the existing garage would be converted into living space. He showed the elevations of the proposed additions on the overhead projector. He said there would be a shed dormer on the rear of the house to accommodate extra space on the second floor, which was intended to minimize the architectural impact on the front. Mr. French said they were also building a front porch.

Mr. Hammack then asked questions about Outlot A, the purpose it served and how wide it was. Ms. Byrd stated that the adjacent property, Outlot A and Lots 2 and 3, were owned by the next-door neighbor, and he had no objection to the application.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff did not have information on the width of Outlot A. She said they had spoken to the owner of Lot 17A, who said there was nothing on Outlot A now, but he planned to use that for access to the back lot in the future.

In response to Mr. Hammack's questions, Ms. Langdon said Lot 11A was not developed, and the granting of the variance would have no impact on that lot.

Mr. Hart asked if the setback on the side of Lot 1 would be changed if Outlot A were to become a driveway in

~ ~ ~ November 4, 2003, BRIAN L. AND PAMELA F. LESLIE, VC 2003-MV-124, continued from Page 188

the future and whether it would change a side yard to a front yard. Ms. Langdon replied that if it served only one lot, there would be no change. She said it would have to serve two or three lots for it to cause the other lots to become front yards. She acknowledged that Lots 2, 3, and 4 were oriented to the corner on the left. Mr. Hart referred to several lots that were landlocked and asked how they could be approached. Ms. Langdon said staff did not have an answer to that question.

Mr. Hart, Mr. French, and Ms. Langdon discussed the definition of a patio, the deck variance, and its distance from the lot line. Mr. Hart asked staff to provide him with information concerning the driveway on Lot A.

Ms. Langdon, in answer to Mr. Hart's question, said Lot 3 was not large enough to be divided further, and she doubted that Lot 11A could be further subdivided because it did not have adequate lot width.

In response to Mr. Beard's question, Ms. Langdon stated that Lots 2, 3, and 11A were owned by the same person.

Margaret Stehman, Deputy Zoning Administrator for Zoning Appeals, Zoning Administration Division, explained that according to the zoning requirements, if pipestems were served by more than one lot, the 25-foot setback would become effective, and that was not the case with Lot 1. She also noted that the property was zoned R-2, and as long as Lot 11A was less than one acre, it could not be subdivided.

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

Mr. Ribble moved to approve VC 2003-MV-124 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN L. AND PAMELA F. LESLIE, VC 2003-MV-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line and deck to remain 0.0 ft. from rear lot line. Located at 9501 Ferry Harbour Ct. on approx. 20,004 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((6)) 1. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine standards for a variance.
3. The lot has two front yards.
4. The location of the house on the lot contributes to the need for a variance.

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

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

~ ~ ~ November 4, 2003, BRIAN L. AND PAMELA F. LESLIE, VC 2003-MV-124, continued from Page 189

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

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

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

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

1. This variance is approved for the location of a garage addition and concrete patio, as shown on the plat prepared by Bryant L. Robison, dated May 13, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted against the motion. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ANA LADO, VC 2003-MV-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. with eave 18.0 ft. from front lot line. Located at 2111 Whiteoaks Dr. on approx. 19,951 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((20)) 18.

~ ~ ~ November 4, 2003, ANA LADO, VC 2003-MV-129, continued from Page 190

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 Ready, co-owner, 2111 Whiteoaks Drive, Alexandria, Virginia, replied that it was.

Vice Chairman Ribble assumed the Chair.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a carport addition 20 feet with eave 18 feet from the front lot line. A minimum front yard of 35 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 15 feet and 14 feet, respectively, were requested.

Mr. Ready presented the variance request as outlined in the statement of justification submitted with the application. He said he and his wife were proposing to build an attached carport to their existing home, and the variance was necessary due to the shape of the lot. He said there would be minimal impact on the lot. Mr. Ready said they had received approval from their neighbors and he knew of no objections to their proposal.

Ms. Gibb asked Mr. Ready to point out the location of the neighbor to the right of his property. He said his neighbor could not see his lot because of the extensive foliage between their properties. He explained that when the homes in his subdivision were built, they did not have carports or garages; however, several of his neighbors had added one or the other to their houses.

Mr. Ready, responding to Mr. Hammack's request, described the topography and the slope of his property. He pointed out that there was only one significant tree on the property, and it would have to be removed to allow for the addition.

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

Ms. Gibb moved to approve VC 2003-MV-129 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANA LADO, VC 2003-MV-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. with eave 18.0 ft. from front lot line. Located at 2111 Whiteoaks Dr. on approx. 19,951 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((20)) 18. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant attempted to make the best of an odd-shaped lot with a gas line easement on the left-hand side that makes the location of any additional structure impossible.
3. On the right-hand side of the lot, there is a steep drop off in grade.
4. There will be an adequate buffer between the subject lot and the adjacent lot.
5. The applicant has 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:

~ ~ ~ November 4, 2003, ANA LADO, VC 2003-MV-129, continued from Page 191

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

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

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

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

1. This variance is approved for the location of a car port addition, as shown on the plat prepared by Rebecca L.G. Bostick, dated September 1, 1995, revised through August 13, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, continued from Page 192

Chairman DiGiulian resumed the Chair.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DALE R. AND NOEMI M. CHADDOCK, VC 2003-LE-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.5 ft. with eave 2.0 ft. from side lot line. Located at 6211 Sandlin Ct. on approx. 19,744 sq. ft. of land zoned R-3. Lee District. Tax Map 82-4 ((14)) (25) 58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dale Chaddock, 6211 Sandlin Court, Alexandria, Virginia, the applicant, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage 3.5 feet with eave 2.0 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 8.5 feet and 7.0 feet, respectively, were requested.

Mr. Chaddock presented the variance request as outlined in the statement of justification submitted with the application. He said his lot was long and skinny, and it was all uphill from the street to the back of the lot with a 15- to 20-degree slope. He said the back third of the lot was woods, and he did not intend to build there.

Mr. Beard said he was concerned about the close proximity of the structure to the lot line, and he asked how Mr. Chaddock proposed to take care of that side of the building. Mr. Chaddock said there was 3.5 feet between the garage and the lot line. He said it would be a single story, and he could reach the top of the roof and did not foresee any problems.

Mr. Hart asked Mr. Chaddock if he could shift the garage a little to the left. Mr. Chaddock explained the problems he would encounter if he did that. Mr. Hart noted that the two-car garage would be wider and longer than most garages and asked if Mr. Chaddock planned to use the rear of the structure. Mr. Chaddock replied that he intended to build a small workshop in the rear. In answer to another question from Mr. Hart, he said the garage would be made of concrete block and either painted or stuccoed.

In answer to Mr. Beard's question, Mr. Chaddock said his neighbor approved of the addition and indicated that he wanted to do the same thing.

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

Mr. Beard stated that the application had a unique lot situation and he agreed with the applicant that although it would be close to the lot line, the abutting side of the garage could be serviced. He said the applicant had met all the variance standards, and he moved to approve VC 2003-LE-123. Mr. Ribble seconded the motion.

Mr. Pammel said he could not support the motion because of its encroachment on the common property line; however, he could support some variance.

The motion failed by a vote of 3-3. Mr. Pammel, Ms. Gibb, and Mr. Hart voted against the motion. Mr. Hammack was not present for the vote.

Mr. Hart moved to amend the motion to locate the wall to five feet from the side lot line. Mr. Ribble seconded the amended motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

DALE R. AND NOEMI M. CHADDOCK, VC 2003-LE-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.5 ft. with eave 2.0 ft. from side lot line. **(THE BZA APPROVED THE ACCESSORY STRUCTURE 5.0 FEET WITH EAVE 3.5 FEET FROM THE SIDE LOT LINE.)** Located at 6211 Sandlin Ct. on approx. 19,744 sq. ft. of land zoned R-3. Lee District. Tax Map 82-4 ((14)) (25) 58. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and Fwith the by-laws of 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 4, 2003; and

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

1. The applicants are the owners of the land.
2. This is a unique lot situation.
3. The applicants have 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 reasonable use of the land and/or buildings involved.

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

~ ~ ~ November 4, 2003, DALE R. AND NOEMI M. CHADDOCK, VC 2003-LE-123, continued from Page 194

following limitations:

1. This variance is approved for the location of a detached garage, as shown on the plat (**THE BZA APPROVED THE DETACHED GARAGE 5.0 FEET WITH EAVE 3.5 FEET FROM THE SIDE LOT LINE**) prepared by L. S. Whitson, dated June 17, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN ICE, VC 2003-PR-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 7.4 ft. with eave 6.4 ft. from both side lot lines. Located at 2807 Woodlawn Ave. on approx. 8,051 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((4)) 51.

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 Ice, 2807 Woodlawn Avenue, Falls Church, Virginia, the applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a second-story addition 7.4 feet with eaves 6.4 feet from both side lot lines. A minimum side yard of 10 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 2.6 feet and 0.6 feet, respectively, were requested.

Mr. Hart stated that the photographs showed a second story with dormers and asked if that counted as a second floor. Mr. Ice replied that because of the sloped walls, it was considered to be a half story.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, said it was considered to be a one-and-one-half-story structure and she assumed that the applicant was proposing to raise the walls to a full second story and go higher.

Mr. Ice presented the variance request as outlined in the statement of justification submitted with the application. He said he was proposing to add a full second story to the existing house and would not encroach any further than the house itself, except for the eaves. The exterior would be vinyl, in keeping with the other homes in the neighborhood. He said he had the full support of his neighbors.

In response to a question from Mr. Pammel, Mr. Ice said he would finish the shed on the right side of the structure and stated that he would move it if the variance was approved.

In answer to Mr. Ribble's questions, Mr. Ice said the shed would be moved behind the shed already in the

~ ~ ~ November 4, 2003, JOHN ICE, VC 2003-PR-128, continued from Page 195

back yard, and a variance would not be required.

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

Mr. Pammel moved to approve VC 2003-PR-128 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN ICE, VC 2003-PR-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 7.4 ft. with eave 6.4 ft. from both side lot lines. Located at 2807 Woodlawn Ave. on approx. 8,051 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((4)) 51. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant submitted testimony that he complies with the standards for the granting of a variance.
3. The building envelope is not being expanded with the request. The request is to add a second story to an already existing single-family structure.
4. There will be no changes in the side yards, which were established when the house was originally built in 1952 which predated the 1959 Ordinance.
5. The applicant meets the standards as set forth in the Code.

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

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

~ ~ ~ November 4, 2003, JOHN ICE, VC 2003-PR-128, continued from Page 196

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

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

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

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

1. This variance is approved for the location of a deck shown on the plat prepared by Bryant L. Robinson, dated April 28, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The shed located on the right side of the house in the side yard shall be relocated to a location attached to the existing shed at the rear of the lot.

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

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tapes 1 & 2), Scheduled case of:

9:00 A.M. WILLIAM SCOTT DUDGEON, JANE M. DUDGEON, ALISON C. JONES AND DAVID A. JONES, VC 2003-PR-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.1 ft. from side lot line. Located at 8634 Park St. on approx. 25,953 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (3) 29.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Dudgeon, 8634 Park Street, Vienna, Virginia, the applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a deck to replace an existing deck in the same location, 10.1 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 9.9 feet was requested.

Mr. Hart referred to the plat and noted there were no flood plain areas or resource protection areas (RPA) on the property. However, he said there was a creek located on the left-hand side of the property, which was not entirely in a drainage easement. He asked staff if that counted as a measurement for an RPA. Ms. Stanfield said staff had not counted it as a measurement, and they were going by the applicants' information.

Mr. Dudgeon presented the variance request as outlined in the statement of justification submitted with the

~ ~ ~ November 4, 2003, WILLIAM SCOTT DUDGEON, JANE M. DUDGEON, ALISON C. JONES AND DAVID A. JONES, VC 2003-PR-125, continued from Page 197

application. He said they were requesting the variance to replace a deck, the property was not level, and creek level was low and only flooded on occasion.

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

Mr. Hart moved to approve VC 2003-PR-125 for the reasons stated in the Resolution. Mr. Ribble seconded the motion.

Mr. Pammel called attention to a split-rail fence that he thought could present a problem in the future because it was in the public right-of-way. He asked Mr. Dudgeon if he had put the fence there. Mr. Dudgeon replied that he had placed the fence there, and should a sidewalk be put in, he would take the fence down.

Mr. Hart said his motion was not to approve the fence, just the deck.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM SCOTT DUDGEON, JANE M. DUDGEON, ALISON C. JONES AND DAVID A. JONES, VC 2003-PR-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.1 ft. from side lot line. Located at 8634 Park St. on approx. 25,953 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (3) 29. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 4, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony showing compliance with the required standards for a variance.
3. The subject lot is impacted by some topographic issues and a creek to the left-hand side.
4. The house is oddly placed such that what is the functional backyard is a side yard.
5. The application seeks to replace, with slight modifications, an existing deck which does not appear sturdy in the photographs presented.
6. The request is relatively modest on a house that has had a deck in essentially the same position for many years.
7. There would not be a significant negative impact on any 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

~ ~ ~ November 4, 2003, WILLIAM SCOTT DUDGEON, JANE M. DUDGEON, ALISON C. JONES AND DAVID A. JONES, VC 2003-PR-125, continued from Page 198

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

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

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

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

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

1. This variance is approved for the location of a deck shown on the plat prepared by Bryant L. Robinson, dated June 24, 2003, as revised through August 15, 2003, submitted with this application and is not transferable to other land
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 4, 2003, (Tape 2), Scheduled case of:

9:30 A.M. LAWRENCE J. GRAY, PRESIDENT GHT ENTERPRISES, INC./VILLAGE HARDWARE, A 2003-MV-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing outdoor storage and display which exceeds the maximum amount of accessory outdoor storage allowed in the C-5 District in violation of Zoning Ordinance provisions. Located at 7934 - 7938 Fort Hunt Rd. on approx. 1.27 ac. of land zoned C-5. Mt. Vernon District. Tax Map 102-2 ((2)) (1) 1.

Chairman DiGiulian noted that A 2003-MV-038 had been administratively moved to January 13, 2004, at 9:30 a.m., at the appellant's request.

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~ ~ ~ November 4, 2003, (Tape 2), Scheduled case of:

9:30 A.M. VIRGINIA ENTERPRISE COMPANY, L.C., A 2003-MV-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has established a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at on the E. side of Richmond Hwy., approx. 200 ft. N. of Memorial St. on approx. 17,563 sq. ft. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 93-1 ((1)) 19.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. She said staff had met with the attorney for the appellant, who had requested a deferral. She stated that staff thought the appeal issue could be resolved, and the attorney for the appellant had taken some steps to resolve the appeal. She said staff supported an appeal and recommended a date of January 27, 2004.

Mr. Hammack moved to defer A 2003-MV-041 to January 27, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which passed by a vote of 7-0.

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~ ~ ~ November 4, 2003, (Tape 2), After Agenda Item:

Approval of October 28, 2003 Resolutions

Mr. Hammack moved to approve the Resolutions.

A discussion ensued concerning the use of the word "all" in the conclusions of law, the wording stated: "all reasonable use." Mr. Hart said that the statute did not include the word "all," and he thought it was appropriate for the Board to use the wording in the statute rather than the wording in the Zoning Ordinance. Mr. Ribble stated that the form should be changed.

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that as a result of Mr. Ribble raising the issue in regard to a motion he had made the prior week, the word "all" had been removed from the conclusions of law section of the resolution form for that case at his request, but had been left in the standards on the first page of the resolutions because that is taken directly from the Zoning Ordinance.

It was decided that the Board wanted the word "all" routinely taken out of the conclusions of law section of the resolutions and also removed from the blank copies provided for their use in making motions.

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:43 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: September 20, 2005

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 18, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M.       STUART T. JEFFERSON, VC 2003-MV-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from front lot line and fence greater than 4.0 ft. in height in front yard. Located at 9207 Ox Rd. on approx. 1.08 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 12. (OTH - moved from 12/2/03 per appl. 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. Stuart T. Jefferson, 9207 Ox Road, Lorton, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 21.5 feet from a front lot line and a fence greater than 4.0 feet in height to remain in a front yard. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 18.5 feet was requested. The Zoning Ordinance permits a maximum fence height of 4.0 feet in a front yard; therefore, a variance of 2.0 feet was requested. The applicant had informed staff that the fence exceeding the height limit had been installed by the Virginia Department of Transportation as a safety feature due to road construction on Furnace Road.

Mr. Jefferson presented the variance request as outlined in the statement of justification submitted with the application. He stated that he needed the addition to accommodate medical needs of an immediate family member. He said the proposed addition would be in character with the neighborhood, and there was full neighborhood support for the application. He informed the Board that the fence had been installed by the Virginia Department of Transportation as a safety feature due to road construction on Furnace Road.

Mr. Pammel noted that the dimensions on the plat indicated the closest corner of the dwelling was located 18.2 feet from the front lot line and asked if the application had been advertised correctly because it reflected that the closest corner of the dwelling was located 21.5 feet from the front lot line. Mr. Shriber replied that the existing front porch was located 18.2 feet from the lot line, but the actual addition was to be located on the side of the home, which was 21.5 feet from the lot line. He said the front porch would not be improved or be enclosed by the proposed addition.

Mr. Pammel asked the applicant for verification that the front porch would not be improved or enclosed by the proposed addition. Mr. Jefferson stated that the porch was to be extended as a part of the proposed addition.

Mr. Pammel noted that the application had been incorrectly advertised and a new advertisement was needed to include the front porch dimension of 18.2 feet from the lot line.

Mr. Pammel moved to defer VC 2003-MV-135 to December 16, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M.       RICHARD BRUCE & KAREN HOUCK KUTCH, VC 2003-SP-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. with eave 19.0 ft. from rear lot line. Located at 6659 Old Blacksmith Dr. on approx. 9,294 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 6.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning

~ ~ ~ November 18, 2003, RICHARD BRUCE & KAREN HOUCK KUTCH, VC 2003-SP-130, continued from Page 201

Appeals (BZA) was complete and accurate. Karen Kutch, 6659 Old Blacksmith Drive, Burke, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition 20 feet with eave 19 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; however, eaves are permitted to extend 3.0 feet into the rear yard; therefore, variances of 5.0 feet and 3.0 feet were requested.

Ms. Kutch presented the variance request as outlined in the statement of justification submitted with the application. She stated that they had constant drainage problems throughout the lot, and the proposed addition would provide relief from the water problems on the property. She said there was full neighborhood support for the application.

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

Mr. Hammack moved to approve VC 2003-SP-130 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD BRUCE & KAREN HOUCK KUTCH, VC 2003-SP-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. with eave 19.0 ft. from rear lot line. Located at 6659 Old Blacksmith Dr. on approx. 9,294 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 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 November 18, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The plat presented with the application reflects that the house is sited in the center of the lot which is somewhat shallow.
4. There is no other feasible place on the lot to construct the addition.
5. The variance request is minimal.
6. The variance request meets the nine required standards.
7. The variance application will not change the character of the neighborhood and is 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;

~ ~ ~ November 18, 2003, RICHARD BRUCE & KAREN HOUCK KUTCH, VC 2003-SP-130, continued from Page 202

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a one story addition, as shown on the plat prepared by Bryant L. Robinson, dated July 12, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M. ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE, VC 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 195.87 ft. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E.

~ ~ ~ November 18, 2003, ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE,  
VC 2003-DR-132, continued from Page 203

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The site was zoned Residential Estate (R-E) and was developed with a barn. The property was provided access via a gravel driveway from the adjacent lot to the west. The lot was created in 1984 through a four-lot subdivision of the applicants' 9.10-acre parcel. The subdivision created two buildable lots and two non-buildable outlots, the subject property being one of the non-buildable outlots. The site was densely wooded and contained an Environmental Quality Corridor (EQC) in the northwest portion of the property. Though the revised plats showed proposed limits of clearing and grading, a construction footprint was not included on the submitted plat. Absent the approval of the variance, the property could not be developed as it does not meet Zoning Ordinance requirements. The applicants requested a variance to permit a lot with a minimum lot width of 195.87 feet. The Zoning Ordinance requires a 200-foot lot width in the R-E district; therefore, a variance of 4.13 feet was requested.

Mr. Shriber responded to questions from Ms. Gibb and Mr. Hart regarding the size of the lots and outlots. He said Lot 6 was not buildable. Mr. Shriber stated that the property was a four-lot subdivision; however, Lot 6 could not be developed.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She addressed staff's comments stating, in part, that the strict application of the Zoning Ordinance would produce an undue hardship. She took exception to staff's comment that Lot 6 was not buildable since she had been advised by the applicants' engineer that it was, and it had been confirmed by the recent amendment to the Subdivision Ordinance. Ms. Kelsey said the variance request was only 4.13 feet, and without the approval, the property could not be utilized.

In answer to Chairman DiGiulian's query, Ms. Kelsey said she had seen the letter of opposition from David S. Julian.

A lengthy discussion ensued between Mr. Hart; Ms. Gibb; Susan Langdon, Chief, Special Permit and Variance Branch; and Ms. Kelsey concerning the proposed location of the house, limits of clearing and grading, tree preservation, proposed location of a driveway, the original plat and the boundary adjustment plat, status of Lot 6, EQC at the rear of the lot, and stormwater management. Ms. Kelsey stated that if a waiver was not obtained, the applicant would not have to change the limits of clearing and grading.

Lori Greenlief, Kelsey and Associates, Inc., displayed photographs of the property on the overhead projector and addressed questions asked by members of the Board.

Chairman DiGiulian called for speakers.

John O'Neill, 10550 Beach Mill Road, Great Falls, Virginia, came forward to speak in opposition to the application. He submitted a letter for the record and requested that the Board deny the request for less than the minimum 200 feet as required for buildable lots.

At Mr. Beard's request, Mr. O'Neill pointed out the location of his lot.

In her rebuttal, Ms. Kelsey addressed Mr. O'Neill's comments. She requested that the application be deferred to give her an opportunity to obtain information in writing concerning Lot 6.

Chairman DiGiulian closed the public hearing.

Mr. Hart announced his intention to make a motion to defer the application and asked staff to provide information on the impacts on tree preservation and the location of the proposed home.

In response to a question from Ms. Kelsey, Mr. Hart asked for a photocopy of the deed indicating when Lot 6 was created, copies of any changes made since its inception, a copy of the pertinent Ordinance provisions,

~ ~ ~ November 18, 2003, ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE,  
VC 2003-DR-132, continued from Page 204

and any other pertinent backup information concerning the properties.

Mr. Hart moved to defer VC 2003-DR-132 to December 9, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M. NEIGHBORHOODS II LLC, VC 2003-PR-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 16.3 ft. from front lot line of a corner lot. Located at 6424 South St. on approx. 10,116 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((2)) 111.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Broyhill, Reed Smith LLP, 3110 Fairview Park Drive, Falls Church, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit construction of a dwelling to be located 16.3 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 13.7 feet was requested.

Ms. Broyhill presented the variance request as outlined in the statement of justification submitted with the application. She said the request for a variance was due to the irregular shape of Lot 111 and referenced other similar lots that had been approved.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in opposition to the application: Kevin Sarring, 6418 South Street, Falls Church, Virginia; and Jessica Ginsburg, 6426 South Street, Falls Church, Virginia. Their main points were that the proposal was incomplete since it addressed only the building footprint and not the existing neighborhood topography; pedestrian access; civil engineering; landscaping views; the proposed building was substantially larger than the other homes in the community; the footprint would extend in excess of 15 percent into the public setback; suggested ameliorations including fitting the proposed building into the setback by reconfiguring the footprint; planting trees; and, moving the proposed garage. Ms. Ginsburg cited possible encroachment onto her property. She said the applicant had assured her that an appropriate number of trees would be planted to separate the two lots, but that was not indicated on the proposed plat.

In her rebuttal, Ms. Broyhill said the applicant had agreed to add a development condition that they would plant a row of evergreen trees adjacent to the rear yard lot lines between Lots 111 and 112. She said the applicant was in the process of constructing 10 single-family dwellings in a row along South Street, and the house in question would be the 11<sup>th</sup> house in the row. She displayed a drawing of the proposed development. She said the request by Mr. O'Neill to turn the house around would not be compatible with the surrounding neighborhoods.

In response to Mr. Hammack's question, Ms. Broyhill said the home on the corner, Lot 131, was a two-story house, circa 1940s.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-SP-131 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

NEIGHBORHOODS II LLC, VC 2003-PR-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 16.3 ft. from front lot line of a corner lot. Located at 6424 South St. on approx. 10,116 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((2)) 111. 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 18, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The property has double-front yard requirements.
4. The property is of exceptional shape.

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

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

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

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

~ ~ ~ November 18, 2003, NEIGHBORHOODS II LLC, VC 2003-PR-131, continued from Page 206

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

1. This variance is approved for the location of a dwelling, as shown on the plat prepared by Theodore D. Britt, dated July 24, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The applicant will plant a row of evergreen trees along the rear lot line between Lots 111 and 112.

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

Mr. Beard seconded the motion, which carried 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 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M. TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 87-C-018 for an existing church and previously approved child care center to permit a church and nursery school and increase in land area. Located at 11506 and 11508 North Shore Dr. on approx. 4.26 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 6 and 13.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Elliott, the applicants' agent, (no address given), replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to an existing special permit for a church and related uses to permit the addition of a nursery school and land addition. The nursery school would have a maximum daily enrollment of 68 children, with maximum hours of 9:00 a.m. to 12:15 p.m., Monday through Friday. The additional land area consisted of the neighboring parcel, which was currently owned by the applicant and used as a parsonage. The parsonage was proposed to be used as office, meeting, and classroom space. No new construction was proposed. Staff recommended approval of the application.

Mr. Elliott said the proposed change was critical to the church's current and long range plans for the site, use of the house as a parsonage was no longer viable, both the existing and proposed uses of the property were consistent with the character of the neighborhood, and there would be no increase in the intensity of use.

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

Ms. Gibb moved to approve SPA 87-C-018 for the reasons stated in the Resolution.

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~ ~ ~ November 18, 2003, TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018, continued from Page 207

**COUNTY OF FAIRFAX, VIRGINIA**

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

TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 87-C-018 for an existing church and previously approved child care center to permit a church and nursery school and increase in land area. Located at 11506 and 11508 North Shore Dr. on approx. 4.26 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 6 and 13. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 18, 2003; and

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

1. The applicants are the owners of the land.
2. There is no appreciable increase in the intensity or use of the land.
3. There is an increased lot area.
4. The staff report is favorable.
5. The applicants presented testimony indicating compliance with the prescribed criteria for the granting 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 Sect(s) 6-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 11506 and 11508 North Shore Drive (4.26 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Paciulli, Simmons and Associates, dated June 5, 2003, revised July 21, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 192 seats in the main place of worship.
6. The total maximum daily enrollment in the nursery school programs combined shall be 68.
7. The maximum number of children using the tot area at any one time shall be 48.

~ ~ ~ November 18, 2003, TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018, continued from Page 208

8. The hours of operation of the nursery school programs shall be a maximum of 9:00 am – 12:15 pm, Monday through Friday.
9. All parking shall be on site as shown on the Special Permit Plat.
10. The structure labeled "Old Parsonage" on the Special Permit Plat on Tax Map 17-2 ((1)) 13 shall be used only as administrative, classroom or meeting space.
11. Transitional screening shall be modified as shown on the Special Permit Plat.
12. The barrier requirement shall be waived as shown on the Special Permit Plat.
13. The wood chip trail depicted on the Special Permit Plat shall be paved and lighted with bollard style lighting and shall be in accordance with the performance standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
14. A device such as a gate or a chain shall be provided to block access to the driveway on parcel 17-1 ((1)) 13. The device shall be used to bar entrance to the driveway during times when more than 10 people will be using the building. Signs compliant with the standard End of Road signs described in the Manual of Uniform Traffic Control Devices (OM4-3) shall be affixed to and maintained on this device.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 26, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-P-068 previously approved for a church with nursery school to permit increase in land area, building additions and site modifications. Located at 3730, 3800 and 3804 Glenbrook Rd. on approx. 6.90 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((9)) 17A, 17B and 19. (Moved from 9/16/03 per appl req).

Chairman DiGiulian noted that SPA 81-P-068-3 had been administratively moved to December 2, 2003, at 9:00 a.m., at the applicants' request.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:30 A.M. TITAN MOVING & STORAGE, LLC, MR. EDMUND C. BOWLER, A 2003-MV-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has established a storage yard on property in the C-6 District in violation of Zoning Ordinance provisions. Located at 1602 Belle View Blvd. on approx. 6.57 ac. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 2.

Chairman DiGiulian noted that A 2003-MV-040 had been administratively moved to January 20, 2004, at 9:00 a.m., at the applicants' request.

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~ ~ ~ November 18, 2003, Scheduled case of:

9:30 A.M. MCDONALD'S CORPORATION, A 2003-BR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed and is operating a freestanding video DVD vending machine which is not in substantial conformance with the development conditions of Special Exception SE 00-B-009 in violation of Zoning Ordinance provisions. Located at 8976 Burke Lake Rd. on approx. 1.14 ac. of land zoned C-6. Braddock District. Tax Map 69-4 ((1)) 49 pt. (Deferred from 9/16/03)

Chairman DiGiulian noted that A 2003-BR-013 had been withdrawn.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that the violation had been cleared, and the applicant had withdrawn the appeal.

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~ ~ ~ November 18, 2003, After Agenda Item:

Approval of November 19, 2002 Minutes

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

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~ ~ ~ November 18, 2003, After Agenda Item:

Request for Additional Time  
Vulcan Materials Company, SPA 82-V-091-4

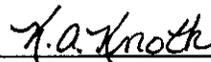
Mr. Ribble moved to approve one year of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was November 2, 2004.

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

Minutes by: Lori M. Mallam / Mary A. Pascoe

Approved on: September 20, 2005

  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 25, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church with child care center and private school of special education to permit a reduction in land area. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. (In association with SE 2003-DR-022).

Chairman DiGiulian noted that SPA 68-D-955-4 was administratively moved to January 13, 2004, at the applicant's request.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. ERIC ALCHOWIAK, VC 2003-SP-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. with eave 18.4 ft. from rear lot line. Located at 6808 Mallow Ct. on approx. 11,033 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((14)) (10) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Lenk, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, the applicant's agent, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a sunroom 19.5 feet with eave 18.4 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 5.5 feet and 3.6 feet, respectively, were requested.

Mr. Lenk presented the variance request as outlined in the statement of justification submitted with the application. He explained that the applicant had applied for a variance because the existing foundation had an odd configuration and the angle of the walls had to be adjusted.

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

Mr. Pammel moved to approve VC 2003-SP-141 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC ALCHOWIAK, VC 2003-SP-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. with eave 18.4 ft. from rear lot line. Located at 6808 Mallow Ct. on approx. 11,033 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((14)) (10) 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 November 25, 2003; and

~ ~ ~ November 25, 2003, ERIC ALCHOWIAK, VC 2003-SP-141, continued from Page 211

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

1. The applicant is the owner of the land.
2. The subject lot is extremely shallow, being approximately 102 to 103 feet deep.
3. The applicant meets the prescribed standards for a variance 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a sunroom, as shown on the plat prepared by Bryant L. Robinson, dated July 23, 2003 revised through September 4, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

~ ~ ~ November 25, 2003, ERIC ALCHOWIAK, VC 2003-SP-141, continued from Page 212

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 December 3, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. LOIS ANN JESSUP, VC 2003-MV-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line and 12.5 ft. from rear lot line. Located at 8001 Scott Pl. on approx. 11,104 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 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. Lois Jessup, 8001 Scott Place, Alexandria, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 6.0 feet from a side lot line and 12.5 feet from the rear lot line. A minimum side yard of 12 feet and a minimum rear yard of 25 feet are required; therefore, variances of 6.0 feet and 12.5 feet, respectively, were requested. Mr. Shriber stated that one of the sheds shown on the plat as 9.0 feet in height had been reduced to comply with Zoning Ordinance requirements.

Ms. Jessup presented the variance request as outlined in the statement of justification submitted with the application. She said her lot was wedge-shaped, and she was requesting the addition so she could build a single-car garage and a family room at the rear of the property. Ms. Jessup noted that because of the pitch of the roof, her home would appear to be one and a half stories high and explained that that area would be used for storage. She said the addition would be in keeping with the existing neighborhood.

Responding to Mr. Hart's question concerning a handwritten note that was attached to the application, Mr. Shriber said he had forgotten to remove the note from the file and stated that it did not involve the request for a variance.

Mr. Hart and Ms. Jessup discussed the size of the proposed garage, the addition to the family room, and the removal of a storage shed in the rear yard. Ms. Jessup said no trees would be removed.

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

Mr. Hart moved to approve VC 2003-MV-139 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LOIS ANN JESSUP, VC 2003-MV-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line and 12.5 ft. from rear lot line. Located at 8001 Scott Pl. on approx. 11,104 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 7. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 25, 2003; 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 showing compliance with the required standards for a variance.
3. The subject lot is irregularly shaped.
4. The subject lot is on a cul-de-sac with the front on a curve.
5. None of the sides or rear of the lot are square to house.
6. The house is over 50 years old, and it is expected that homes like that would be updated and expanded.
7. The proposed expansion is on the logical side.
8. The proposed expansion is no closer than six feet to the side lot line and would be acceptable for maintenance.
9. Although the height seemed high at 24 feet, to the extent that it is just a pitched roof, it would be acceptable.
10. No one would be significantly negatively impacted either to the left or to the rear by the structure.
11. Based on the record and the photographs of the existing trees and vegetation, the structure would be screened from everything around it.
12. The applicant testified that the trees would not be removed.

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

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

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

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

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

1. This variance is approved for the location of two story addition, as shown on the plat prepared by R.C. Fields, Jr., dated May 12, 2003, submitted with this application and is not transferable to other

~ ~ ~ November 25, 2003, LOIS ANN JESSUP, VC 2003-MV-139, continued from Page 214

land.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-1-1. Mr. Pammel voted against the motion. Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. JERRY & LISA JAROSIK, VC 2003-HM-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 15.5 ft. Located at 13334 Point Rider La. on approx. 11,512 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 12.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerry Jarosik, 13334 Point Rider Lane, Herndon, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of garage addition 5.5 feet from a side lot line such that side yards totaled 15.5 feet. A minimum side yard of 8.0 feet is required; therefore, a variance of 4.5 feet was requested.

In answer to Mr. Hart's question, Mr. Shriber stated that the advertisement listed Sully District as the location of the property, not Hunter Mill. After a brief discussion as to whether or not the application could be heard, Chairman DiGiulian advised that they could proceed as long as the street address was correct.

Mr. Jarosik presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because he wanted to expand his current one-car garage to a two-car garage which would permit him to move his vehicles off the street. Mr. Jarosik noted that he had been before the Board of Zoning Appeals regarding the proposed construction, and his application had been denied. He said that since that time he had reduced the plan to a minimum. He stated that his car had been parked on the street the prior evening and had been sideswiped by a hit-and-run driver who had apparently gotten lost and returned to the site at a great rate of speed, nearly hitting him.

Chairman DiGiulian called for speakers.

Tom Hasson, 13330 Point Rider Lane, Herndon, Virginia, came forward to speak in opposition to the application. He submitted a letter for the record. His main points were that the look of the neighborhood would be changed; the applicants' property did not meet the definition of exceptional narrowness; the structure would infringe on visual space between the homes; curbside appeal of the neighborhood would be affected; the applicants' goal was to construct behind the proposed structure; real estate values would be affected; and a precedent would be set.

~ ~ ~ November 25, 2003, JERRY & LISA JAROSIK, VC 2003-HM-140, continued from Page 215

In answer to Chairman DiGiulian's question, Mr. Hasson said his home was approximately 15 feet from the applicants' property line, and he presented a photograph showing the two homes.

In his rebuttal, Mr. Jarosik said Mr. Hasson's comments were essentially the same as they were in June of 2003. Mr. Jarosik said he did not think the addition would have a negative impact on the neighborhood; it would be identical to that of the existing garage; visual impact on his neighbor's yard would be kept at a minimum; and curbside appeal would not be affected.

Chairman DiGiulian asked whether the minimum setback was eight feet, as indicated on the first page of the staff report. Mr. Shriber said that in the R-3 Cluster, side yards were set at eight feet and the total side yards would be 20 feet combined. He pointed out that there was 10 feet on the left side, and with the proposed 5.5-foot addition, that would necessitate the request for a variance of 4.5 feet.

In answer to Mr. Beard's question, Mr. Shriber indicated that a variance had been granted on Pointe Rider Lane for an addition on a side lot line.

Mr. Hart asked for clarification of the Chairman's question, and Mr. Shriber explained how the measurements had been determined.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-HM-140 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY & LISA JAROSIK, VC 2003-HM-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 15.5 ft. Located at 13334 Point Rider La. on approx. 11,512 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 12. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 25, 2003; and

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

1. The applicants are the owners of the land.
2. The application is not similar at all to the one previously submitted by the applicants in June of 2003.
3. The applicants have a situation with the placement of the house on the lot and the converging lot line toward the front which causes the need for the variance. The one point that is 10 feet on the southern side of the lot is just on one corner, so if the house were placed a little bit differently, a variance would not be needed.
4. The lot is unusually shaped.

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

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

~ ~ ~ November 25, 2003, JERRY & LISA JAROSIK, VC 2003-HM-140, continued from Page 216

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a garage addition, as shown on the plat prepared by Javier A. Arencibia, dated September 3, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried 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 3, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. EARL J. BURROUGHS AND LUCY J. TORBERT, VC 2003-MV-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. with eave 3.8 ft. from side lot line and 6.0 ft. with eave 4.0 ft. from rear lot line. Located at 1606 Baltimore Rd. on approx. 11,611 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (17) 23.

~ ~ ~ November 25, 2003, EARL J. BURROUGHS AND LUCY J. TORBERT, VC 2003-MV-142, continued from Page 217

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Earl J. Burroughs, 1606 Baltimore Road, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of an accessory structure, specifically a detached garage, of 12 feet in height to be located 6.0 feet with eave 3.8 feet from the side lot line and 6.0 feet with eave 4.0 feet from the rear lot line. A minimum side yard of 12 feet and a minimum rear yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and rear yards; therefore, variances of 6.0 feet, 5.2 feet, 6.0 feet, and 5.0 feet, respectively, were requested.

Mr. Burroughs presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because it would allow his sons to have a place to work on automobiles and practice Lacrosse footwork.

Mr. Burroughs, in response to Ms. Gibb's question, said he had seen the letter from Mr. and Mrs. Yi. He said the Yis were non-resident landlords. In response to the Yis' comment concerning the proposed structure being an eyesore, Mr. Burroughs said he would screen his property from the Yis by planting either Cyprus trees or other screening foliage. Mr. Burroughs said the water table was high in that area, and all the lots drained down, so he did not perceive any problems with drainage. Mr. Burroughs, in answer to further questions from Ms. Gibb, said he would consider building a smaller structure if his application was denied; the driveway would be no more than nine feet wide; he would remove the shed on the other side of his home due to non-compliance; and he would remove a tree next to the deck.

A discussion ensued concerning a suggested reduction in size of the garage, the location if a variance was not approved, issues of noise, the use of the sheds, and the minimum width of a lot in the R-3 District. It was noted that the house was built in 1952 and predated the Ordinance.

Chairman DiGiulian called for speakers.

Maeng Yul Yi, 1608 Baltimore Road, Alexandria, Virginia, came forward to speak in opposition to the application. He said he intended to move back into the house; there had always been a problem with runoff; there were no other garages in the neighborhood similar to the one proposed by the applicants; screening was not adequate; he has two bedrooms and a Florida room located on the side of the his home next to the proposed garage and driveway, and a driveway in that location would exacerbate levels of noise.

Further discussion ensued concerning the location of the bedrooms and the distance of Mr. Yi's property from the applicants' lot line, how much impervious surface would be allowed in the rear yard, and stormwater issues.

In his rebuttal, Mr. Burroughs said his yard had not been built up, was not higher than Mr. Yi's, and he anticipated no problem with stormwater drainage.

Mr. Hart referred to a photograph of a white shed with a green door and asked whether it would be removed. Mr. Burroughs said it would be moved to another location and used for storage.

Mr. Hart asked whether the minimum rear yard would be more or less than 30 percent if the garage and white shed were to be moved. Mr. Sherman responded that should the applicants return for a building permit, an engineer would have to determine that. Mr. Sherman said staff was recommending approval of any structure other than the proposed garage. He also said that the structure contributed to the 30 percent calculation and that the percentage would include the driveway or other permanent impervious surfaces. Mr. Sherman also said that at the present time the driveway would not encroach into the minimum required rear yard. He acknowledged that the garage could be built in the rear of the house without a permit; however, if it was in the minimum required rear yard, it would be included in the 30 percent calculation.

Mr. Pammel said that he calculated that the proposed garage would take up 24 percent of the rear yard and the applicant was within the permitted range.

~ ~ ~ November 25, 2003, EARL J. BURROUGHS AND LUCY J. TORBERT, VC 2003-MV-142, continued from Page 218

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve-in-part VC 2003-MV-142 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL J. BURROUGHS AND LUCY J. TORBERT, VC 2003-MV-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. with eave 3.8 ft. from side lot line and 6.0 ft. with eave 4.0 ft. from rear lot line. **(THE BZA APPROVED ACCESSORY STRUCTURE 11.0 FEET WITH EAVE 9.0 FEET FROM THE SIDE LOT LINE AND 6.0 FEET WITH EAVE 5.0 FEET FROM THE REAR LOT LINE.)** Located at 1606 Baltimore Rd. on approx. 11,611 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (17) 23. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 25, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented persuasive testimony that they are entitled to some sort of variance.
3. The proposed garage is too large for the small lot.
4. The greatest need is for the front corner.
5. The structure would be too near the neighbor if the requested six-foot variance was granted.
6. The applicants testified that some sheds would be removed.
7. Due to the tree and the location of the house, the proposed location is the only place to put a garage.

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

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

~ ~ ~ November 25, 2003, EARL J. BURROUGHS AND LUCY J. TORBERT, VC 2003-MV-142, continued from Page 219

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

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

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

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

1. This variance is approved for the location of a detached garage, as shown on the plat prepared by Bryant L. Robinson, dated July 28, 2003 and revised September 8, 2003, **(THE BZA APPROVED ACCESSORY STRUCTURE 11.0 FEET WITH EAVE 9.0 FEET FROM THE SIDE LOT LINE AND 6.0 FEET WITH EAVE 5.0 FEET FROM THE REAR LOT LINE.)** submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M.       SHELLEY SCHIMKUS, VC 2003-MV-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 8497 Silverview Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-3 ((7)) 72.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shelley Schimkus, 8497 Silverview Drive, Lorton, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a sunroom addition 22.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 2.1 feet was requested.

Ms. Schimkus presented the variance request as outlined in the statement of justification submitted with the application. She said she wanted to enclose the existing deck to make it into a sunroom and build a new deck on the side of the home. Ms. Schimkus stated that her home was set at an angle, only one corner would encroach, and she was not requesting any additional setback.

~ ~ ~ November 25, 2003, SHELLEY SCHIMKUS, VC 2003-MV-137, continued from Page 220

Chairman DiGiulian called for speakers.

Mark Dickerson, 8492 Silverview Drive, Lorton, Virginia, came forward to speak in support of the application. He said the applicant took great care of her home and property, and any improvement would add value to neighboring properties.

Al Beyer, 8499 Silverview Drive, Lorton, Virginia, came forward to speak in opposition to the application. His main points were that the current unobstructed view from his home would be eliminated by a fully enclosed room; the proposed sunroom would constitute an extension to the applicant's home and would extend to the rear wall of the applicant's property; marketability of his home would be affected; and it would increase runoff, which would contribute to already wet and muddy conditions.

In her rebuttal, Ms. Schimkus presented photographs to show the view from her deck to the Beyers' home. She said they had one window on the side facing her home, and they had an upper and lower deck that extended beyond hers. Ms. Schimkus said her property was nicely landscaped with trees and provided a buffer.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-MV-137 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SHELLEY SCHIMKUS, VC 2003-MV-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 8497 Silverview Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-3 ((7)) 72. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2003; and

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

1. The applicant is the owner of the land.
2. As stated in the testimony, the existing structure already sits within the variance that is requested.

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

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

~ ~ ~ November 25, 2003, SHELLEY SCHIMKUS, VC 2003-MV-137, continued from Page 221

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

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

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

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

1. This variance is approved for the location of a sunroom addition, as shown on the plat prepared by George M. O'Quinn, dated May 21, 2003, revised July 21, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 25, 2003, Scheduled case of:

- 9:00 A.M. CLAYTON W. COVEY, SP 2003-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.2 ft. with eave 0.8 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with VC 2003-MV-134).
- 9:00 A.M. CLAYTON W. COVEY, VC 2003-MV-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30% and construction of addition 5.0 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with SP 2003-MV-035).

~ ~ ~ November 25, 2003, CLAYTON W. COVEY, SP 2003-MV-035 and VC 2003-MV-134, continued from Page 222

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames (phonetic), Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on error in building location to permit an accessory structure, specifically a shed, to remain 2.2 feet with eave 0.8 feet from the side lot line. A minimum side yard of 8.0 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 5.8 feet and 4.2 feet, respectively, were requested. The applicant requested a variance to permit minimum rear yard coverage of greater than 30 percent and construction of an addition 5.0 feet with an eave 4.5 feet from the side lot line. Variances of 3.0 feet and 0.5 feet, respectively, were requested.

Vice Chairman Ribble assumed the Chair.

Mr. Hart commented that he did not understand why the yard wasn't considered to be all a front yard as opposed to a side yard. He said it appeared to him to be a through lot that had frontage on Pohick Road, and the yard was all between the structure and the street.

Mr. Reames presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had been advised that a special permit was needed when a variance had been applied for. He said the shingled wood shed that set on blocks could not be hidden any better than it was. He said it was concealed by a fence on two sides, and due to the lay of the land and the slope, it was barely detectable. Mr. Reames said the applicant located the shed in error without any knowledge of what was required.

Mr. Hammack asked whether the shed could be pulled in. Mr. Reames replied that there was nowhere else on the lot where it could be located and be out of sight due to the unusually sloped lot.

Chairman DiGiulian resumed the Chair.

Mr. Reames then presented the variance request as outlined in the statement of justification submitted with the application. He said there were two concerns involved with the variance. The first was the 30 percent lot coverage in the rear that was preexisting when the property was purchased, and the second was that the eave would be approximately six feet, two inches off the property line. He said the applicant wanted to put a therapeutic hot tub in the rear of his home and indicated that it would have to be configured to avoid blocking a doorway.

Mr. Hammack asked why the room to house the hot tub had to be 16 feet by 10 feet in size. Mr. Reames said the hot tub itself was eight feet by eight feet and would be concealed by fences on two sides. He said there was no way to relocate it.

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

Mr. Hammack moved to deny SP 2003-MV-035 for the following reasons: the shed was too close to the property line, and the applicant had not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Section 8-006 and additional standards as may be contained in the Zoning Ordinance

Mr. Pammel seconded the motion.

Mavis Stanfield, Senior Staff Coordinator, in response to Mr. Hart's question, stated that the site was a front yard, and the applicant was requesting an accessory structure of less than 36,000 square feet. In response to questions from the Board, she confirmed that the property had not been advertised correctly and would have to be re-advertised.

Mr. Hammack withdrew his motion.

~ ~ ~ November 25, 2003, CLAYTON W. COVEY, SP 2003-MV-035 and VC 2003-MV-134, continued from Page 223

A discussion ensued, and it was determined that because the applications had been improperly advertised, the hearing would be continued to January 13, 2004, at 9:00 a.m.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 88-S-091 previously approved for a church and related facilities to permit building additions, increase in parking and site modifications. Located at 12409 Henderson Rd. on approx. 14.44 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-4 ((1)) 7. (Decision deferred from 9/16/03)

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Chairman DiGiulian stated that the application had been deferred for decision only with the record to remain open for written comment. He noted that several letters in opposition had been received and asked the applicant's agent, Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, if she had copies. Ms. Strobel said that she had received copies of letters both in support of and in opposition to the application.

Ms. Strobel said the application had been submitted to request a permit to build a parish hall, make some site modifications, and add parking spaces. She said the issues raised at the previous public hearing had been addressed. Referring to the above-ground water tank, which had been one of the issues, Ms. Strobel called attention to an addendum to the application indicating that the tank had been placed underground. She said the applicant had eliminated the second access point to Henderson Road, and as a result, the impervious surface of the site was 14 percent, and the proposed floor area ratio (FAR) was 0.027, which was approximately one quarter of that permitted for nonresidential uses in the R-C District. She addressed questions raised concerning church attendance and referred to the staff addendum that stated that the Zoning Enforcement Branch, Department of Planning and Zoning, had made three visits to the church and had observed no violations. Ms. Strobel also referred to letters of support from property owners on Sherry Hunt Drive stating that they had no objections to the expansion. She stated that she had received a letter from Lawrence Spellman, 12415 Henderson Road, Clifton, Virginia, who had voiced objections at the previous public hearing, that said based on the elimination of the north entryway and the water tower, he supported the construction of the rectory and parish hall. Ms. Strobel called attention to the addendum concerning a left-turn lane. She said she had had a meeting with Kevin Nelson, Virginia Department of Transportation (VDOT), and the applicant's site engineer, Russell Smith, and she understood that there were a number of ways to address the issue. Ms. Strobel said Mr. Nelson was concerned about sight distance for vehicles approaching from the south and coming up upon a car turning left and thought that there were various ways to address the issue. As a result of that meeting, Ms. Strobel distributed a development condition that specified that if a left-turn lane was required, it would be constructed within the existing right-of-way.

In response to a question from Mr. Beard concerning monitoring of functions, Ms. Strobel said she had prepared a detailed letter describing the uses that could or could not occur in the proposed parish hall and stressed that it was binding, was referenced in the development conditions and was enforceable by staff. She said having a priest living in the rectory would add to the security of the property.

Ms. Stanfield, Senior Staff Coordinator, clarified that Bill Sherman, Staff Coordinator, had made the three visits to the church and that Zoning Enforcement had looked at the lighting issue.

Chairman DiGiulian cited a letter received from Mr. Novack (phonetic) concerning parishioners parking in his front yard and blocking his driveway. Ms. Strobel said she was not aware of that problem; however, additional parking onsite would alleviate offsite parking.

Mr. Pammel called attention to a letter from Mr. Marr indicating that contrary to the information provided in the original development conditions, the church's website showed a membership of 450 and asked how they

~ ~ ~ November 25, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 224

intended to reconcile that. Tom Leonardo, the office manager for St. Claire's, came forward to speak. He said the information provided at the previous public hearing was the official number of registered families, which was 422, and the website was incorrect and would be revised. He said that in the history of the parish, membership had never reached 450.

Mr. Hammack said that when the first application had been received, St. Claire's was referred to as a mission church. He called attention to information on the website that indicated a vast increase of activities, similar to that of a large church, and stressed that the lot had constraints. Mr. Leonardo pointed out that the distinction between a parish and a mission parish was a title rather than a purpose of the church. He said growth happened in the first few years when St. Claire's was a mission parish, and it had not grown at all since it became a full-fledged parish. Mr. Leonardo also said the church had no plans to increase their activities, only to do what they had been doing in a better facility. Ms. Strobel displayed on the overhead projector a document listing the official number of families in the parish dating back to 1997 and pointed out that there had been a decrease in family membership.

Ms. Gibb said she was interested in the number of people who attend services as opposed to the number of registered families. She pointed out that the development conditions stated that the maximum seating was 300 per service and asked how many attended now. Ms. Strobel called attention to the addendum prepared by Mr. Sherman that indicated that attendance at the early morning service was less than at the later service, and he had determined that the maximum number was 250, which was average.

In answer to Mr. Beard's question, Ms. Strobel confirmed that if the application was granted, there would be no parking on neighboring streets.

In answer to Mr. Beard's question concerning whether or not a mission church was limited to the number of services it held per week, Father Dizinski (phonetic) explained that the distinction between a mission church and a parish church was based on canon law and was determined by whether there was a resident priest or not and had nothing to do with the way services were conducted.

Mr. Hammack stated that when the original application had been presented in 1989, the Board had been told that there was no resident pastor, and the level of activity would be lower. He asked what Father Dizinski's response was. Father Dizinski responded that he did not think the number of activities in a mission was limited to whether there was a resident pastor or not, and activities were based on size.

Ms. Gibb asked whether having a resident priest was based on an increase in membership and money. Father Dizinski acknowledged that had more to do with whether or not the members of the parish church could be financially accountable for all expenses that would occur; however, if a mission church wanted to be a full parish church, they acted like one.

In response to Mr. Pammel's request, Ms. Strobel showed where St. Timothy's and St. Andrew's churches were on the map.

With reference to a question from Mr. Pammel concerning Mr. Marr's letter that stated that some of the families had children attending St. Andrew's school and they attended mass at St. Claire's, Ms. Strobel said she did not know what letter Mr. Pammel was referring to since Mr. Marr had sent a letter directly to her that stated that he would withdraw the objection with three caveats. She stated that she did not have a copy of the November 24, 2003 letter he was referring to. Chairman DiGiulian provided her with a copy.

A discussion ensued between Mr. Pammel, Father Dizinski, and Ms. Strobel concerning how to control the number of people attending St. Claire's masses. Father Dizinski reiterated that membership enrollment in their church was 422 families; however, anyone could come to mass. He said that to attempt to prohibit them from doing so would be contrary to the precepts of the Catholic Church. Ms. Strobel addressed Father Dizinski's comment concerning activities at the church stating that her letter to Mr. Sherman specified that no bingo, dances, or et cetera, were proposed for St. Clare's. She said the applicant was talking about very small wedding receptions, committee meetings, coffee socials, and the like.

Mr. Pammel said the application was troubling to him primarily because the representations that were made

~ ~ ~ November 25, 2003, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 225

when the original application was approved were binding. He said the mission statement was a representation made to the Clifton community, and he was concerned because they had been broken. He stated that he understood that certain things occurred over the years, such as growth, and they were constantly being reevaluated; however, he said he had looked at the application in a term analogous to what could be described as a small operation in an area that was developed to very low density. He noted that there was not a lot of activity in the Clifton area, the homes were all on 5 acres or larger, and he thought the original proposal, which garnered the support of the BZA, was one that was in keeping with character and low density representations. He noted that at that time there was staff opposition. He stated that what was being looked at now were major changes, additions, modifications which could lead to an increase in the number of parishioners and would greatly facilitate their activities and their participation in the church. He said it was obvious to him that there were persons attending the church for convenience purposes who were not registered members. He said that in this case he did not think the applicant had been sincere with the community as to what it was going to do, they had changed the original mission statement, and a mission is what the project was. He stated that to now enlarge and expand, as the application was presented today, did not conform or comply with the provisions of the Comprehensive Plan. He also said that its current state was not compatible with the community and would lead to significant future impacts on the residents of Clifton.

David Schnare (phonetic), representing the Occoquan Watershed Coalition, interrupted Mr. Pammel to correct the record that showed that the Coalition was opposed to the application at the previous hearing. He said they had not received notice of this hearing until two business days ago, had reaffirmed their understanding of it, and had changed their position to show support. He stated that the Coalition had reexamined the question of the religious land use and the Individual Institutionalized Persons Act and had reinforced its understanding that the Board of Zoning Appeals, under federal law, was not free to limit the number of people who may attend the church.

Mr. Pammel replied that his motion would not have that effect.

Mr. Pammel moved to deny SPA 88-S-091 for the reasons stated above and because the applicant had presented testimony that did not indicate compliance with the general standards for Special Permit Uses as set forth in Section 8-006 and additional standards as may be contained in the Zoning Ordinance.

The motion failed for lack of a second.

Mr. Hammack moved to defer decision to January 13, 2004, to allow more time to review the record.

Ms. Gibb and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the public hearing.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:30 A.M.       STEPHEN D. AND ANN L. HUFFMAN, A 2003-DR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the swale on property located at Tax Map 7-3 ((5)) 10 has not been maintained and is, therefore, affecting the natural drainage on the lot, in violation of Zoning Ordinance provisions. Located at 10701 Creamcup La. on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((5)) 10.

Chairman DiGiulian said the BZA had received an e-mail from Ms. Huffman, the appellant, withdrawing the appeal.

Jack Reale, Zoning Administration Division, called attention to a copy of an e-mail he had received from the appellants this morning requesting that the appeal be withdrawn.

In answer to Mr. Hammack's question, Mr. Reale said the notice of violation had not been officially rescinded.

~ ~ ~ November 25, 2003, STEPHEN D. AND ANN L. HUFFMAN, A 2003-DR-044, continued from Page 226

Mr. Hammack said it would be difficult for him to accept Ms. Huffman's withdrawal if there was still an outstanding notice of violation that she appealed. He noted that she had satisfied all the requirements listed in staff's memorandum.

Chairman DiGiulian stated that the staff report indicated that they had an inspection and the violation had been cleared.

Mr. Hammack then asked why the notice of violation hadn't been withdrawn if the violation had been cleared.

Mr. Reale said a Notice of Violation had not been officially rescinded or withdrawn; however, staff had advised the appellants by telephone that they had observed the property and determined that the violation at issue had been cleared, and the property was now in compliance with the Zoning Ordinance. Mr. Hammack said the inspection had been done on November 14th, and he did not understand why staff had not yet written a letter to the appellants. He said the appellants were acting on verbal rather than written communication, and he found that unacceptable.

Mr. Hammack moved to defer decision on the application until the notice of violation had been rescinded.

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Ms. Gibb and Mr. Pammel seconded the motion, which passed by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ November 25, 2003, Scheduled case of:

9:30 A.M. GARY WAYNE VOLLMER, A 2003-LE-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot area or width requirements of the Zoning Ordinance when created, does not meet current minimum lot area or width requirements of the R-2 District, and is not buildable under Zoning Ordinance provisions. Located at 3432 Memorial St. on approx. 12,974 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((15)) 93A.

Jack Reale, Zoning Administration Division, stated that reconsideration and redetermination on the status of this lot had been made, and it had been determined that it was a buildable lot. On that basis, he said the issue had been resolved, and a request had been made for a dismissal.

In response to questions from Ms. Gibb and Mr. Hammack, Mr. Reale said a copy of a memorandum dated December 17, 2003, from Margaret Stehman, Deputy Zoning Administrator for Appeals, indicated that additional research by staff found that under the 1959 Zoning Ordinance, there were certain provisions allowing for this lot to be divided in the manner that it was, and it was discovered by research of those provisions. Mr. Reale said he did not know what lead to that research or who had done it. Mr. Hammack stressed that he wanted to know specifically what research was done, who did it, and why it hadn't been done to begin with.

Ms. Gibb asked if other people in the same situation had received letters like the earlier one stating that their lots were not buildable. She said it was a difficult problem for the BZA because they knew that the problem existed. She added that in order to find out any information on those lots, someone had to read through the Zoning Ordinances and subsequent amendments beginning from March 1, 1941, through the current year. She stressed that needed to be done if property owners were being told their lots were not buildable. Ms. Gibb asked how the BZA would know if this determination had been applied to someone else. Mr. Reale indicated that he did not have a response to that question.

Mr. Hammack asked if the Zoning Administration Division made those decisions. Mr. Reale responded that they made those decisions in concurrence with the Department of Public Works and Environmental Services.

Mr. Hart stated that it was his concern that at times perhaps the wrong kind of talent had been assigned to certain projects, similar to non-buildable lots, and said a more deliberate review of deeds and the chain of

~ ~ ~ November 25, 2003, GARY WAYNE VOLLMER, A 2003-LE-045, continued from Page 227

title needed to be done. He said he would prefer that the instruments themselves be attached to the application in lieu of a memorandum from staff and asked that they be provided to the Board.

Ms. Gibb asked if an amendment to the Ordinance was being drafted to address non-buildable lots that did not meet the requirements on March 1, 1944, or thereafter, because of the amendment dated May 20, 2003. Mr. Reale replied that he could not be certain; however, he knew there was one more step to be resolved regarding allowing for some additional lots that were found to have been created after a certain date. He said that if it could be shown that the affected properties had been recorded and were shown on the Fairfax County tax records, they would be viewed as buildable. He said he would provide Ms. Gibb with a copy of any pending proposals by next week.

Mr. Hart said he wanted staff to continue to provide the BZA with copies of all staff reports on Zoning Ordinance amendments so the Board could review them and make constructive suggestions when applicable.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to dismiss A 2003-LE-045. Ms. Gibb seconded the motion, which passed by a vote of 7-0.

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~ ~ ~ November 25, 2003, After Agenda Item:

Approval of November 18, 2003 Resolutions

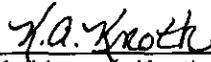
Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: September 27, 2005

  
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Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
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John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 2, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M. JUNE R. JEWELL, VC 2003-DR-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. with eave 15.5 ft. and deck to remain 10.0 ft. from rear lot line. Located at 1332 Vanetta La. on approx. 10,913 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-4 ((18)) 9. (Moved from 12/16/03 at appl. 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. Lynn J. Strobel, with Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, replied that it was.

Mr. Hart gave a disclosure, but indicated that he did not believe his ability to participate in the case would be affected.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition 17.5 feet and eave 15.5 feet from the rear lot line and to allow a deck to remain 10 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet and decks are permitted to extend 12 feet into the minimum rear yard; therefore, variances of 7.5 feet, 6.5 feet, and 3.0 feet, respectively, were requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the addition was requested because the minimum rear yard would not permit any type of addition without the approval of a variance. She also indicated that because of the unusual shape and small size of the lot, a strict application of the Ordinance would result in an unreasonable hardship. Ms. Strobel stated that she had a petition signed by the neighbors, and there were no objections to the application in the community.

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

Mr. Pammel moved to approve VC 2003-DR-151 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JUNE R. JEWELL, VC 2003-DR-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. with eave 15.5 ft. and deck to remain 10.0 ft. from rear lot line. Located at 1332 Vanetta La. on approx. 10,913 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-4 ((18)) 9. (Moved from 12/16/03 at appl. request). 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 2, 2003 and

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

- 1. The applicant is the owner of the land.
- 2. The property is extremely shallow.

3. The dimension from the narrowest point on the cul-de-sac to the rear lot line allows the applicant very little room to do anything on the lot other than in the rear, therefore necessitating the need for a variance.

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

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

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

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

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

1. This variance is approved for the location of a one story addition and deck, as shown on the plat prepared by John F. Amatetti, dated September 16, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

~ ~ ~ December 2, 2003, JUNE R. JEWELL, VC 2003-DR-151, continued from Page 230

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M.        ROBERT E. TUCKER, SP 2003-HM-036 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 10913 Lawyers Rd. on approx. 2.06 ac. of land zoned R-E. Hunter Mill District. Tax Map 27-3 ((7)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Tucker, 10913 Lawyers Road, Reston, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a home professional office for a financial and estate planning practice. Staff recommended approval of SP 2003-HM-036 subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Tucker presented the special permit request as outlined in the statement of justification submitted with the application. He requested that he be permitted to operate his business from his home.

Mr. Hart asked if Mr. Tucker had read the proposed development conditions contained in the staff report. Mr. Tucker replied that he had and they were acceptable to him.

In response to Mr. Hart's questions concerning the plat and the proposed parking spaces, Mr. Tucker said he did not envision that they would encumber one another. He displayed a photograph of the area on the overhead projector.

In response to Mr. Hart's question, Mr. Shriber stated that there was adequate room for six parking spaces plus two in the garage.

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

Mr. Hart moved to approve SP 2003-HM-036 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ROBERT E. TUCKER, SP 2003-HM-036 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 10913 Lawyers Rd. on approx. 2.06 ac. of land zoned R-E. Hunter Mill District. Tax Map 27-3 ((7)) 4. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 2, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The staff report is favorable and self-explanatory.
4. There is no opposition to the special permit request.
5. The explanation the applicant provided regarding the parking situation is acceptable.
6. The development conditions relating to signage, limiting parking and the amount of activity on the property will ensure that there will be no noticeable impact on the neighborhood.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-907 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10913 Lawyers Road (2.06 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 Cervantes & Associates, P.C. dated May 7, 2002 with revisions through September 4, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum hours of operation of the home professional office shall be limited to 8:30 a.m. to 5:30 p.m. Monday through Friday.
6. The maximum number of employees shall be limited to four (4), including the applicant.
7. Client meetings shall be limited to a maximum of four (4) per week, with no more than two clients on site at any one time.
8. Parking shall be maintained as two (2) spaces for the dwelling and six (6) spaces for the Home Professional Office. All parking shall be contained on-site.
9. The area utilized for the home professional office shall not exceed 958 square feet.
10. The dwelling that contains the home professional office shall also be the primary residence of the applicant.
11. There shall be no signage associated with the home professional office.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outline above, and this Special Permit shall not be valid until this has been accomplished.

~ ~ ~ December 2, 2003, ROBERT E. TUCKER, SP 2003-HM-036, continued from Page 232

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M.        BRIAN F. PITKIN, TR, AND SUZANNE S. PITKIN, TR, VC 2003-MA-136 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. with eave 11.0 ft. from side lot line. Located at 4824 Birch La. on approx. 21,781 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 74.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, with Jane Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 12 feet with eave 11 feet from the side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.0 feet and 1.0 feet, respectively, were requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She said the variance was to allow the existing carport and one-car garage to be combined into a two-car garage and to permit an existing screen porch over the existing garage to be enclosed and extended over the carport for a sunroom. She placed several photographs of the subject lot and surrounding properties on the overhead projector and described the hardships they caused to the applicants' property.

Ms. Gibb asked if the driveway was going to be enlarged. Ms. Kelsey replied that if it was to be widened, there would be an insignificant difference in its current width.

Mr. Hammack asked why the applicant needed a variance. Ms. Kelsey responded that it was because the property sloped upward, the garage was entered from the basement, and they needed a stairway to go directly to the second floor. In answer to another question from Mr. Hammack, Ms. Kelsey indicated that the stairs would be located inside the garage. Mr. Hammack asked why the stairs would encroach into the minimum side yard. Ms. Kelsey said the stairs would be three feet wide, and additional space would be required.

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

Ms. Gibb moved to approve VC 2003-MA-136 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN F. PITKIN, TR AND SUZANNE S. PITKIN, TR, VC 2003-MA-136 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. with eave 11.0 ft. from side lot line. Located at 4824 Birch La. on approx. 21,781 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 74. Ms.

~ ~ ~ December 2, 2003, BRIAN F. PITKIN, TR AND SUZANNE S. PITKIN, TR, VC 2003-MA-136, continued from Page 233

Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 2, 2003; and

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

1. The applicants are the owners of the land.
2. The variance request is modest.
3. The applicants provided testimony indicating the topography of the lot justifies the need for the variance.
4. There is no impact on the neighboring properties due to the screening, which is evident in the photographs provided by the applicants.
5. The request is in character with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by George

~ ~ ~ December 2, 2003, BRIAN F. PITKIN, TR AND SUZANNE S. PITKIN, TR, VC 2003-MA-136, continued from Page 233

M. O'Quinn, dated June 27, 2003, revised through September 9, 2003, submitted with this application and is not transferable to other land.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M. PHILLIP R. HERGET, III AND ANNE S. HERGET, VC 2003-MV-146 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 11.1 ft. with eave 10.1 ft. from rear lot line and eave 9.0 ft. from side lot line and covered deck 19.4 ft. from front lot line. Located at 2205 Belle Haven Rd. on approx. 12,968 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 5A and 6.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, with Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure, specifically a shed 13.5 feet in height, 11.1 feet with eave 10.1 feet from the rear lot line and eave 9.0 feet from the side lot line; and construction of a covered deck (portico) 19.4 feet from the front lot line. A minimum rear yard of 13.5 feet, a minimum side yard of 10 feet, and a minimum front yard of 25 feet are required; therefore, variances of 2.4 feet, 3.4 feet, 1.0 feet, and 5.6 feet, respectively, were requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She said the addition was requested to allow an accessory structure behind the home and a covered porch to the existing front portico. She called attention to the statement of justification that referenced an addition and said the applicants had scaled back the variance request and were requesting only the shed and portico. She showed photographs on the overhead projector of neighboring properties and said the requested variance would not impact the neighborhood. Ms Greenlief submitted four letters in support of the application

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

Mr. Ribble moved to approve VC 2003-MV-146 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

PHILLIP R. HERGET, III AND ANNE S. HERGET, VC 2003-MV-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 11.1 ft. with eave 10.1 ft. from rear lot line and eave 9.0 ft. from side lot line and covered deck 19.4 ft. from front lot line. Located at 2205 Belle Haven Rd. on approx. 12,968 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 5A and 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 December 2, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is shallow.
4. The placement of the house on the lot precludes construction of the addition in any other location on the property.

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

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

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

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

~ ~ ~ December 2, 2003, PHILLIP R. HERGET, III AND ANNE S. HERGET, VC 2003-MV-146, continued from Page 236

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

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

1. This variance is approved for the location of a shed and portico, as shown on the plat prepared by George M. O'Quinn, dated July 30, 2003, revised through October 22, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M. DIANNE P. EDGAR, SP 2003-MV-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 16.2 ft. from front lot line. Located at 10612 Belmont Blvd. on approx. 1.93 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((1)) 5. (Concurrent with VC 2003-MV-138).

9:00 A.M. DIANNE P. EDGAR, VC 2003-MV-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft., roofed deck 29.9 ft. and steps 23.9 ft. from front lot line. Located at 10612 Belmont Blvd. on approx. 1.93 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((1)) 5. (Concurrent with SP 2003-MV-037).

Chairman DiGiulian called the applicant to the podium and asked if the affidavits before the Board of Zoning Appeals (BZA) were complete and accurate. Dianne Edgar, 10612 Belmont Blvd., Lorton, Virginia, replied that they were.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a one- and two-story addition, specifically a carport/mudroom, 18.9 feet from the front lot line; construction of a roofed deck 29.9 feet from the front lot line; and construction of steps 23.9 feet from the front lot line. A minimum front yard of 50 feet is required; however, steps are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 31.1 feet, 20.1 feet, and 21.1 feet, respectively, were requested. The applicant also requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit a dwelling to remain 16.2 feet from the front lot line. A reduction of 33.8 feet was requested.

Mr. Hart asked staff how they determined when an outlet road counted as a street for a front yard and when it did not. He said the plat showed a road in front of the property and an outlet road in the rear. He also noted that outlet roads were located on both sides of the property, but an outlet road was being used to

~ ~ ~ December 2, 2003, DIANNE P. EDGAR, SP 2003-MV-037 and VC 2003-MV-138, continued from Page 237

determine the front yard.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had posed that question to the Zoning Administration Division, and they were in the process of preparing a written response. She said staff could not respond to Mr. Hart's question at this time.

Mr. Hart said there had to be consistency when making such determinations and referenced an application containing outlet roads presented by Jane Kelsey, Kelsey and Associates, Inc., at a previous hearing.

Ms. Gibb asked what the building permits branch was doing with respect to an application containing an outlet road. Ms. Langdon replied that they were applying the standards Zoning Administration had determined concerning outlet roads or whether they were paved or not, and other criteria to be taken into consideration. She noted that building permits were a part of Zoning Administration and said they would look at the criteria when determining if there was a front yard.

Ms. Edgar presented the variance and special permit requests as outlined in the statements of justification submitted with the applications. She said the request for a special permit addressed an existing garage. With respect to the variance application, she said approval would allow renovation of the property for building a front porch and a side carport with a mudroom in the rear and would facilitate easier access to the home for its elderly residents. She stated that a letter of support from her neighbor, Nathan Bozarth, was attached to the justification.

Mr. Hammack asked if the appellant had any plans for the existing garage after the carport was built. Ms. Edgar said she and her family would be using the carport for a total of four parking spaces, eliminating the need to park on the road. Mr. Hammack pointed out that a driveway into the carport was not on the plat.

Nathan D. Bozarth, 10614 Belmont Boulevard, Lorton, Virginia, came forward to speak in support of the application. He said he owned a 20-foot easement near the road and allowed Ms. Edgar and her family to use it for parking.

In answer to Mr. Hart's question, Ms. Edgar said there would be two driveways on the property, one into the proposed carport and the other into the existing garage. Mr. Hart asked whether there was a second dwelling unit in the house. Ms. Edgar said she lived in a room in the rear of the new kitchen that she referred to as her apartment.

In response to Mr. Hart's question, Ms. Langdon said if there was only one kitchen in the dwelling, an apartment would be allowed. Ms. Edgar said everyone occupying the house had common use of the kitchen.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2003-MV-037 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

DIANNE P. EDGAR, SP 2003-MV-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 16.2 ft. from front lot line. Located at 10612 Belmont Blvd. on approx. 1.93 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((1)) 5. (Concurrent with VC 2003-MV-138). 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

~ ~ ~ December 2, 2003, DIANNE P. EDGAR, SP 2003-MV-037 and VC 2003-MV-138, continued from Page 238

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 2, 2003; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by George M. O'Quinn, dated November 27, 2002, revised through September 8, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned 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 December 10, 2003. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 2003-MV-138 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

DIANNE P. EDGAR, VC 2003-MV-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft., roofed deck 29.9 ft. and steps 23.9 ft. from front lot line. Located at 10612 Belmont Blvd. on approx. 1.93 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-2 ((1))

5. (Concurrent with SP 2003-MV-037). 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, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant provided testimony indicating compliance with the required standards for the granting of a variance.
3. The property is unique in respect to the ingress/egress, size and shape, and its location within 16.2 feet of the front lot line.
4. The variance request will not change the character of the zoning district or have any impact on any adjacent property owners.
5. The neighbor to the immediate south is in support of the application.

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

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

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

~ ~ ~ December 2, 2003, DIANNE P. EDGAR, SP 2003-MV-037 and VC 2003-MV-138, continued from Page 240

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

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

1. This variance is approved for the location of an addition (labeled carport, 2 story mudroom and 2 story addition on the plat), porch and steps as shown on the plat prepared by George M. O'Quinn, dated November 27, 2002, revised through September 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M.       STEPHEN D. MACLEOD, VC 2003-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 3.9 ft. from rear lot line. Located at 8820 Fort Hunt Rd. on approx. 11,745 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((7)) 6. (Decision deferred from 10/28/03).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen D. MacLeod, 8820 Fort Hunt Road, Alexandria, Virginia, replied that it was and noted that it had been revised.

In answer to Mr. Hart's question, Mr. MacLeod said the accessory structure had been reduced in width and length.

Mr. Pammel said he had viewed the videotape of the prior public hearing and was prepared to participate in the decision.

Mr. MacLeod showed the plat on the overhead projector and addressed Mr. Hart's question concerning the reduction of the footprint and the issues raised at the prior public hearing. He said he had reduced the size of the garage by 15 percent.

Members of the Board questioned the reduction, indicating that the plat, as shown, did not reflect that reduction.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the original garage was planned to be 26 feet by 28 feet in size, 5 feet with an eave, and 3.9 feet from the rear lot line, and had been reduced to 24 feet by 26 feet, 6.5 feet with the eave, and 5.5 feet from the rear lot line.

~ ~ ~ December 2, 2003, STEPHEN D. MACLEOD, VC 2003-MV-118, continued from Page 241

Mr. MacLeod responded to Mr. Beard's question stating that a property was located behind the stockade fence.

Mr. MacLeod said he was concerned about the extent of car theft in Alexandria. He said his wife was currently deployed in Baghdad, Iraq, with no date for her end of tour. He stated that he was in the Air Force, subject to deployment to the Middle East at any time, and needed the two-car garage to protect his vehicles while he and his wife were out of the country.

Mr. MacLeod said he had two letters from his neighbors who were in support of the application.

In response to Ms. Gibb's question, Mr. McLeod explained that previous owners had a drainage problem in the rear of the property, had extended the driveway to relieve some of the problem, and it was not his intention to remove it.

Mr. Hart asked staff if the issue of 30 percent of the minimum required rear yard had been addressed. Ms. Langdon replied that it had been addressed.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-MV-118 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN D. MACLEOD, VC 2003-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 3.9 ft. (**THE BZA APPROVED 6.5 FT. WITH EAVE 5.5 FT. )** from rear lot line. Located at 8820 Fort Hunt Rd. on approx. 11,745 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((7)) 6. (Decision deferred from 10/28/03). Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant reduced the size of the original proposed garage.
3. The applicant provided testimony indicating compliance with the required standards for the granting of a variance.

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

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

~ ~ ~ December 2, 2003, STEPHEN D. MACLEOD, VC 2003-MV-118, continued from Page 242

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

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

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

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

1. This variance is approved for the location of a garage, as shown on the plat prepared by Bryant L. Robinson, dated October 30, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-2. Ms. Gibb and Mr. Ribble voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M. MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seats. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((1)) 20A and 20B.

Chairman DiGiulian noted that SPA 95-S-071 had been administratively moved to January 6, 2004, at 9:00 a.m., at the applicants' request.

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~ ~ ~ December 2, 2003, continued from Page 243

The meeting recessed at 10:15 a.m. and reconvened at 10:25 a.m.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-P-068 previously approved for a place of worship with nursery school to permit increase in land area (Lot 19), building additions and site modifications. Located at 3730, 3800 and 3804 Glenbrook Rd. on approx. 6.90 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((9)) 17A, 17B and 19. (Moved from 9/16/03 and 11/18/03 per appl req)

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Chairman DiGiulian and Mr. Hammack gave disclosures, but indicated they did not believe their abilities to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynn J. Strobel, with Walsh, Colucci, Lubeley, Emrich & Turpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicants' agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit an expansion in land area from 13.61 acres to 18.7 acres; an increase in seating from 400 seats to 1,500 seats; an increase in building area from 7,100 square feet to 89,845 square feet, and an increase in parking from 189 spaces to 531 spaces. She reported that the application had initially raised several land use and compatibility concerns based on the design and intensity of the use and insufficient mitigation of potential impacts.

Ms. Stanfield stated that the initial plat proposed an increase of seats to 1,950 on 17.13 acres of land, at an FAR of 0.15, the maximum permitted. There were 82 parking spaces were shown on Lot 27, which abutted Olms Drive, for a total of 650 spaces, and minimal screening had been provided along the periphery of the property. She said that staff believed the bulk of the building should be reduced, more open space should be provided, and the impervious surfaces on site should be reduced. She reported that the applicant was also urged to provide low-impact techniques to supplement the proposed underground detention. She stated that the application proposed significant clearing and grading on the site, minimal replacement of landscaping and screening, and did not address concerns related to off-site nuisance impacts stemming from vehicle noise, glare, and hours of use.

Ms. Stanfield explained that the applicant had provided a number of changes in the application to address the concerns, including the following: The design of the building addition had been revised to substantially decrease encroachment into the mature upland forested area in the northern portion of the site; the travel aisle at the western edge of the site was shown to be removed and the area heavily landscaped; the play area for the nursery school had been relocated to an area of the site farthest away from adjacent dwellings and was to be screened with a minimum of a four-foot-high wall or fence to provide noise attenuation; a four-to six-foot-high barrier fence was provided along the site frontage to supplement existing evergreen trees and enhance screening of parking spaces; additional screening had been added to the parking lot and the western and northern lot lines; a sidewalk or trail was provided on the west side of Glenbrook Road to facilitate pedestrian movement; off-site landscaping was proposed on Lot 27A to the east across Glenbrook Road pursuant to discussions with the owners of that property; and the overall FAR proposed had been reduced to 0.128 due to the elimination of a proposed chapel. To further address the land use and compatibility concerns, she stated that the applicant had agreed to a number of development conditions related to operational aspects of the use. Use of the outdoor terrace would be limited to no later than 11:00 p.m. on weeknights; trash removal would not occur before 9:00 a.m.; no cooking would be permitted outdoors, except when the synagogue had an outdoor social event; trucks could not be parked on-site for more than one hour unless they were located on the eastern side of the building; and new and replacement lighting would be consistent with the recently developed lighting standards of the Zoning Ordinance. Additional development conditions related to off-site parking and shuttle bus service had been proposed to accommodate increased attendance at different times of the year. Ms. Stanfield said the most recent plat

~ ~ ~ December 2, 2003, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 244

revision also provided a raised median that divided incoming and outgoing traffic at the entrance to the synagogue, and the exit had been further modified with the inclusion of a speed hump.

Ms. Stanfield noted that the synagogue had provided staff with information regarding the number of social activities that occurred on an annual basis. In the year 2003, 47 social events were held at the synagogue; 12 events were held in the evening, and 3 events were for non-members of the Jewish faith.

Ms. Stanfield said that staff had 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 dated December 2, 2003, and, therefore, recommended approval of SPA 81-P-068-3.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the application proposed improvements, not growth. She stressed that although the congregation had purchased an adjacent lot and adjoining outlots they were not included as a part of the application. Ms. Strobel emphasized that there had been no change in the proposed building and the issue was how the floor area ratio (FAR) had been calculated. She said the applicant had reverted to the plan numbers presented at the public hearing in October of 2003, and explained the proposed modifications requested by the congregation. She noted that with the absence of transitional screening, the property was in compliance with the Zoning Ordinance. She commented on the proposed development conditions and proposed modifications and said the applicants had met all the standards imposed by Fairfax County. Ms. Strobel submitted 157 letters in support of the application and copies of the proposed development conditions

Mr. Pammel requested that Ken Kurran, the president of the congregation, address the issues of having better control of traffic in and out of the site. He cited an issue he had regarding erratic driving by one of its members and asked what measures the congregation proposed to take regarding parking and getting better control of traffic into and out of the site.

Mr. Hammack asked Ms. Strobel what had been done to address the conservation easements on the outlots and those lots to be encumbered by the easement and what the congregation intended to do with the lot it was not going to put the easement on. Ms. Strobel replied that on Outlot E1 there were a number of easements that currently encumbered the property, and the congregation had no plans to do anything about it. She said the outlots had been purchased with the intention to provide a buffer to the residential community.

Ms. Stanfield said there was a proposal to change the language regarding the conservation easement. Because there was concern about different terminology used to describe the easement, she said staff had changed the language to "a perpetual easement" as opposed to other terminology being used. She said staff had added more detail with respect to the purpose of the easement rather than a specific name. She said that language would read, "The easement shall remain as perpetually undisturbed open space. No structures, to include fences, shall be permitted in this area and in the adjacent Outlot E." She explained that Outlot E would not be developed and would be disturbed only in conjunction with utility easements that existed.

In reply to Ms. Gibb's question concerning receipt of any complaints prior to the filing of the application for the amendment, Paul McAdam, Zoning Enforcement Branch, said none had been received.

Mr. Hammack moved that representatives of civic associations be allowed five minutes to speak, other speakers be allowed two minutes, and that comments be limited to land use issues. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support of the application: Rabbi David S. Kalender, 9204 Briary Lane, Fairfax, Virginia; Peter Maer, 9112 Coronado Terrace, Fairfax, Virginia; Miriam Smolan, 9306 Coronado Terrace, Fairfax, Virginia; Leslie Varkonyi, 3823 Prince William Drive, Fairfax, Virginia; Richard Retting, 9110 Coronado Terrace, Fairfax, Virginia; Jerome Strauss, 8411 Guinevere Drive, Annandale,

Virginia; Susan Kristol, 6625 Jill Court, McLean, Virginia; Tomas Muller, 3301 Mantua Drive, Fairfax, Virginia; Michelle Stravitz, 3810 Sandalwood Court, Fairfax, Virginia, on behalf of Melissa Hotchberg, 3815 Acosta Road, Fairfax, Virginia; Mayer Smith, (no address given); Bruce Waxman, 3911 Laro Court, Fairfax, Virginia; Lee Cohen, 9028 Denise Lane, Fairfax, Virginia; Ruth Massy-Leichter, 9020 Denise Lane, Fairfax, Virginia; Joshua Oppenheim, 8716 Margaret Lane, Annandale, Virginia; Rachelle Palley, 5701 Oak Apple Court, Burke, Virginia, on behalf of Meryl Stafman, 9207 Leamington Court, Fairfax, Virginia; Jennifer McKenzie, 3722 Prince William Drive, Fairfax, Virginia; and Kenneth Cohn, 3805 Ridgelea Drive, Fairfax, Virginia, President of Congregation Olam Tikvah.

Their main points dealt with: the addition of 80 parking spaces to accommodate citizen concerns; the Environmental Quality Corridor (EQC); the need for efficient religious school rooms and two kitchens to accommodate Jewish dietary laws; information to be presented by opponents was exaggerated; a new, compliant stormwater management pond would be built; two wooden structures would be removed and the sites be revegetated; the house at 3730 Glenbrook Road would put on a septic field and revegetated; a study performed by a certified industrial hygienist determined that noise from the terrace could not be heard on Colesbury Place; according to statistics developed over the past 10 years, annual growth in membership only would increase by six persons over the foreseeable future; improvements benefit the neighborhood; many acts of community service were being provided by members of the congregation; they opposed closing access to property from Denise Lane; and opposed the appearance of religious intolerance.

Mr. Hammack asked Mr. Strauss whether limits for the neighbors' yards that backed up to Petrose Court had been included in the congregation's study. Mr. Strauss said they had only looked at 300 feet, and he did not know what the distance from Petrose Court was.

In response to Mr. Beard's question concerning the time of year the model had been done, Mr. Strauss said it had been done when there were no leaves on the trees other than an evergreen.

Addressing Ms. Kristol's statement, Mr. Pammel said he agreed with her that noise was not an issue on Colesbury Place.

The following speakers came forward to speak in opposition to the application: Bruce Levine, 3801 Glenbrook Road, Fairfax, Virginia; Ali Abdu Fatah (phonetic), (no address given); Cassandra Burham, 9009 Colesbury Place, Fairfax, Virginia; Domenico Cipicchio, 3823 Glenbrook Road, Fairfax, Virginia; Mike Ferubar, 3799 Glenbrook Road, Fairfax, Virginia; Donna Wilson, 9100 Petrose Court, Fairfax, Virginia; Kevin Harnisch, 3819 Glenbrook Road, Fairfax, Virginia; Doris Ihlenburg, 9024 Denise Lane, Fairfax, Virginia; Andrew J. Strasser, 3910 Glenbrook Road, Fairfax, Virginia; Thomas Barham, 9009 Colesbury Place, Fairfax, Virginia; Donna Cipicchio, 3823 Glenbrook Road, Fairfax, Virginia; Coomie Lee Stedham, 9025 Denise Lane, Fairfax, Virginia; Jane Prosperi, 9012 Colesbury Place, Fairfax, Virginia; Robert Wilson, 9100 Petros Court, Fairfax, Virginia; Gerald Marosic, 9003 Colesbury Place, Fairfax, Virginia; Min Loo (phonetic), 9017 Denise Lane, Fairfax, Virginia; John McBride, on behalf of Eugenia Sugg, 9104 Petros Court; the Lendens, 3916 Glenbrook Road, Fairfax, Virginia; Mr. and Mrs. Paul Severs, 9101 Petros Court, Fairfax, Virginia; Matthew Ames, 8939 Colesbury Place, Fairfax, Virginia; Erin Ward, 9005 Colesbury Place, Fairfax, Virginia; a letter submitted for Ruth Semb, 9007 Colesbury Place, Fairfax, Virginia; Lynda Bassett, 8957 Colesbury Place, Fairfax, Virginia; Donald McCarthy, 3915 Glenbrook Road, Fairfax, Virginia; Scott Nicholas, 3808 Chantal Lane, Fairfax, Virginia; Paul Bulger, 3804 Chantal Lane, Fairfax, Virginia; Andrew Rapavi, 3807 Glenbrook Road, Fairfax, Virginia; Richard Canty (phonetic), 9005 Colesbury Place, Fairfax, Virginia; Stanley Leroy, 3826 Skyview Lane, Fairfax, Virginia; Helen Bohan, 8973 Colesbury Place, Fairfax, Virginia, (Ms. Bohan submitted a letter written by her husband); Mary Knowlan, 9001 Colesbury Place, Fairfax, Virginia; and Fran Wallingford, 3311 Mantua Drive, Fairfax, Virginia.

Their main points dealt with: the neighbors had not been involved in the process; the issue was land use, not religion; traffic and parking continued to be a problem; children and adults were in danger from speeding vehicles in the neighborhood; there was a potential significant increase in traffic, and calming measures needed to be taken at the corner of Glenbrook Road and Denise Lane; a sidewalk and streetlight should be taken into consideration; a terrace was not being built; closing egress onto Denise Lane; removing the service road; lighting was not being addressed; relocation of stormwater pond to allow for screening; invasion of privacy; the proposed structure was not being architecturally consistent with the existing neighborhood; intrusive proposed rooflines; reduction of property values; evergreens to be planted to screen

~ ~ ~ December 2, 2003, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3,  
continued from Page 246

abutting properties from the synagogue; limiting the rental of the property to members only; and deferring decision on the application until all issues had been addressed and current special permit obligations had been met.

Ms. Gibb gave a disclosure, but indicated that she did not believe her ability to participate in the case would be affected.

In answer to Mr. Beard's question, Ms. Ihlenburg said she had lived in her home for 19 years.

In response to Mr. McCarthy's comments regarding the installation of sidewalks on Glenbrook Road, Mr. Pammel suggested that he work with the Mantua Citizens Association and his neighbors, obtain their consensus, and make it known to their elected representatives that sidewalks are essential to the neighborhood.

Eileen McLane, Zoning Administration Division, defined the difference in FAR between a cellar and a basement.

In answer to Mr. Hammack's question concerning a recalculation of elevation, Ms. McLane said elevations do not change, and there were no averages taken. She said the difference was that the clear height was calculated for each portion of a particular floor of a building. Mr. Hammack asked what the maximum was. Ms. McLane stated that for nonresidential uses, the number was 0.15, and the revised plan was for 0.128.

Pamela Nee, Chief, Environment and Development Review Branch, responded to Mr. Beard's request for an interpretation of the Comprehensive Plan as it pertained to the applicants' address, stating that the Plan recommended residential use at one to two dwelling units per acre, but did not preclude consideration for a special permit use such as the subject one for nonresidential use. She said a determination had to be made that the use would not adversely affect the neighboring properties. She said there was no site specific text that spoke to expansion of the uses for the Olam Tikvah property.

Ms. Strobel responded to several questions posed by Mr. Hammack concerning whether or not the outlots were buildable, whether three or more houses could be built on those lots and Lot 19, the capacity of the existing social halls and how many events had been held there within the past year, and the seating capacity for the proposed social hall. She said other groups outside of the Jewish religion would not be permitted to use the social hall.

In response to statements concerning music emanating from the social hall, Rabbi Kalendar stated that instrumental music was forbidden by their religious laws on the Sabbath and holidays.

Ms. Strobel said there would be classrooms for religious education, and the proposed social hall would be 700 square feet less than the two currently being used.

Mr. Cohen addressed Ms. Gibb's questions regarding the time of day and on what days social activities could take place.

Mr. Beard called attention to Development Condition 18 and asked staff if Lots H and J could ever be used since they had been placed in perpetual easements. Ms. Stanfield said she didn't know if the conditions would preclude development of the outlots in the future.

In her rebuttal, Ms. Strobel said the applicants had been trying to address citizen concerns and had been waiting for a list from the Mantua Citizens Association. She said the synagogue would not move. Ms. Strobel responded to comments made by the citizens in opposition to the application.

Ms. Strobel answered questions from Ms. Gibb concerning screening and use of the social hall.

Barbara Byron, Director, Zoning Evaluation Division, answered Ms. Gibb's questions concerning screening around detention ponds and sidewalks. Ms. Byron said that although the regulations had been eased around certain parts of a detention pond, no plantings could be placed around embankments or the area between the pond and the road. Ms. Strobel said that according to their experts, the current location for the

~ ~ ~ December 2, 2003, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 247

stormwater pond was the best one.

Ms. Byron said staff believed that there was enough right-of-way within the existing condition for a sidewalk to be extended to Denise Lane, and the applicant had been asked to do that. Ms. Gibb asked how that was within the applicants' control, given the length of Glenbrook Road. Chuck Almquist, Department of Transportation, said the sidewalk could be constructed in public right-of-way and with current grading; however, some temporary construction easements would have to be obtained from property owners.

Mr. Hammack asked whether two events, for example, a worship service and a special event, could take place at the same time. Mr. Cohen said social events were prohibited from taking place during the Sabbath and on religious holidays.

Responding to Mr. Ribble's questions concerning trips per day and peak hours as noted in Appendix 7, Mr. Almquist said he had obtained information published by the Institute of Transportation Engineers since there was one synagogue. He said the analysis was based upon the total square footage of useable space in the building because congregations grow on a continuum.

Mr. Cohen answered Mr. Beard's question, stating that on Sundays religious school classes would be held as well as a small service at 9:00 a.m., with approximately 25 people in attendance.

In answer to Mr. Pammel's question, Mr. Cohen said the tradition in Judaism was to hold prayer services three times a day, and at their synagogue they held morning services only on Sunday, Saturday, and federal holidays; however, they had short evening services each night of the week at 8:00 p.m., attended by approximately 30 people.

Ms. Stanfield explained that with respect to the Comprehensive Plan, the language was not site specific and did not preclude an addition. She noted also that music would be permissible after sundown on Saturday.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision on SPA 81-P-068-3 for 120 days in order for two small committees to be formed, one representing the synagogue and one representing the community, to come together in serious negotiations on the issues that needed to be addressed to arrive at something with which both parties could agree.

Ms. Gibb seconded the motion for purposes of discussion, but stated that she would not support the motion because she felt 120 days was too long. She suggested a deferral of the decision for 60 days. Mr. Pammel said he would agree with a 90-day deferral.

Mr. Ribble seconded the motion to defer decision on SPA 81-P-068-3 for 90 days.

Mr. Hammack stated that he would support a motion to defer decision because the Board had received a large amount of information at the hearing, but he was unsure whether the length of the deferral would result in issues being resolved and felt 60 days was sufficient.

Chairman DiGiulian called for the vote. The motion to defer decision on SPA 81-P-068-3 to March 2, 2004, at 9:00 a.m., carried by a vote of 5-1. Mr. Hammack voted against the motion. Mr. Hart recused himself from the hearing.

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~ ~ ~ December 2, 2003, Scheduled case of:

9:30 A.M. JUBAL AND KIRSTEN THOMPSON; ESTATE OF MARY BROWN, ELTON K. DONALDSON, A 2003-DR-046 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area or width requirements of the Zoning Ordinance when created, does not meet current minimum lot area or width requirements of the R-1 District, and is not buildable under Zoning Ordinance

~ ~ ~ December 2, 2003, JUBAL AND KIRSTEN THOMPSON; ESTATE OF MARY BROWN, ELTON K. DONALDSON, A 2003-DR-046, continued from Page 248

provisions. Located at 8304 & 8308 Randwood St. on approx. 29,838 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2)) 5 and 6.

Chairman DiGiulian noted that A 2003-DR-046 had been administratively moved to March 9, 2004, at 9:30 a.m., at the applicants' request.

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~ ~ ~ December 2, 2003, After Agenda Item:

Approval of November 25, 2003 Resolutions

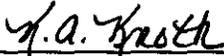
Mr. Beard moved to approve the Resolutions. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 1:59 p.m.

Minutes by: Lori M. Mallam / Mary A. Pascoe

Approved on: September 20, 2005



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, December 9, 2003. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. COREY D. CHAMNESS, JR. AND TRACY L. DAVIS, VC 2003-PR-143 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft., roofed decks 29.7 ft. and 19.8 ft. and steps 23.7 ft. from front lot lines of a corner lot. Located at 2842 Meadow La. on approx. 7,905 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((7)) 30.

Mr. Hart stated that he intended to recuse himself from the public hearing. Because he was part of the quorum of four at the time, he requested that the case be set aside until a quorum could be reached without him.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. LODEWYK J. ERASMUS, VC 2003-DR-149 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 21.6 ft. from front lot line and 8.2 ft. with eave 7.2 ft. from side lot line. Located at 1633 Wrightson Dr. on approx. 19,382 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (4) 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. Lodewyk Erasmus, 1633 Wrightson Drive, McLean, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition 21.6 feet from the front lot line and 8.2 feet with eave 7.2 feet from the side lot line. A minimum front yard of 30 feet and minimum side yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 8.4 feet, 3.8 feet, and 1.8 feet, respectively, were requested.

Mr. Erasmus presented the variance request as outlined in the statement of justification submitted with the application. He said the garage was being requested primarily for safety concerns. He said he traveled frequently and for extended periods of time, and the garage would provide his family with safe access to their home. He said he had discussed the construction with his neighbors, and they had not voiced any objections.

Ms. Gibb said she had driven past the property earlier in the morning and did not see a sign posted. Mr. Erasmus said a sign had been posted; however, it had fallen many times, either by inclement weather or vandalism, and he and his wife had put it back up each time. In response to Ms. Gibb's question, Susan Langdon, Chief, Special Permit and Variance Branch, said it was a legally advertised application.

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

Mr. Hart moved to approve VC 2003-DR-149 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LODEWYK J. ERASMUS, VC 2003-DR-149 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit

--- December 9, 2003, LODEWYK J. ERASMUS, VC 2003-DR-149, continued from Page 251

construction of addition 21.6 ft. from front lot line and 8.2 ft. with eave 7.2 ft. from side lot line. Located at 1633 Wrightson Dr. on approx. 19,382 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (4) 6. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 9, 2003; 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 showing compliance with the required standards for a variance.
3. The subject lot is narrow, with the dwelling oriented across the narrow part of the lot, which does not leave room to locate a garage on either side.
4. The proposed location for the garage is in front of an existing carport and at approximately the same distance from the side lot line as the existing carport, which is a substantial brick structure, so there would be no significantly different impact to anyone from the side.
5. With the constraints of the subject lot and the location of vegetation, particularly to the left, the structure would be fairly well concealed.
6. The proposed addition of a two-car garage is expected with a single-family house, and some relief is warranted.
7. The proposed location of the addition is in a logical place and in the only place it can be located on the subject lot.
8. There was no opposition to 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

~ ~ ~ December 9, 2003, LODEWYK J. ERASMUS, VC 2003-DR-149, continued from Page 252

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

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

1. This variance is approved for the location of a garage addition, as shown on the plat prepared by Jon R. Kline, dated October 31, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-2. Mr. Pammel and Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. COREY D. CHAMNESS, JR. AND TRACY L. DAVIS, VC 2003-PR-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft., roofed decks 29.7 ft. and 19.8 ft. and steps 23.7 ft. from front lot lines of a corner lot. Located at 2842 Meadow La. on approx. 7,905 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((7)) 30.

Mr. Hart indicated that he would recuse himself from 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. Lori Greenlief, Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of addition 15 feet, roofed decks 29.7 feet and 19.8 feet and steps 23.7 feet from front lot lines of a corner lot. A minimum front yard of 30 feet is required; however, steps are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 15 feet, 0.3 feet, 10.2 feet, and 1.3 feet, respectively, were requested. He said that, as noted on the plat, the frame shed would be removed.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She said the applicants were requesting an addition to the rear of their existing home and a covered front stoop in the front. She noted that an uncovered stoop and steps already existed; however, as a result of advertising requirements, the steps had to be included because changes to the front of the house would be made. Ms. Greenlief referred to items listed in the statement of justification and indicated that the house was constructed prior to the current Zoning Ordinance, and it was located too close to Westover Street under the current requirements. She indicated that requiring the applicants to bring the property into compliance with the current minimum yard requirements would produce unreasonable hardship. Using the

~ ~ ~ December 9, 2003, COREY D. CHAMNESS, JR. AND TRACY L. DAVIS, VC 2003-PR-143, continued from Page 253

viewgraph she showed the buildable area of the lot and said the renovation was in character with other renovations that had taken place within the neighborhood. Ms. Greenlief submitted five letters in support of the application from adjacent neighbors.

In answer to Mr. Beard's question, Ms. Greenlief confirmed that several variances had been granted within the proximity of the applicants' property.

Mr. Beard asked for clarification of staff's background statement that said following the adoption of the current Ordinance, they had not heard of any similar variances. Mr. Shriber replied that staff had been looking for variances that shared the same characteristics as the subject application and had looked for properties on corner lots with variances to the front lot requirements. He stated that he did not find any that had been recorded in the County's Land Development System.

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

Mr. Hammack moved to approve VC 2003-PR-143 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COREY D. CHAMNESS, JR. AND TRACY L. DAVIS, VC 2003-PR-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft., roofed decks 29.7 ft. and 19.8 ft. and steps 23.7 ft. from front lot lines of a corner lot. Located at 2842 Meadow La. on approx. 7,905 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((7)) 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 December 9, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants satisfied the nine required standards for a variance.
3. The subject property is located in an older subdivision and under the current Ordinance, is a substandard lot.
4. The subject property is impacted by having a double front yard.
5. The applicants demonstrated that the variance would not be a substantial detriment to the adjacent properties.
6. The applicants demonstrated that the variance 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

~ ~ ~ December 9, 2003, COREY D. CHAMNESS, JR. AND TRACY L. DAVIS, VC 2003-PR-143, continued from Page 254

adjacent to the subject property.

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

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

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

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

1. This variance is approved for the location of a one story addition and roofed decks as shown on the plat prepared by George M. O'Quinn, dated July 23, 2003, with revisions through October 23, 2003, submitted with this application and are not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the height as depicted on the variance plat, the shed shall be reduced in height, relocated, or removed from the property so as to comply with Zoning Ordinance requirements.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Hart recused himself.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. RICHARD S. VOLLMER, VC 2003-SP-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less

and fence greater than 4.0 ft. in height in front yard. Located at 5198 Dungannon Rd. on approx. 20,953 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((4)) 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. Richard Vollmer, 5198 Dungannon Road, Fairfax, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure to remain in the front yard of a lot containing 36,000 square feet or less and to permit fences 4.5 feet and 5.0 feet in height to remain in the front yard. The maximum permitted fence height in the front yard is 4.0 feet; therefore, variances of 0.5 feet and 1.0 foot, respectively, were requested.

Mr. Vollmer presented the variance request as outlined in the statement of justification submitted with the application. He said the accessory structure was requested because his family was growing and they needed additional storage space. He said constructing the shed in the southeast corner of his back yard was not viable because it would place the shed too close to his two adjoining neighbors, and the location of the septic field would not allow him to place the shed in that corner or along the side property line. Mr. Vollmer said he had chosen the northeast corner of his property because it was naturally wooded and the furthest from any of his neighbors. He said the shed was approximately 30 feet from the street. Mr. Vollmer stated that he had been given conflicting information from several County agencies and had built his shed on the assumption that he was in compliance. He stated that if he had to tear the shed down, it would pose a hardship on his family. Mr. Vollmer discussed the landscaping he intended to do to screen the shed.

Mr. Hammack stated that the Board had received a letter from a neighbor stating that Mr. Vollmer had been told to halt construction in July, but had continued, and he asked Mr. Vollmer to respond. Mr. Vollmer said he had spoken to his neighbor on several occasions. He discussed the chain of events regarding the construction of the shed. He stated that he had consulted with the Department of Public Works and Environmental Services and Zoning Administration staff and indicated that he had been given conflicting information. Mr. Vollmer said he had not been asked to halt construction because of a zoning violation, but because of a violation of community rules.

In response to Mr. Hammack's question concerning how far back the house on Lot 1 was from Bantry Terrace, Mr. Shriber said he did not know.

Mr. Ribble asked why the information presented by the applicant did not fall under the building in error section of the Ordinance. Susan Langdon, Chief, Special Permit and Variance Branch, said the Zoning Ordinance had certain additions that could be considered under building in error; however, accessory structures were not considered to be in that category and, therefore, must be considered to be a variance.

Mr. Hart said receiving conflicting information from the County was not unusual. He referred to Standard 8 and asked why Mr. Vollmer thought that putting an accessory structure so close to the street would not change the character of the neighborhood. Mr. Vollmer responded that there were many sheds in his neighborhood that could be seen from the street, and he intended to make sure that his neighbors' properties would be well screened. Mr. Vollmer and Mr. Hart discussed screening and planting materials. Mr. Vollmer stated that because of the location of the septic field, he had no other place to put a shed on his property.

Ms. Langdon and Mr. Hart discussed the types of plant materials Mr. Vollmer could choose.

Mr. Hart asked Mr. Vollmer why he couldn't erect a four-foot fence in lieu of vegetation. Mr. Vollmer said the existing fence was approved by the community association many years ago, and it was dilapidated and falling down. He said he offered to put another fence up if the neighbors were in agreement to it, but he had been advised by Zoning Administration staff that the fence was in violation.

Mr. Ribble stated that letters received from Mr. Vollmer's neighbors said the shed could be moved to another location. Mr. Vollmer reiterated his comment concerning the existing septic field and how he had no other alternative than to build the shed in its present location.

~ ~ ~ December 9, 2003, RICHARD S. VOLLMER, VC 2003-SP-155, continued from Page 256

Mr. Beard asked Mr. Vollmer to clarify the information written in his letter specifying which of his neighbors were in support of his application. Mr. Vollmer explained that the original submission was in color with the properties of the neighbors in support highlighted. Mr. Shriber presented a map on the overhead that highlighted in yellow the neighbors who were in support and shaded areas showing those who were in opposition.

Chairman DiGiulian called for speakers

The following speakers came forward to speak in support of the application: Tiffany Mack, 5197 Dungannon Road, Fairfax, Virginia; John Golden, 11408 Meath Drive, Fairfax, Virginia; George Delprete, 11399 Bantry Terrace, Fairfax, Virginia; Craig B. Courtney, 11392 Bantry Terrace, Fairfax, Virginia; James Reed, 11390 Bantry Terrace, Fairfax, Virginia; Leslie Dale, 5192 Dungannon Road, Fairfax, Virginia; and Darrel Mack, 5197 Dungannon Road, Fairfax, Virginia. Their main points were that the applicant had done a great deal to improve his home and property and was an asset to the community; the quality of the shed was excellent and did not detract from the neighborhood; moving the shed would destroy it; there was no walkout from the applicant's home; homes in the neighborhood needed storage space; and screening would improve the site, enhance curb appeal, and improve property values.

The following speakers came forward to speak in opposition to the application: George Bott, 11398 Bantry Terrace, Fairfax, Virginia; Gary Green, 11394 Bantry Terrace, Fairfax, Virginia; Daniel Wester, 11400 Bantry Terrace, Fairfax, Virginia; and Eleanor Wester, 11400 Bantry Terrace, Fairfax, Virginia. Their main points were that the applicants had been asked to cease construction of the shed by some of their neighbors and had not done so; the structure was too large for a front yard; there was concern about a proposed oversized fence; all of the neighbors had septic fields; none of them had walkouts from their homes; and property values would decrease.

George Bott said there were approximately a dozen alternative locations where the shed could be built. Using the overhead projector, he presented photographs showing what he considered to be an improper setback, a view of the shed from his property, and a corner lot where the shed was in compliance with the Zoning Ordinance. He said all sheds in the neighborhood were in conformance with the Ordinance. It was his opinion that the shed could be picked up by a forklift and moved to another location on the lot without damaging it. He noted that there were 14 neighbors in opposition to the application.

At Ms. Gibb's request, Mr. Bott pointed out the alternate locations he had referenced on the overhead viewer. Mr. Shriber stated that there was a 20-foot setback requirement in the zoning classification. In response to Ms. Gibb's question regarding whether there were trees and flat ground in the back yard, Mr. Bott said he had not been in the backyard, but did not believe there were any trees.

Responding to Mr. Beard's questions, Mr. Bott said he was in the middle of the road when he took his referenced pictures and that it was Daniel Wester who had asked Mr. Vollmer to cease construction on the shed. Mr. Bott said he did not think that the proposed vegetation would properly screen the shed.

Mr. Shriber noted that a landscape plan that had been prepared by Merrifield Gardens was being passed around for the Board's information. He said it had not been included in the staff report because it would not reproduce well.

Daniel Wester said he had spoken to Mr. Vollmer two times and had received no satisfaction concerning his complaints. He said after his first conversation with the applicant, he had consulted with Zoning Administration staff and had been informed that because the applicant had two front yards, the shed would have to be moved back behind the house. He said he had conveyed the information to the applicant.

In answer to Mr. Beard's question, Mr. Wester stated that he had not pursued the issue until his neighbors had asked him to.

Using the overhead projector, Eleanor Wester displayed photographs of the Vollmer property from her front yard.

In rebuttal, Mr. Vollmer disagreed with the claims made concerning the timing of conversations with Mr. Wester. He said Mr. Wester did not mention anything to him about the Zoning regulations, only the

community's rules. He said that as soon as he received information that he was not in compliance with the Ordinance, he went to the Zoning office himself. Mr. Vollmer said that after his conversation with Zoning staff, he ceased any further construction on the shed with the exception of putting a tarp and heavy slate pieces on the roof to protect it from the weather. Mr. Vollmer indicated that the plat the surveyor produced showed that the septic field was an approximate location, and he said the septic field went much further along the back and side lot lines of his property. He reiterated that there was nowhere else to build a shed on his property without intrusion into the septic field. He said the screening he was proposing would block the shed from his neighbor across the street. Mr. Vollmer stated that after he had returned from vacation, there was a letter in his mailbox that had been signed by seven of his Bantry Terrace neighbors indicating that they were opposed to the shed. He said he wrote a four-page response to them, which was included in the Board's packet, that encouraged communication, and he had received no response, and no one had spoken with him since then.

Mr. Pammel asked Mr. Vollmer why he had not taken a copy of his plat to the Zoning Administration office prior to building his shed instead of making telephone calls. Mr. Vollmer replied that because a shed was not a structural addition and he would not have to pull a permit, he called to get the setback information, and he followed the setback requirements given to him over the telephone.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the application left a lot of unanswered questions. He said he was concerned with the County's procedures, and it was his suggestion that a change be made to the regulations requiring a zoning permit for any structure regardless of type or size. Referring to Mr. Vollmer's comment that the septic field behind his home was larger than shown on the plat, Mr. Pammel said he wanted more information concerning the actual size of the field before he made a decision. He said he was going to move for a deferral for approximately one month to allow the applicant to obtain further engineering data and a plat showing the exact limits of the drainage field.

Ms. Gibb said she would support the motion. She stated that although she had seen the Merrifield Gardens drawing, she would like the applicant to readdress the issue and come up with better screening. She said she would like to see a revised screening plan, and she intended to visit the property.

In response to the Chairman's question, Ms. Langdon said setting a date for a deferral would depend on how long it would take the applicant to have the septic field resurveyed.

In response to Mr. Vollmer's request for guidance regarding how to go about getting the septic field resurveyed, Chairman DiGiulian advised him to contact the Health Department and ask them to send someone out to locate the limits of the drain field and then ask whoever had done his plat to modify it to show an exact location. In response to another question from Mr. Vollmer about incurring the additional expense of having his property resurveyed, Mr. Pammel said that verification of the septic field limits from the Health Department would be all that was necessary.

Mr. Pammel moved to defer decision on VC 2003-SP-155 to January 13, 2004, at 9:00 a.m. Ms. Gibb seconded the motion.

Ms. Gibb and Mr. Hart indicated that they wanted additional information on where a shed could be placed, whether it would be an L-shaped or straight line configuration, whether or not it was covered by a development condition, what the proposed vegetation would consist of, how the shed would be screened, how it would be finished, and what color it would be painted.

Mr. Pammel suggested that the paint used on the shed should be an earth tone to ensure that it would blend into the surrounding vegetation to make it less conspicuous to the neighbors.

Mr. Hammack said he shared concerns about the Merrifield screening proposal because he felt that it was not clear. He requested that additional information be provided concerning the existing fence and whether or not it was going to be removed.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE, VC 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 195.87 ft. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E. (Decision deferred from 11/18/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, replied that it was.

Chairman DiGiulian referred to information provided by staff indicating that they had not had enough time to review the plat submitted by the applicants.

Ms. Kelsey said she had submitted the plat to staff on Friday, December 5, 2003, and staff claimed that they had not received it until Monday, December 8, 2003.

Aaron Shriber, Staff Coordinator, explained that the County had declared liberal leave on Friday, and he had left the office early in the afternoon, did not get the plat until yesterday, and had not had sufficient time to review it.

In response to the Chairman's question, Susan Langdon, Chief, Special Permit and Variance Branch, said it would take approximately a week to review the information submitted by Ms. Kelsey.

Mr. Ribble moved to defer decision on VC 2003-DR-132 to December 16, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Hart stated that the information submitted by Ms. Kelsey regarding Lot 6 was important to the hardship criteria. He noted that the lot was created in 1952 with a metes and bounds description and no plat. Mr. Hart said the only point in question was whether or not there was a plat, and from information contained in the current Zoning Ordinance, he thought that issue had been resolved and Lot 6 was now a buildable lot. He said that if staff disagreed with his conclusions, he wanted copies of instruments in the chain of title or Ordinance provisions that would contradict it. He requested that copies of the deeds and/or Ordinance provisions be submitted to the Board in lieu of a memorandum.

In answer to Ms. Gibb's question, Ms. Kelsey said the property had originally been designated as agricultural. She said that as a result of her researching the property, she found out that it had been zoned agricultural in 1941 and continued to be so until 1959 when it was zoned R-E2. Ms. Kelsey indicated that the information she had found was located in the street file in the office of the Zoning Administration Division, and she would provide staff with a copy.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. ANNA AMACZI AND ROBERT HORVATH, VC 2003-MA-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. with eave 7.1 ft. from side lot line. Located at 6049 Brook Dr. on approx. 10,976 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3)) 63.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Anna Amaczi, 6049 Brook Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a Variance to permit construction of a two-story addition, consisting of a two-car garage with living space above it, 8.1 feet with an eave 7.1 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.9 feet and 1.9 feet, respectively, were requested.

Ms. Amaczi presented the variance request as outlined in the statement of justification submitted with the application. She said the addition was requested because their family was growing and additional living

space was needed. She said she had spoken to her neighbors, and no one had expressed any opposition to the application.

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

Mr. Ribble moved to approve VC 2003-MA-154 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANNA AMACZI AND ROBERT HORVATH, VC 2003-MA-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. with eave 7.1 ft. from side lot line. Located at 6049 Brook Dr. on approx. 10,976 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3)) 63. 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 9, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants met the nine standards required for a variance.
3. The subject lot is characterized by a narrow lot width and the placement of 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.

~ ~ ~ December 9, 2003, ANNA AMACZI AND ROBERT HORVATH, VC 2003-MA-154, continued from Page 260

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Bryant L. Robinson, dated March 13, 2003, as revised through September 26, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Beard abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. PATRICK S. CIEPLAK D.D.S., SPA 80-D-035-3 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for a home professional office to permit a change in development conditions and change in permittee. Located at 1300 Beulah Rd. on approx. 35,247 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-3 ((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. Patrick Cieplak, 1300 Beulah Road, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment for an existing home professional office for a dental practice to permit a change in permittee and changes in the development conditions. The change in permittee would change the applicant name from Lawrence L. Ziemianski to Patrick S. Cieplak, D.D.S., and the changes in the development conditions would extend the hours of operation from 8:30 a.m. to 5:30 p.m., Monday through Friday, to 7:00 a.m. to 6:00 p.m., Monday through Friday, and from 7:00 a.m. to 2:00 p.m. on Saturday. The application would also remove the term limitation. Staff recommended approval of SPA 80-D-035-3 subject to the proposed development conditions contained in Appendix 1 of the staff report.

Dr. Cieplak presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said he was requesting an amendment because he planned to live in the house with his children and to change his hours of operation so he would be in compliance with the Zoning Ordinance. He said that his actual office hours were from 8:30 a.m. to 3:30 p.m.; however, his reason for requesting a change of hours was to enable him to accommodate patients who would need emergency

dental care. Dr. Cieplak said he was also asking to increase the size of his sign. He displayed a photograph on the overhead projector that showed the different types and sizes of signs displayed by his neighbors.

Ms. Gibb asked for clarification concerning the sign. Susan Langdon, Chief, Special Permit and Variance Branch, explained that staff did not ordinarily approve the display of signs in a residential neighborhood. However, after the staff report was written, staff found out that there was an existing sign, and staff had no objection to deleting Development Condition No. 4. Ms. Langdon said the applicant would have to comply with the Zoning Ordinance on the size of the sign. She said that whatever the Zoning Ordinance allowed was the maximum, and the Board could not authorize the applicant to put up a larger sign.

Mr. Hart and Dr. Cieplak discussed the change to the hours of operation. Mr. Hart quoted from the Ordinance and said he doubted that the applicant would be permitted to treat patients in the evening. Ms. Langdon said that staff's development condition was based on what the applicant had requested in his statement of justification.

Mr. Hart asked Dr. Cieplak if the development conditions were acceptable to him as written. Dr. Cieplak responded that his original application had included the phrase "with occasional emergencies" and thought staff had omitted it from the amendment. Dr. Cieplak said that he had read all of the development conditions, and with the exception of the omission concerning emergencies, he agreed with them.

Mr. Hart asked Ms. Stanfield whether staff had a position on emergency hours. Ms. Stanfield said she did not think it would be inconsistent to what had been approved prior to this application. She said she thought the hours requested would encompass emergencies.

Dr. Cieplak said that at two previous hearings provisions had been made for emergencies and he was asking that the hours be extended to enable him to address the emergencies, hold occasional staff meetings, or conduct instructional courses, if necessary.

In response to Chairman DiGiulian's question, Dr. Cieplak said the hours of operation specified in the development conditions were acceptable to him.

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

Ms. Gibb moved to approve SPA 80-D-035-3 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

PATRICK S. CIEPLAK D.D.S., SPA 80-D-035-3 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for a home professional office to permit a change in development conditions and change in permittee. Located at 1300 Beulah Rd. on approx. 35,247 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-3 ((1)) 12. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 9, 2003; and

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

1. The applicant is the owner of the land.
2. The use has continued for a number of years.
3. The staff report is favorable.
4. The subject house is in an area that has a lot of commercial uses.

~ ~ ~ December 9, 2003, PATRICK S. CIEPLAK D.D.S., SPA 80-D-035-3, continued from Page 261

5. The subject property has a lot of onsite parking.
6. It is appropriate to allow the new permittee and to delete the term limit.

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). 8-907 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Patrick S. Cieplak, D.D.S., only and is not transferable without further action of this Board, and is for the location indicated on the application, 1300 Beulah Road (35,247 square feet) and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Harold Logan dated January 31, 2003, 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 employees including the applicant shall be four (4). The applicant shall be the only dentist operating from this property.
5. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 2:00 p.m. on Saturday, and occasional emergencies.
6. There shall be twelve (12) parking spaces, including two garage spaces. All parking shall be on-site as shown on the plat.
7. The home professional office shall occupy no more 1,200 square feet of the dwelling.
8. The existing vegetation on-site shall be maintained; any dead or dying plants shall be replaced.
9. The dwelling that contains the home professional office shall also be the primary residence of the applicant.
10. Upon demand by the Virginia Department of Transportation (VDOT) or Fairfax County, additional right-of-way and ancillary easements, where necessary, along the Leesburg Pike frontage of the site shall be dedicated to the Board of Supervisors in fee simple, consistent with that shown on the attachment to these 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.

Mr. Beard seconded the motion, which carried 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 17, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:00 A.M. PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 91-V-071 previously approved for a church to permit child care center and nursery school. Located at 8600 Plymouth Rd. on approx. 6.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((2)) 601B and 102-4 ((3)) A2.

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 Crumplar, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 91-V-071, previously approved for a church, to permit the addition of a child care center and nursery school with a combined total maximum daily enrollment of 99 children, with hours of operation from 7:00 a.m. to 6:30 p.m., Monday through Friday. Staff recommended approval of SPA 91-V-071-3 subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Ribble stated that the prior evening he had received a letter authored by Susan Fannan Burroughs with a note written on it from Mr. Shockey (phonetic), President, Riverside Gardens Citizens Association, requesting a deferral of the application.

Mr. Crumplar presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the church was aware of the need for quality daycare facilities in the Mount Vernon area and would like to be able to provide that to those that needed it. He said the church property consisted of a recently built fellowship hall that had a commercial-type kitchen, a large meeting room, classrooms, and restrooms. He said there was also a two-level educational building that housed classrooms, a nursery, offices, and restrooms. Mr. Crumplar stated that there were 20 classrooms on the site. Describing the church's grounds, he said there was a small fenced playground, a baseball field, and ample playground facilities on the side and front of the fellowship hall. He also said there were 118 parking spaces with three ingress/egress sites leading to the parking area. He noted that the applicant anticipated an initial enrollment of 25 children, ages two to four, with operating hours from 9:00 a.m. to 12:00 p.m., Monday through Friday. Mr. Crumplar said the staff ratio would be consistent with that of county and state regulations, and they planned to employ four people; a supervisor and three staff members. He stated that he had mailed letters to ten families living within the vicinity of the church, had visited with nine of the families, and had described the church's plans to them. Mr. Crumplar stated that he had not heard of any objections to the church's plans until today. He said that two of the families he visited had expressed great interest in enrolling their children in the program.

Tom Johnson, Pastor, Plymouth Haven Baptist Church, said the church had been in operation for 52 years and had an enrollment of over 300 with approximately 200 active members. Reverend Johnson stated that there was something going on at the church every day of the week and described the various activities and organizations that made use of the facilities. He said that with the constantly changing demographics of the area, there was a tremendous need to support the families in the Mount Vernon area and within the church fellowship.

Chairman DiGiulian called for speakers.

John Coho (phonetic), a member of Heritage Presbyterian Church, came forward to speak. He said his church members strongly supported the application. He said Plymouth Haven's estimate of the need for child care in the neighborhood was accurate, and the demographics of that part of the Mount Vernon District showed that more nursery and child care facilities were needed.

In response to Mr. Ribble's question, Mr. Coho said Heritage Presbyterian Church did not have a child care facility, but they had been studying it.

James Turner, a Plymouth Haven Baptist Church trustee, came forward to speak. He discussed the church's ingress/egress and traffic flow. He said an extensive site plan had been done for the property when a large addition had been built in 1996 or 1997 and stated that entrances off Fort Hunt Road had been closed. He noted that all the entrances to the church were from Plymouth Haven Road. As traffic backup was concerned, he said County staff had studied the impact issue and had found virtually none. Mr. Turner stated that the entrance was across the street from the Presbyterian Church, and they anticipated traffic would approach their site from three different roads. Responding to the letter submitted by Mr. Shockey

~ ~ ~ December 9, 2003, PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3, continued from Page 264

concerning traffic impact, Mr. Turner said the Virginia Department of Transportation (VDOT) was planning to widen the road, but that would not take place for several years, and the church had no control over that. He said ingress/egress would not have an impact on traffic flow.

Mr. Pammel stated that the last traffic impact statement had been done six years prior and he wanted to see an updated, professional transportation analysis of the site with an impact statement because an enrollment of 99 children would generate a considerable volume of traffic. He said he wanted to know when the children would be arriving and departing.

In answer to questions from Ms. Gibb, Mr. Ribble, and Mr. Beard, Mr. Turner said the applicant had been working with County staff for approximately one and a half years. Mr. Turner stated that the applicant would be willing to reduce the number of students from 99 to 50 if the Board would approve the application today, with the expectation that they would apply for an amendment to expand the number to 99 if it was necessary. Mr. Turner said there would be 16 employees on site.

Ms. Gibb referred to a letter from the Fairfax County Department of Transportation (DOT) stating that they had no objection to an approval of the application. She said she knew how hard it was to find quality child care, was strongly in support of child care in the Mount Vernon area, and would be upset if the Board voted against it.

Susan Langdon, Chief, Special Permit and Variance Branch, said DOT's information was based on the most recent information they had. She said DOT would have reviewed the trip generation on the roads surrounding it as well as how many additional trips they felt this use would add, and DOT did not think the increase was significant enough to raise a red flag.

Mr. Ribble acknowledged that traffic exiting from the subdivision referred to in the letter authored by Ms. Burroughs was difficult; however, he said there were other ways to exit the subdivision. He said he thought Mr. Shockey probably had not seen the posted sign or knew about the application because he had used other exits. He agreed that there was a problem at the intersection Ms. Burroughs was concerned about, but other exits could be utilized.

Mr. Beard said he was inclined to support the application, but was concerned about the proposed number of students and employees and their impact on traffic. He said he would like to see a more current traffic study.

In answer to Mr. Beard's question regarding whether the last official survey was done six years prior, Ms. Langdon said she was unsure what survey Mr. Beard was referring to, but that DOT would have used the most recent information they had.

Mr. Beard said he would be in favor of a deferral until the Board had better information regarding the traffic.

In response to Ms. Gibb's question, Mr. Turner said a new traffic study would cost thousands of dollars and would take approximately one and a half years to complete. He said it was his opinion that there had been no significant increase in traffic since the applicant's original site plan had been completed. He stated that at that time they had given up two entrances off Fort Hunt Road with the anticipation that they were accommodating the public and the public's concern about relocating to Plymouth Road. He said he did not want the church to be penalized or impeded by paying for another traffic study.

Chairman DiGiulian said he did not understand that anyone was talking about the church paying for a traffic study. He said Mr. Shockey's email indicated that Mr. Shockey understood that a study had been done and that he wanted to review it.

Mr. Pammel agreed with Mr. Beard's comments and said the child care facility was something that was needed; however, he noted that in reviewing applications for churches throughout the County, that type of information was consistently requested by the Board. He said that in all fairness the Board had to impose the same type of request on the applicant because their proposal was going to further impact the community, and the neighbors had requested the information. He said he had no objections to the applicant providing information obtained from a professional analysis or from current data and statistics provided by their membership. Mr. Pammel indicated that he wanted information on what the carrying capacity and traffic

volumes were on Plymouth and Fort Hunt Roads.

Chairman DiGiulian said that DOT could provide the information required since they had submitted a memorandum indicating that they had no problem with the applicant's request. He said he did not think the church should be required to do a traffic study.

In response to Ms. Gibb's request for clarification that the Board was looking for the backup numbers that DOT had and their accuracy, Mr. Pammel said he was looking for the volumes on the roads. He cited as an example the volume of traffic on Hunter Mill Road and the road being over capacity where several churches had been permitted. He said he wanted information provided to ensure the use would not be exacerbating an already bad situation.

Ms. Gibb said she had difficulty with the Board receiving a letter requesting information on the day of the hearing since the signs had been posted and the application had been advertised.

Mr. Turner said it was his experience that if the trip count went over a certain percentage of increase, it would automatically stimulate DOT to ask for a traffic study. He said he knew that the County guidelines specifically state that DOT review the trip count, and they would implement a requirement for a study if they determined that there was a significant increase. He said that it was his understanding that DOT saw no significant increase.

Mr. Pammel reiterated his request to see the analysis that DOT undertook concerning what was taking place at the intersection.

In response to Ms. Gibb's question whether the additional traffic information would be required if the Board had not received the e-mail, Mr. Pammel responded that when considering impact uses, the Board needed the information. Ms. Gibb commented that in every case traffic was an issue. She cited a past case where the request was to add six children to a mother's day out program, and there were complaints because it would add six cars on Georgetown Pike. She said she did not want the request to get lost in the statistics because an e-mail was received from a neighbor. She said it was to be expected because no one wanted one more car on any road in Fairfax County. Ms. Gibb said child care was needed.

Mr. Hart stated that he had some questions for the applicant's agent, but he thought there were additional speakers waiting to speak.

Beth Pierra (phonetic), a member of Plymouth Haven Baptist Church, came forward to speak. She said she was a professional daycare provider who had taken care of 12 children on a daily basis and had a very long waiting list. She stated that the need for additional daycare in the Mount Vernon area was critical. With respect to additional traffic generation, she said parents would be on the road regardless of whether the application was approved or not. She noted that other churches in the vicinity had daycare facilities, and she discussed how the programs she was familiar with had successfully handled the traffic issues to minimize impacts. Ms. Pierra said that with the influx of citizens in the area and increased traffic in and out of shopping centers and other facilities on Fort Hunt and Plymouth Roads, traffic would always be a problem, and she did not think that should be an issue in this case.

In answer to Mr. Beard's questions regarding how operating hours from 9:00 a.m. to 12:00 p.m. would help parents who worked full time and whether there was a possibility of adding an afternoon session in the future, Ms. Pierra stated that some parents worked part time and some were in job share positions. She said some parents had nannies or friends who provided transportation for their children to preschool. She said the church had applied in the manner it did was because limiting the facility to the hours of 9:00 a.m. to 12:00 p.m. would cause the applicant to have to revisit the issue if the need arose, but she was not the best person to answer questions about future plans.

In response to Mr. Hammack and Mr. Beard's questions concerning the applicant's request of operating hours from 7:00 a.m. to 6:30 p.m. and whether there would be an afternoon session, Mr. Turner said they intended to start out the program slowly with the initial hours of 9:00 a.m. to 12:00 p.m., but they were anticipating that they would want to increase their operating hours at some point in the future. He said the church would be appreciative if it could move forward even in some sort of conditional fashion.

~ ~ ~ December 9, 2003, PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3, continued from Page 266

Mr. Hart and Mr. Turner discussed the drop-off areas, stacking of cars waiting to drop off or pick up children, and whether it would impede traffic in an already problem area.

Mr. Hammack said he agreed with the concerns expressed by his colleagues concerning stacking and the impact on road traffic and said he thought that should be studied more before making any decision on the application.

Ms. Langdon explained that when staff was reviewing the application, they had looked at three entrances which were all off Plymouth Road, and they had determined that the site distance was good; therefore, they did not look at limiting access to one place because the applicant could provide access at all three entrances.

Mr. Beard moved to continue SPA 91-V-071-3 to January 27, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-1. Ms. Gibb voted against the motion.

Mr. Hammack, referring to Ms. Burrough's request, asked staff to contact DOT and determine the status of any anticipated road widening and/or stop light installation.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 and 10/21/03 per appl. req)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 and 10/21/03 per appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03 and 10/21/03 per appl. req)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to January 27, 2004, at the applicants' request.

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~ ~ ~ December 9, 2003, Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 4. (Admin. moved from 10/28/03 per appl. req.)

Chairman DiGiulian noted that A 2003-MV-037 had been administratively moved to February 3, 2004, at the applicant's request.

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~ ~ ~ December 9, 2003, After Agenda Item:

Status update for John D. Bobolsky, III, A 2003-SP-033

Ms. Gibb said she had read the progress report, which was not satisfactory. She indicated that Mr. Bobolsky should stop trying to reach Ms. Douglas by telephone and either find her in person or sue her.

In response to Mr. Hart's question, Jayne Collins, Zoning Administration Division, said the County Attorney's office had the case file, and there was no indication as yet that they had filed anything in Circuit Court.

Joe Bakos, Zoning Enforcement Branch, stated that the County Attorney's office had been waiting for additional evidence which his office had provided to them. He said he presumed that with that information, they would move forward in the near future.

In answer to Ms. Gibb's question, Mr. Bakos said the deadline for hearing the appeal was April 20, 2004.

Ms. Collins stated that she had requested a memorandum from Mr. Bobolsky that would explain any actions he had taken, but she had not spoken to him in several weeks. She said she did not have any information concerning his appearing before the Board today.

Ms. Gibb reiterated that Mr. Bobolsky had to do more than make telephone calls and write letters. She and Chairman DiGiulian indicated that the Board wanted him to appear before them at the next scheduled meeting on January 4, 2004, to explain any and all actions taken by him.

In answer to Ms. Collins' question, Chairman DiGiulian said he wanted the case listed as an after agenda item at the January 4, 2004 meeting and that Mr. Bobolsky should be asked to appear at that time.

In response to Ms. Langdon's question, the Chairman said the case should be listed as an action item, not an information item.

Mr. Hart said he was interested in finding out what was happening in court on the Heath property.

In response to Mr. Beard's question, Ms. Collins stated that the Enforcement Branch was pursuing the Heath case.

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~ ~ ~ December 9, 2003, After Agenda Item:

Approval of December 2, 2003 Resolutions

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

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Ms. Gibb referred to correspondence from Jack Reale, Zoning Administration Division, concerning VC 2003-SP-155, Richard S. Vollmer, and his non-buildable lot determinations. She quoted from the last paragraph of

~ ~ ~ December 9, 2003, continued from Page 268

Mr. Reale's memorandum that stated, in part, "Since June 1, 2002, this office has made buildable lot determinations pertaining to 448 lots. Other than the Vollmer case, it is uncertain whether any other determinations were affected by the provisions. A detailed analysis would require a substantial number of staff hours to achieve." Ms. Gibb said that the problem with that was if someone got an unfavorable determination, such as the one given to Mr. Vollmer, and it was a mistake made by the County, they had a worthless lot and/or an outlot with a house on it. She said the County could not just drop it by saying it would take too many staff hours. Ms. Gibb stated that someone on staff had to look at the determinations made on the 448 lots to find out whether any of them had to do with lot size during the time that the Zoning Ordinance allowed for smaller lots, as with the Vollmer case.

Ms. Langdon said she did not have a copy of the correspondence Ms. Gibb referred to because Mr. Reale had handed that directly to the Board, so she could not address Ms. Gibb's comments, but she would relay the information to the Zoning Administration Division.

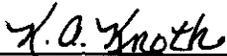
Ms. Gibb said she thought that on some of the lots, staff could look at them immediately on the face of it and make a determination whether or not they would apply.

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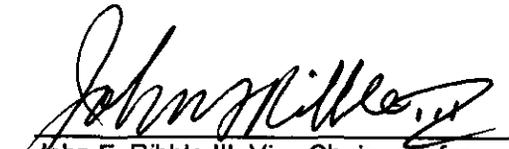
As there was no other business to come before the Board, the meeting was adjourned at 11:52 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 10, 2007



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 16, 2003. The following Board Members were present: Vice Chairman John F. Ribble, III; V. Max Beard; Nancy E. Gibb; Paul W. Hammack, Jr.; James R. Hart; and James D. Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:04 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE, VC 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 195.87 ft. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E. (Decision deferred from 11/18/03 and 12/9/03)

Vice Chairman Ribble announced that this case was deferred for decision from November 18, 2003, and December 9, 2003. He asked staff to inform the Board of the reasons for deferral.

Aaron Shriber, Rezoning and Special Exception Branch, said last minute submissions from the applicants' representative at the December 9, 2003 public hearing warranted deferral of the decision to allow staff time to review the information. He pointed out his December 15, 2003 memorandum, distributed that morning, that addressed the buildable eligibility of Lot 6 and issues of clearing and grading. Revised Proposed Development Conditions dated December 16, 2003, were attached, he said, that addressed and satisfied the matters. Mr. Shriber said that submitted that morning by the applicants' representative, Jane Kelsey, was a proposed development condition for the limits of clearing and grading.

Jane Kelsey, Jane Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, agent for the applicants, came forward to speak and referenced Note 19 on the Plat. She submitted that the current language for the extent of clearing and grading was extremely restrictive. Ms. Kelsey suggested rewording staff's sentence regarding the allowance of accessory structures with that of her own, quoting the following: "The clearing, grading line as shown on the variance plat shall be adhered to provided that there may be minor deviations in that line, as determined by the Zoning Administrator for engineering reasons in order to allow for the construction of a dwelling and accessory structures on the lot." She said it was nice for a two-acre lot to have a shed, a swimming pool, or some other permitted accessory structure.

In response to Mr. Hart's question, Mr. Shriber said staff had reviewed Ms. Kelsey's language that was submitted that morning concerning limits of clearing and grading, and it would be imbedded in Condition Number 2. He noted that the revised plats, submitted that morning, showed an accessory structure, and the way staff wrote the condition, it was not staff's intention to limit any further accessory structures; staff preferred that the language be changed to allow for minor deviations for utility construction. Mr. Shriber clarified that the limits of clearing and grading, as shown, did allow for further development including accessory structures as shown on the plat.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2003-DR-132 for the reasons stated in the Resolution.

Mr. Pammel commented that there was evidence to indicate the applicants' hardship was self-imposed because of earlier adjustments to the lot when it was conforming. He said he believed the lot was a complete two-acre lot, which was not inconsistent with the character and development occurring in the area; therefore, he supported the motion. Mr. Pammel complimented Ms. Kelsey on her extensive research of the application and the information she provided the Board.

Mr. Hart voiced his support of the motion pointing out the case's difficulties concerning the two-fold hardship, one being self-imposed, and the other being the issue of the boundary line adjustment to Lot 6. With the submission of Ms. Kelsey's handouts, there was a breakdown of numerous lot width variances in the neighborhood consistent with the application, and the revised plat gave more information showing the house's location and the limits of clearing and grading, and he said he believed the case was significantly improved.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE, VC 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 195.87 ft. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E. (Decision deferred from 11/18/03 and 12/9/03) 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 16, 2003; and

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

1. The applicants are the owners of the land.
2. An unusual situation rendered this lot to having frontage slightly less than the required Ordinance frontages.
3. The lot is a large lot of 89,420 square feet and is portrayed as an out-lot.
4. Strict application of the Ordinance would produce undo hardship for the owners and this hardship is not shared by the other lots in the immediate vicinity.
5. The variance does not change the character of the zoning district to any substantial detriment to the adjacent properties.

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

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

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

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

~ ~ ~ December 16, 2003, ANNA G. BURGESS, TRUSTEE AND JUNE B. BACON, TRUSTEE, VC 2003-DR-132, continued from Page 272

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

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

1. This variance is approved for a lot width variance of Lot 26E (Outlot A1), as shown on the plat prepared by Reid M. Dudley, dated July 8, 2003, revised through December 10, 2003, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these Development Conditions. These conditions shall be recorded among the Land Records of Fairfax County.
2. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements and a tree preservation plan shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry Division, for review and approval. Notwithstanding Note 19 on the plat the extent of clearing and grading line as shown on the variance plat shall be adhered to provided that there may be minor deviations in that line as determined by the Zoning Administrator for engineering reasons in order to allow for the construction of a dwelling and accessory structures on the lot. The plan shall depict the location of the Environmental Quality Corridors (EQC) on site. The EQC and area outside of the limits of clearing and grading shall be preserved as undisturbed open space with no structures or fences within these limits. The tree preservation plan shall preserve as much of the existing tree canopy as possible as determined by DPWES and the Urban Forestry Division, and shall meet the tree cover requirements of the Zoning Ordinance. Prior to any land disturbing activity for construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for onsite construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall an area of the site be left denuded for a period longer than fourteen (14) days.
3. Stormwater management and Best Management Practices shall be provided in accordance with the requirements of the Public Facilities Manual as determined by DPWES. If not in substantial conformance with this Variance plat, the Variance shall become null and void.

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

Mr. Beard 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 December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. DENNIS & PATRICIA CARROLL, VC 2003-BR-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 4.6 ft. from side lot line. Located at 4623 University Dr. on approx. 10,916 sq. ft. of land zoned PDH-4. Braddock District. Tax Map 57-3 ((9)) 4.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of

~ ~ ~ December 16, 2003, DENNIS & PATRICIA CARROLL, VC 2003-BR-150, continued from Page 273

Zoning Appeals (BZA) was complete and accurate. The applicants' agent and architect of the project, Henry L. Berben, Case Design/Remodeling, Inc., 4701 Sangamore Road, North Plaza, Suite 40, Bethesda, Maryland, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 5.0 feet with eave 4.6 feet from a side lot line. A minimum side yard of 8.0 feet is required; however eaves are permitted to extend 3.0 feet into the side yard; therefore, variances of 3.0 feet and 0.4 feet, respectively, were requested.

Mr. Berben presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was acquired in good faith, and it was unique because of its converging rear-lot lines, a flag lot, which severely restricted development. The owners sought to expand the living area for family gatherings, he said, and to allow more enjoyment of their rear yard which was largely open space that was quite beautiful. He pointed out that the proposed addition was in the exact footprint of the existing deck.

Responding to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, said that although no rendition was submitted with the exact measurement, staff was comfortable the floodplain was more than 15 feet from the house.

In response to Mr. Hammack's question concerning the possibility of moving the addition back, Mr. Berben stated that it was architecturally possible, but pointed out that their proposed design utilized the exact footprint of the existing deck, while moving it impacted the use of the property and removed desirable vegetation.

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

Mr. Pammel moved to approve VC 2003-BR-150 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS & PATRICIA CARROLL, VC 2003-BR-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 4.6 ft. from side lot line. Located at 4623 University Dr. on approx. 10,916 sq. ft. of land zoned PDH-4. Braddock District. Tax Map 57-3 ((9)) 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 December 16, 2003; and

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

1. The applicants are the owners of the land.
2. The lot is a very irregular shape.
3. There is only a small area on the lot in which an addition can be placed
4. The variance is reasonable under these circumstances.

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

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

~ ~ ~ December 16, 2003, DENNIS & PATRICIA CARROLL, VC 2003-BR-150, continued from Page 274

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

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

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

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

1. This variance is approved for the location of a two story addition, as shown on the plat prepared by Henry L. Berben, dated September 25, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. STUART T. JEFFERSON, VC 2003-MV-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from front lot line and fence greater than 4.0 ft. in height in front yard. Located at 9207 Ox Rd. on approx. 1.08 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 12. (Moved from 12/2/03 to 11/18/03 per appl. req.) (Def. from 11/18/03 for notices)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stuart Jefferson, 9207 Ox Road, Lorton, Virginia, replied that it was.

Aaron Shriber, Rezoning and Special Exception Branch, said the application was deferred from November 18, 2003, because of an error in the notices. He made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 21.5 feet from the front lot line and a fence 6.0 feet in height in the front yard. A minimum front yard of 40 feet is required and the maximum allowable fence height is 4.0 feet; therefore, variances of 18.5 feet and 2.0 feet, respectively, were requested.

Mr. Jefferson presented the variance request as outlined in the statement of justification submitted with the application. He explained that his home was built in the 1930s from the roadway's 20-foot setback, and 20 feet was the usual during that era. He said the setback was later changed to 40 feet, putting the house approximately 20 feet into the setback, which placed an undue hardship for any modernization or renovation for the front portion of his home. He pointed out that Ox Road was scheduled to be re-routed sometime in the future, making Route 123, which currently ran in front of his house, an access route. His neighbors supported his proposal, he said, and their proclamation of support was contained in the record. Mr. Jefferson explained that his L-shaped lot fronted Furnace Road and that the Virginia Department of Transportation (VDOT) had taken a 50-foot wide easement along his property to complete road improvements and provided a fence as a sound barrier and protector against construction and foot traffic. He said that VDOT planned to landscape his property along the fence line after completing the Furnace Road improvements.

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

Mr. Hart moved to approve VC 2003-MV-135 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STUART T. JEFFERSON, VC 2003-MV-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from front lot line and fence greater than 4.0 ft. in height in front yard. Located at 9207 Ox Rd. on approx. 1.08 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 12. (Moved from 12/2/03 to 11/18/03 per appl. req.) (Def. from 11/18/03 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 16, 2003; and

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

1. The applicant is the owner of the land.
2. Their house predates the Zoning Ordinance setback requirements as it was built in the 1930s.
3. The entire neighborhood has homes along Route 123 that are very close to the street.
4. The front plane of the addition is actually the front line of the existing house.
5. The variance will not have a negative impact on the neighborhood nor is the character of the neighborhood changed.

~ ~ ~ December 16, 2003, STUART T. JEFFERSON, VC 2003-MV-135, continued from Page 276

6. VDOT constructed the fence for safety reasons and will maintain it. Because the fence is a significant distance from the roadway, the difference between a four-foot fence versus a six-foot fence is not significant or very noticeable.

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

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

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

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

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

1. This variance is approved for the location of a two story addition and fence, as shown on the plat prepared by Larry N. Scartz, dated June 24, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day

~ ~ ~ December 16, 2003, STUART T. JEFFERSON, VC 2003-MV-135, continued from Page 277

waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. TRUSTEES OF EPIPHANY LUTHERAN CHURCH OF MT. VERNON, SPA 67-V-595 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-595-67 previously approved for a church with child care center to permit reduction in land area. Located at 5513 and 5521 Old Mill Rd. on approx. 3.64 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4A and 4A1.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Esquire, Walsh, Colucci, et al., P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, replied that it was.

Mr. Hart made a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested an amendment to the previously approved special permit to permit a reduction in land area. The applicant proposed to delete 15,000 square feet of land area, which contained the parsonage, with 3.29 acres remaining for the church property. She noted that the plat indicated additional area to be dedicated for public street purposes, leaving the church property with 2.8 acres of total land area. There were no other changes to the structures or uses proposed at that time, Ms. Langdon stated, and staff recommended approval of the special permit amendment application subject to the development conditions contained in the staff report.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said that the application property consisted of two subdivided parcels that were subject to an approved special permit. The applicant requested a reduction in land area for the property encumbered by the special permit to allow the sale of Parcel 4A1 to generate needed funds to improve its existing facilities.

Mr. Hart questioned staff concerning density credits, to which Ms. Langdon stated that the method was correct for reserving the density credit with the dedication as evidenced on the plat.

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

Ms. Gibb moved to approve SPA 67-V-595 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 EPIPHANY LUTHERAN CHURCH OF MT. VERNON, SPA 67-V-595 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-595-67 previously approved for a church with child care center to permit reduction in land area. Located at 5513 and 5521 Old Mill Rd. on approx. 3.64 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4A and 4A1. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ December 16, 2003, TRUSTEES OF EPIPHANY LUTHERAN CHURCH OF MT. VERNON, SPA 67-V-595, continued from Page 278

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 16, 2003; and

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

1. The applicant is the owner of the land.
2. The staff report recommends approval.
3. The floor area ratio (FAR) is minimal.
4. There have been no issues raised concerning the appropriateness of the rectory being removed from the church property.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5513 and 5521 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 prepared by Bowman Consulting, dated October 9, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be one-hundred seventy (170).
6. The total maximum daily enrollment for the child care center shall be 60.
7. The maximum hours of operation for the child care center shall be from 9:00 am to 12 noon, Monday through Friday.
8. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
9. Except for dead or dying vegetation, all existing vegetation on Lot 4A shall remain and shall serve as the required transitional screening.
10. The barrier requirement shall be waived along all lot lines.
11. If any lights are replaced, the replacement lighting shall be in conformance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
12. All signs on the property shall conform to the provisions of Chapter 12.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the

~ ~ ~ December 16, 2003, TRUSTEES OF EPIPHANY LUTHERAN CHURCH OF MT. VERNON, SPA 67-V-595, continued from Page 279

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

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. CARL E. COX, TRUSTEE, VC 2003-MA-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.0 ft. with eave 24.0 ft. from front lot line of a corner lot and carport 4.4 ft. with eave 4.0 ft. from side lot line. Located at 6327 Lakeview Dr. on approx. 16,183 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 25.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carl Cox, 6327 Lakeview Drive, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 27 feet with eave 24 feet from the front lot line of a corner lot and a carport 4.4 feet with eave 4.0 feet from a side lot line. A minimum front yard of 35 feet and minimum side yard of 15 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum front and side yards, and a carport is permitted to extend 5.0 feet into the side yard; therefore, variances of 8.0 feet, 8.0 feet, 5.6 feet, and 8.0 feet, respectively, were requested.

Mr. Cox presented the variance request as outlined in the statement of justification submitted with the application. He requested approval to build a carport onto the left side of his home which, he pointed out, was the only practical place as the driveway was there and the proposed carport would be near the house's main entrance and the side entrance to the kitchen. He pointed out that his next-door neighbor had the same configuration. He said that last year the Board rejected his previous application which requested an addition to the back of his house as well as the variance currently requested. Mr. Cox said he relocated the planned rear addition within the normal setback and was now submitting only the request for the carport and the expansion of the right side of his home toward Aqua Terrace. He explained that the current placement of the house allowed for some expansion of the house, but the 35-foot setback for his corner lot combined with the narrowing of his lot reduced the expansion. He submitted that his application today represented a genuine effort to respond to the views the Board had expressed at his hearing last year.

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

Mr. Beard moved to approve VC 2003-MA-144 for the reasons stated in the Resolution.

Mr. Hammack commented that he supported the motion. He said he remembered voting against Mr. Cox's application last year, but he said he believed these two variances were justified under the Ordinance and that

~ ~ ~ December 16, 2003, CARL E. COX, TRUSTEE, VC 2003-MA-144, continued from Page 280

the current application was much improved.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL E. COX, TRUSTEE, VC 2003-MA-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.0 ft. with eave 24.0 ft. from front lot line of a corner lot and carport 4.4 ft. with eave 4.0 ft. from side lot line. Located at 6327 Lakeview Dr. on approx. 16,183 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 25. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 2003; and

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

1. The applicant is the owner of the land.
2. The lot is a corner lot with both sides considered front yards.
3. The uniqueness of the lot warrants 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

~ ~ ~ December 16, 2003, CARL E. COX, TRUSTEE, VC 2003-MA-144, continued from Page 281

deprive the user of reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of an addition and a carport, as shown on the plat prepared by Donald E. Hamilton, dated January 11, 2002, revised through September 15, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. JUAN S. AND ROSARIO JUSTINIANO, VC 2003-MA-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from rear lot line. Located at 7026 Roundtree Rd. on approx. 8,400 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((26)) 21.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Juan Justiniano, 7026 Roundtree Road, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of an addition 23 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 2.0 feet was requested.

Juan Justiniano presented the variance request as outlined in the statement of justification submitted with the application. He said that the requested variance from 25 feet to 23 feet would allow for a 10-foot addition to the kitchen and dining room, which would accommodate his dining room table and allow sufficient circulation for family members. He pointed out that the foundation remained at the required 25-foot setback, and only the second floor addition would project two feet into the setback.

Mr. Sherman responded to Mr. Hart's question concerning the detached, concrete patio that was depicted on the plat, clarifying that an accessory structure must be less than 8 ½ feet in height and that a note on the plat had indicated that the structure was detached.

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

Mr. Hammack moved to approve VC 2003-MA-148 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JUAN S. AND ROSARIO JUSTINIANO, VC 2003-MA-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from rear lot line. Located at 7026 Roundtree Rd. on approx. 8,400 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((26)) 21. 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 16, 2003; and

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

1. The applicants are the owners of the land.
2. The house's design has set it at a minimum front setback of 35 feet which places the bulk of the house into the rear half of the property leaving a very shallow rear yard.
3. The variance request of two feet is very minimal for the addition's construction.
4. The Zoning character is not changed and the adjacent properties will have no adverse impact.

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

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

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

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

~ ~ ~ December 16, 2003, JUAN S. AND ROSARIO JUSTINIANO, VC 2003-MA-148, continued from Page 283

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by George M. O'Quinn, dated July 10, 2003, revised September 24, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M.        ANDREW SHERIDAN, VC 2003-BR-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 1 having a lot width of 76.24 ft. Located at 4716 Wakefield Chapel Rd. on approx. 2.61 ac. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 285.

Before the case commenced, Ms. Gibb announced that she would recuse herself.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William M. Baskin, Jr., Esquire, Baskin, Jackson, Hansbarger & Duffett, P.C., 301 Park Avenue, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a lot width variance to subdivide the lot into three lots for the purpose of creating three single-family detached residential building lots. The Proposed Lot 1 would contain Oak Hill, she noted, and would continue to access Wakefield Chapel Road from an existing driveway. Ms. Stanfield stated that the reason for the variance request was that the width of the lot where the driveway met Wakefield Chapel Road was 76.24 feet. She noted that, as proposed, the other two lots met all Zoning Ordinance requirements including lot width. Ms. Stanfield pointed out that there were historic American boxwood bushes, believed to be approximately 250 years old, located along the lot line that the two new lots would share and would be damaged or removed entirely if the site was developed as proposed. Ms. Stanfield advised the Board that representatives from the community, including Supervisor Bulova, the applicant, and staff, met on December 12, 2003, to discuss the application, and the applicant proposed moving the house footprints forward to mitigate their impact on the American boxwoods. Submitted that morning, she pointed out, was a new plat and revised development conditions, but staff had not had the opportunity to review in detail the new material.

Mr. Baskin presented the variance request as outlined in the statement of justification submitted with the application. He explained that because of the property's unusual shape, the requested rezoning would create two lots that each had the required frontage and met all applicable Zoning Ordinance requirements.

~ ~ ~ December 16, 2003, ANDREW SHERIDAN, VC 2003-BR-147, continued from Page 284

Lot 1, he noted, which contained the historic house, would have frontage of 76 feet, approximately four feet short. He noted that the subdivision would not change the current access to Lot 1. The three changes to the plat distributed that morning, he pointed out, were: the proposed two houses would be moved forward closer to Braeburn Road; the rear lot lines would be moved forward; and, a conservation easement would be established to preserve the historic boxwoods. He noted that preservation of the historic home, Oak Hill, and the boxwoods was important, but also pointed out that the property could be developed by right, which would destroy the historic house and boxwoods. The applicant did not agree with several of staff's development conditions, Mr. Baskin stated. Issues to resolve, he said, were which organization would create the conservation easement and determining what portions of Oak Hill house would be preserved or modified.

Responding to Mr. Pammel's question, Mr. Baskin said the applicant was not in the position to agree to an archeological study at this time.

Mr. Baskin requested approval of the variance in accordance with the applicant's proposed development conditions dated December 16, 2003, distributed that morning.

In response to Mr. Hammack's questions regarding the applicant's efforts to save the boxwoods, Mr. Baskin said that the site was designed so that as few as possible of the historic shrubs would be disturbed or removed. He also explained the reason for the design of the houses, noting that the applicant believed certain amenities were necessary in order to attract a specific buyer so as to meet the applicant's economic requirements. The suggestion of moving the driveways to the other side of the houses was addressed during the meeting the prior week, he said, and both staff and the neighbors requested there be no change.

Susan Langdon, Chief, Special Permit and Variance Branch, clarified that at the meeting referenced by Mr. Baskin, when it was determined there would be no changes to the design or size of the houses, staff suggested the houses be moved forward as much as possible. She said staff cared to save the boxwoods, but they also sought the best case scenario. Ms. Langdon noted that with the Urban Forrester's assistance, it was determined that moving the boxwoods was not feasible due to their age and root system. She concurred with Mr. Baskin's statement that it was possible to relocate the boxwoods, but maintained that their chance of survival was questionable.

Mr. Pammel commented that the site was prime for historic trust preservation and hoped it could be preserved. He stated that, while walking the site, he had seen a perfect American Holly tree that was not identified on the plat, and suggested that it be preserved.

Mr. Hart suggested a development condition stipulating that the homes be brick on three sides, and that the garage on one house be front-loading. Mr. Baskin agreed to the development condition regarding brick facades but said he would not entertain the suggestion concerning front loading garages.

In response to Mr. Hart's concern, Ms. Langdon said staff would work with the Urban Forrester on the possibility of moving the boxwoods, and staff would craft a development condition. Ms. Langdon also noted that the applicant was to provide plantings along the side lot lines to screen and buffer.

Mr. Baskin assured that it was the developer's intention to appropriately landscape the area.

In response to Mr. Beard, Mr. Baskin stated that if the variance was not approved, there was the possibility that the site would be developed by right and the historic house razed to develop seven luxury homes. Mr. Baskin stated, however, that they were continuing to work with preservation groups to save the entire parcel, that the opportunity to preserve the site in its entirety was still sought.

Mr. Beard commented that the crux of the issue was that a landowner had the right to utilize his property to the highest and best use, in concert with governmental authority. To save the property in its historic state might not be entirely feasible, and some concessions must be made or the loss of the entire site to development was practically assured. Mr. Baskin concurred with Mr. Beard's statement.

In response to Mr. Pammel's question, Mr. Baskin said the historic house was to be restored consistent with the preservation group's instructions, with the intention of selling the home after some interior modernization.

Vice Chairman Ribble called for speakers.

Janice Hedetniemi, 4702 Philadelphia Place, Annandale, Virginia, President of the Oak Hills Citizens Association and the Braddock District representative to the Transportation Advisory Commission came forward to speak to the application. She said as the property would not be designated entirely as a historic preservation, they supported the proposed development. She said their concern was the compatibility of the new homes within the existing, older neighborhood. She was pleased that the developer had demonstrated concessions in addressing issues and concerns. Ms. Hedetniemi pointed out the Archeological Survey contained in the staff report. Her final concern, said Ms. Hedetniemi, was that the developer continued to be sensitive to the neighbors.

Mike Synco, 8933 Braeburn Drive, Springfield, Virginia, came forward to speak to the application. He voiced his affection for the property and its history and said he was saddened over the loss of so much of our heritage.

Mr. Pammel commented that he shared Mr. Synco's concern.

Phil Bracher, 8506 Braeburn Drive, Annandale, Virginia, came forward to speak to the application. He gave a brief history of the property and care of the mansion and boxwoods. He pointed out that both were not maintained over the last number of years and would require a lot of work to refurbish. Mr. Bracher said that he believed the developer would clean up and restore the area, and he welcomed that.

Mr. Baskin, in his rebuttal, thanked the speakers for their comments and those who participated during the meeting Friday. He stated that their concerns had been heard and considered as they modified the plan. Mr. Baskin affirmed his support of the plan, stating it was a good plan. He requested the Board's approval.

Ms. Langdon called the Board's attention to one difference in the applicant's proposed development conditions that concerned her. She pointed out that staff's Condition Number 4 required the house on Lot 1, historic Oak Hill, to remain, but that language was removed from the developer's conditions.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel commented that a deferral was warranted to permit time to carefully consider the possibility of saving the historic site in its entirety. He said he believed preservation of heritage was important and too much history had been lost in the County with the overnight destruction of historic homes to development. Mr. Pammel stated that an archeological analysis of the site was necessary to assure that significant artifacts were recovered. Mr. Pammel moved to defer decision on VC 2003-SU-145 for 90 days. The motion was seconded by Mr. Hammack.

Mr. Beard said he would not support the motion. He pointed out that the developer had the right to develop the lot into seven lots. He commented that he wanted the historic house to remain, and he said he believed some accommodation was required to keep as much as possible of the site in its historic condition.

Responding to Vice Chairman Ribble's request for verification, Mr. Baskin said that negotiations with the preservation groups began five months ago with the primary focus being the trust's acquisition of a preservation easement to cover the entire property. He pointed out that the revised plat showed that the Oak Hill house would remain.

By seconding the motion he concurred with the deferral, said Mr. Hammack, and he urged that the opportunity to preserve the entire site be explored. He requested clarification of the design of the homes, the double-wide driveways, the side-loading garages, and additional information on transplanting the boxwoods that were not shown on the conservation easement.

Mr. Baskin voiced his objection to the deferral.

Mr. Hart agreed with the deferral. He requested a development condition be crafted to address the architecture, particularly the materials slated for construction. He also wanted an analysis on moving the boxwoods, the results of negotiations with the Park Authority, information on an opportunity to save the vegetation around Oak Hill mansion, and the feasibility of moving the houses three or four feet forward toward the building restriction line.

~ ~ ~ December 16, 2003, ANDREW SHERIDAN, VC 2003-BR-147, continued from Page 286

In response to Mr. Hart's question, Mr. Baskin opposed the deferral, stating that a 90-day deferral might force the issue of whether the developer developed under this scenario or a by-right scenario. He said that negotiations would continue with the Park Authority and the Northern Virginia Trust, but cautioned that there were contractual obligations to settle.

Discussion followed among the Board members and Ms. Langdon concerning a deferral date that was acceptable to the applicant, would be a time when the necessary staff was available due to the upcoming holidays, and that allowed staff sufficient time to research and propose new development conditions.

Mr. Hart amended his motion to defer decision on VC 2003-BR-147 for 60 days to February 17, 2004, at 9:00 a.m. Mr. Baskin noted his objection to the February date. Mr. Pammel supported the amended motion.

The Board clarified that the record remained open for written testimony, and only staff and the applicant's representative could give verbal testimony.

Although opposed to the deferral, Mr. Beard requested that at decision time more information be provided regarding the houses' proposed features, such as whether the garage accommodations were for two or three cars.

The motion carried by a vote of 3-2. Vice Chairman Ribble and Mr. Beard voted against the motion. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M.        PATRICK AND KIMBERLY MEERE, TRUSTEES, VC 2003-SU-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 4.2 ft. from side lot lines. Located at 4323 Cub Run Rd. on approx. 16,769 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 41A.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kimberly Meere, 4323 Cub Run Road, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story two-car detached garage to be located 5.0 feet with eaves 4.2 feet from two side lot lines. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 15 feet and 12.8, respectively, were requested. Ms. Stanfield stated that the property was previously zoned R-2 cluster, which required a minimum side yard of 8.0 feet and total side yards of 24 feet. She noted that on January 7, 2003, the BZA denied VC 2002-SU-169 for the subject application property to permit construction of a three-car garage with a second story to be located 5.0 feet from the side lot lines. The garage presented at that time was 37.3 feet wide while the current application depicted a garage that was 26.5 feet wide.

Ms. Meere presented the variance request as outlined in the statement of justification submitted with the application. She said the house was circa mid-1700s, and they bought it in 1990. She explained that when determining an appropriate site for the garage, they considered the impact on the neighbors and saving, what they considered, historic trees. Ms. Meere concurred with the Board's denial last year, agreeing that the structure proposed was too large, and they reduced the size, as well as took the Board's suggestions and took out a bay and a bathroom. She submitted that they intended the third bay for storage for her husband's tools and that they never intended the garage to be livable space. She distributed photos of the trees, the boxwoods, and the stone house, pointing out that a detached garage would detract from the architecture of the house. Ms. Meere explained that the rooms were quite small with no storage and exceptionally little closets, which was typical of old farm houses. She said they loved the little old house, thought it charming, and hoped to build a detached garage with an upstairs loft for the much needed storage space.

Mr. Pammel commented that restoration of such houses constructed in the Federalist period was indeed a

~ ~ ~ December 16, 2003, PATRICK AND KIMBERLY MEERE, TRUSTEES, VC 2003-SU-145, continued from Page 287

challenge and agreed that the closets were very small.

In response to Mr. Hammack's question, Ms. Meere explained that the loft would be accessed by a set of stairs adjacent to one of the bays. She noted that the garage would back up to the neighbor's garage, and the neighbor's garden on Lot 40 would be adjacent to the garage.

Mr. Hart said he thought he recalled their case from last year. He said he had no problem with the garage up against the neighbor's garage, but a two-story unit five feet from the property line was not usual for the Board's approval. He suggested moving the garage out a few feet further from the back yard, which should not block the view of the graveyard.

Ms. Meere had no objection to moving the garage eight feet instead of five feet, but voiced concern over transplanting the boxwoods.

Ms. Stanfield responded to Mr. Hart's question, saying staff had no information on the historical significance of the two boxwoods.

In response to Mr. Hart's question, Ms. Meere said that where the garage was currently proposed, the boxwoods would be saved, and the graveyard could be viewed from several rooms of the house. She concurred that the boxwoods would be considerably shaded, more so than presently, if up against the north wall of the garage.

In response to Mr. Beard's question, Ms. Meere said that no boxwoods would be disturbed with their proposal.

Mr. Hammack said that he shared Mr. Hart's reservation about a two-story garage five feet from the property line, and that was an objection of his at the prior hearing. He commented that a one-story did not impose as much bulk right up to the neighbor's rear yard.

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

Mr. Hart moved to approve VC 2003-SU-145 for the reasons stated in the Resolution.

Mr. Pammel seconded the motion. He commented that the property was indeed unique.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK AND KIMBERLY MEERE, TRUSTEES, VC 2003-SU-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. with eave 4.2 ft. from side lot lines. Located at 4323 Cub Run Rd. on approx. 16,769 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 41A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 16, 2003; and

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

1. The applicants are the owners of the land.
2. The lot is an oddly shaped, pipestem with a trapezoid configuration having a corner cut out. This shape has rendered the building restriction lines to not be at right angles to each other.
3. The existing house is fairly old with a unique style. An attached garage would not be aesthetically

~ ~ ~ December 16, 2003, PATRICK AND KIMBERLY MEERE, TRUSTEES, VC 2003-SU-145, continued from Page 288

pleasing nor in harmony with its architectural style.

4. This revised design is improved from the original submission with a two-car garage preferable to a three-car garage.
5. There won't be a negative impact to the neighbor's property as their garage has a similar placement situation.
6. This design preserves a stand of established boxwoods and mature trees.
7. The garage's placement in the lot's rear corner has no significant impact on the adjoining properties and there are no objections to the proposal.

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

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

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

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

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

1. This variance is approved for the location of the accessory structure shown on the plat prepared by Paciulli Simmons & Associates, LTD, dated as signed September 25, 2002, as revised through September 25, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The accessory structure shall be architecturally compatible with the existing dwelling.
4. The accessory structure shall not be used as living space.

~ ~ ~ December 16, 2003, PATRICK AND KIMBERLY MEERE, TRUSTEES, VC 2003-SU-145, continued from Page 289

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SPA 01-Y-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 01-Y-069 previously approved for a church with child care center to permit change in permittee and site modifications. Located at 15113, 15117 and 15121 Lee Hwy. and 6611 Cedar Spring Rd. on approx. 11.27 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 1, 2, 2A and 64-2 ((3)) 21.

Mr. Hart made three disclosures, but indicated he did not believe his ability to participate in the case would be affected.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John L. McBride, Esquire, Vanderpool, Frostick & Nishanian, PC, 9200 Church Street, Suite 400, Manassas, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield made staff's presentation as contained in the staff report. The application was an amendment to SP 01-Y-069, previously approved for a place of worship and a child care center, to permit a change in permittee from the Washington Eden Korean Presbyterian Church to the New Life Christian Church and site modifications. The site modifications, she explained, consisted of an enlargement of the dry stormwater detention pond and an extension of a driveway from the parking area to allow maintenance vehicles to access the pond, the designation of a sanitary sewer easement, and an overall increase in undisturbed open space. She noted that no other physical or operational changes were proposed, and staff recommended approval of SPA 01-Y-069, with adoption of the Proposed Development Conditions contained in Appendix 1 of the staff report. Ms. Stanfield noted that the development conditions indicated that William M. Robson prepared the plat, which was incorrect. The current plat was prepared by Christopher Consultants, she said, and the development conditions should be changed to reflect that information.

Mr. Pammel pointed out that the application appeared very straightforward and asked Mr. McBride if he had anything else he might add.

Mr. McBride said he had nothing new to inform the Board, but pointed out that there had been a change to the lighting ordinance and that their development conditions were changed to accommodate that. He introduced Brad Andrews and Todd Wilson, ministers of the church. Mr. McBride requested the Board's favorable approval.

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

Mr. Pammel moved to approve SPA 01-Y-069 for the reasons stated in the Resolution.

Mr. Hammack seconded the motion.

Ms. Gibb noted her concern about the requirement to have a paved access-way to the stormwater

~ ~ ~ December 16, 2003, NEW LIFE CHRISTIAN CHURCH, SPA 01-Y-069, continued from Page 290

management pond, as she said she believed the requirement only produced more asphalt, impervious surface, and it was unnecessary because those access-ways were rarely used.

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## COUNTY OF FAIRFAX, VIRGINIA

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

NEW LIFE CHRISTIAN CHURCH, SPA 01-Y-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 01-Y-069 previously approved for a church with child care center to permit change in permittee and site modifications. Located at 15113, 15117 and 15121 Lee Hwy. and 6611 Cedar Spring Rd. on approx. 11.27 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 1, 2, 2A and 64-2 ((3)) 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 December 16, 2003; and

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

1. The applicant is the owner of the land.
2. The application is in accordance with all applicable Zoning Ordinance Codes and requirements.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special permit plat prepared by William M. Robson, dated October 24, 2001, as revised by Christopher Consultants through September 26, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. Any plan, submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. In the event a waiver of service drive dedication and construction is not granted by DPWES, development of site shall be in substantial conformance with the plat attached hereto as Exhibit A. Notwithstanding that which is shown on Exhibit A, transitional screening Type 1 shall be provided along the site's frontage and shall consist of twenty-five (25) feet of a mixture of evergreen and deciduous trees, while allowing some areas through which the church may be viewed from Lee Highway, subject to review and approval of the Urban Forestry Division of DPWES.
5. The maximum number of seats in the principal place of worship shall be 700.

~ ~ ~ December 16, 2003, NEW LIFE CHRISTIAN CHURCH, SPA 01-Y-069, continued from Page 291

6. The maximum total daily enrollment for the child care center shall not exceed 60 children.
7. Hours of operation for the child care center shall be a maximum of 6:45 a.m. to 6:45 p.m. Monday through Friday.
8. All parking shall be on site, as depicted on the Special Permit Plat.
9. Transitional screening shall be provided as follows:
  - Transitional Screening 1 shall be provided along the northwestern and northeastern lot lines, and on the west side of the proposed stormwater management pond, as specified in Article 13 of the Fairfax County Zoning Ordinance and subject to review and approval by the Urban Forestry Division of DPWES.
  - Existing vegetation shall be preserved, as depicted on the Special Permit Plat, along the remainder of the western and eastern lot lines and shall satisfy the transitional screening requirements.
  - Existing vegetation shall be preserved along the northern lot line as depicted on the Special Permit Plat.
  - Existing vegetation shall be preserved and shall be supplemented, as depicted on the Special Permit Plat, along all lot lines.
  - Notwithstanding what is shown on the plat, every effort shall be made to preserve some of the existing vegetation in the middle area of the northern lot line. In consultation with the Urban Forester, the applicant shall designate individual trees to preserve while allowing some areas through which the church may be viewed from Lee Highway. Any supplemental vegetation added to this area shall be flowering deciduous trees compatible with the existing evergreen trees.
10. The barrier requirement shall be waived.
11. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
12. The limits of clearing and grading shall be no greater than shown on the special permit plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
13. The applicant shall make every effort to increase the amount of undisturbed open space to 50%, through a combination of strategies including, but not limited to, reduction in the limits of clearing and grading and size of the stormwater management facilities, and increasing the amount of tree preservation, where possible.
14. Any proposed lighting of the parking lot areas shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
15. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES, provided, however, that such facilities shall be reduced or eliminated if alternative methods can be utilized throughout the site to mitigate

~ ~ ~ December 16, 2003, NEW LIFE CHRISTIAN CHURCH, SPA 01-Y-069, continued from Page 292

water runoff and to restore water quality and no additional vegetation shall be removed.

16. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
17. A turn-around shall be provided as part of Phase 1 at the eastern terminus of parking area "A".
18. The proposed northbound right turn deceleration lane on Lee Highway (Route 29) shall be designed to VDOT standards.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 previously approved for a place of worship to permit a private school of general education. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Moved from 4/3/01 and 5/22/01). (Deferred from 7/17/01 and 10/30/01). (Deferred for decision only from 1/29/02, 7/2/02, 12/10/02, and 6/10/03)

Vice Chairman Ribble noted that there was letter requesting withdrawal of the application and called for a motion.

Mr. Pammel moved to accept the withdrawal request for SPA 84-M-002-2. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02 and 4/30/02) (Def. for Dec. Only from 6/4/02 9/10/02 and 2/4/03) (admin moved from 5/6/03) (def from 5/20/03 and 10/7/03 for decision only)

~ ~ ~ December 16, 2003, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 293

Vice Chairman Ribble announced that there was a deferral request to March 16, 2004.

Diane Johnson-Quinn, Zoning Administration Division, referenced staff's December 8, 2003 memorandum, explaining that the adjoining property owner, Wilfredo Cifuentes, had acknowledged responsibility for the storage of junk material on the Dowdy-Hunter property. She said staff was pursuing that resolution through the courts; however, the case was continued to January 23, 2004. Ms. Johnson-Quinn said Mr. Cifuentes had made some progress, and staff supported a deferral to allow the appellants time to remedy the violations.

Mr. Hammack moved to defer A 2001-LE-023 to March 16, 2004, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ December 16, 2003, Scheduled case of:

9:00 A.M. CARLOS AND MALENA CABALLERO, A 2003-LE-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have installed a tennis court which covers more than 30% of the minimum required rear yard and includes a fence and a series of pole mounted light fixtures in excess of seven feet in height all in violation of the Zoning Ordinance provisions for accessory uses and structures. Located at 6435 Franconia Rd. on approx. 18,826 sq. ft. of land zoned R-2. Lee District. Tax Map 81-3 ((12)) 1.

Vice Chairman Ribble announced that there was a request for deferral of the appeal application, as noted in the memorandum dated December 15, 2003, from Jayne Collins, Zoning Administration Division.

In response to Mr. Hart's request for clarification, Susan Langdon, Chief, Special Permit and Variance Branch, explained that one of the public hearings that was referenced in Ms. Collins' memorandum regarded a special permit for building in error and a variance application to be heard February 24, 2004. She noted that staff had requested a deferral date of March 30, 2004, for the appeal application in order to know the outcome of the special permit and variance application.

Mr. Hammack moved to defer A 2003-LE-047 to March 30, 2004, at 9:30 a.m. Mr. Pammel and Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ December 16, 2003, After Agenda Item:

Consideration of Acceptance  
WL Homes, LLC dba John Laing Homes-Washington Division  
and RSG Associates, a Virginia Limited Partnership

Mr. Pammel moved to accept the withdrawal requested in a letter dated December 10, 2003, submitted by Stephen K. Fox. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

In response to Ms. Gibb's question on why the application was withdrawn, Diane Johnson-Quinn, Zoning Administration Division, explained that the appellant had determined to pursue its concerns through the Chesapeake Bay Preservation Ordinance.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Holy Transfiguration Church (formerly Church Diocese of Newton  
for the Melkites in the United States of America, Inc.), SPA 80-D-069-2

Mr. Pammel moved to approve 150 days of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was March 11, 2004.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Rose Hill Farms Community Center, Incorporated, SPA 69-L-055

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Hammack moved to approve one year of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was December 27, 2004.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Odalys Smith and Virginia I. Carbonell, SPA 94-Y-055-2

Mr. Pammel moved to approve 30 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 29, 2006.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Grace Covenant Church, SP 00-Y-050

Mr. Pammel moved to approve 30 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 16, 2006.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Trustees of Shiloh Baptist Church of Odrick's Corner, SP 00-D-069

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Pammel moved to approve 18 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was March 7, 2005.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Basheer-Edgemore-McLean, LLC, VC 00-P-157

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Pammel moved to approve 12 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was August 21, 2004.

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~ ~ ~ December 16, 2003, After Agenda Item:

Request for Additional Time  
Archdiocese of the Syrian Orthodox Church, a/k/a Archdiocese of the Syrian Orthodox Church  
of the Antioch for the Eastern United States, SPA 79-M-031-5

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Pammel moved to approve six months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 28, 2004.

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~ ~ ~ December 16, 2003, After Agenda Item:

Approval of December 9, 2003 Resolutions

Mr. Pammel and Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Paula A. McFarland

Approved on: February 8, 2005

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
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 6, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Mr. Pammel moved to reappoint John DiGiulian as the Chairman, and John F. Ribble III and Paul W. Hammack, Jr., as the Vice Chairmen. Ms. Gibb seconded the motion, which carried by a vote of 7-0. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no further Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M.      ROBERT CHARLES BARTHLE, JR. AND ELIZABETH M. BARTHLE, VC 2003-SP-161  
 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 square feet or less and deck 10.4 ft. from front lot line. Located at 6093 Arrington Dr. on approx. 26,821 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((6)) 974.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah E. Hall, Esquire, Blankinship & Keith, PC, 4020 University Drive, Suite 300, Fairfax, Virginia, the applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit an accessory structure, an in-ground swimming pool, to be placed in the front yard of a corner lot that contained 36,000 square feet or less. The applicant also sought approval of an open deck to be attached to the dwelling 10.4 feet from the front lot line of a pipe-stem lot. Notwithstanding what was shown in the staff report (*and stated*), a minimum front yard of 40 feet was required; therefore, a variance of 29.6 feet was requested for the deck.

Sarah Hall presented the variance request as outlined in the statement of justification submitted with the application. She said the applicants bought the house in 1984, were the original owners, and had raised their children in that home. Because of both applicants' heart conditions, their doctor recommended that they swim regularly for exercise. Ms. Hall pointed out that there was no other place to locate the pool due to the lot's steep slopes, a septic field, and a septic tank with a pump, and stated that the pool would be well landscaped, partially tucked into a small hill, and out of the neighbors' view. Ms. Hall noted that the proposal had the approval of the Fairfax Station's Architectural Review Board and that the conditions for a variance were met as the applicants would suffer undue hardship if denied the pool.

Chairman DiGiulian called for speakers.

Richard W. Silva, 6094 Arrington Drive, Fairfax Station, Virginia, came forward to speak in support of the application. He said he was the next door neighbor to the applicants and had approved of all the improvements the applicants had made over the years as they only contributed to the quality of the neighborhood. He said he had no objection to their proposal.

William H. and Carol Price, 6099 Arrington Drive, Fairfax Station, Virginia, came forward to speak in support of the application. They said they thought it would be good for the neighborhood. Ms. Price said that as their next-door neighbors, they would be most affected, and they had no objections.

Susan R. Tawfik, 6100 Arrington Drive, Fairfax Station, Virginia, came forward to speak in support of the application. She said she had no problem with the applicants' proposal.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-SP-161 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

ROBERT CHARLES BARTHLE, JR. AND ELIZABETH M. BARTHLE, VC 2003-SP-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 square feet or less and deck 10.4 ft. from front lot line. Located at 6093 Arrington Dr. on approx. 26,821 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((6)) 974. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The unusual front yard requirement is the result of a pipestem driveway.
3. The exercise pool that is proposed is in the functional rear yard of the property and is not visible by any other property owners.
4. The application is supported by the adjacent property owners, in particular Lot 983 who would be most affected.
5. The granting of this variance would not change the character of the zoning district nor would it be detrimental to the adjacent properties.

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

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

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

~ ~ ~ January 6, 2004, ROBERT CHARLES BARTHLE, JR. AND ELIZABETH M. BARTHLE,  
VC 2003-SP-161, continued from Page 298

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

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

1. This variance is approved for the location of the pool and deck shown on the plat prepared by Bartlett Consultants, Ltd. dated August 15, 2003, revised through October 13, 2003, submitted with this application and are not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. GARY A. MARSHALL, EDWARD C. GALLICK, TR., AND LINDA C. ZEMKE, TR., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with Lot 1 having a lot width of 89.99 ft. for a corner lot and both lots with average lot area less than 11,500 square feet. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, agent for the applicants, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of one lot into two lots with Lot 1 having a lot width of 89.99 feet for a corner lot, and both lots with an average lot area of less than 11,500 square feet, which is the minimum lot size required in the R-3 District. Due to the potential to serve as a destabilizing impact on the neighborhood, it was staff's determination that the subject application did not meet all of the applicable Zoning Ordinance requirements nor did it meet the recommendations of the Comprehensive Plan for the area.

Jane Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She informed the Board that both the applicants and the project engineer, Robert S. Schwenger, with Dewberry & Davis, were present to answer questions. She stated that the property met the nine required standards for a variance, and when the property was purchased in 1977, it was acquired in good faith. Ms. Kelsey said the County had confirmed that the lot was legal. She stated that it was a corner lot that had physical characteristics that were unusual, with the main difference being that it extended into the middle of both Shreve Road and Oldewood Drive. She explained that in the 1940s, Oldewood Drive was an outlet road, which was not a general condition that the Board of Supervisors addressed through a rezoning, and Shreve Road was considered a farm-to-market road that did not affect other areas of the County. Ms.

~ ~ ~ January 6, 2004, GARY A. MARSHALL, EDWARD C. GALLICK, TR., AND LINDA C. ZEMKE, TR., VC 2003-PR-157, continued from Page 299

Kelsey said she disagreed with staff's analysis that the area's character would change and be destabilized. Utilizing the overhead projector, she pointed out a number of lots which ranged in size from 9,000 to 11,000 square feet, submitting that the area was developed in what she termed a "hodgepodge" fashion with homes constructed in the 1940s, 1950s, and 1960s. Many were remodeled, many improved with additions, and there were new homes along Shreve Road. She stated that variances were approved in the area, which proved that the neighborhoods' character had not changed nor had the area been destabilized. With regard to the right-of-way dedication, Ms. Kelsey said the State and County had used that portion of land for years, but continued to press the owner to turn it over for public purposes. A title search revealed the property was not condemned nor had the State purchased it, and since its development, no property owners were paid any money for the use of the road, yet they continued to pay taxes on the 8,000 square feet. Ms. Kelsey pointed out that if it were not for the 8,000-square-foot dedication, the two subject lots would meet Zoning Ordinance requirements for both lot width and average lot size. Addressing staff's issue concerning the Comprehensive Plan's recommendation of two to three dwelling units per acre, Ms. Kelsey noted that in all subdivisions approved by a rezoning, by right, or with applications approved by the BZA, the dedicated area was allowed to be included in the density computation. She pointed out that each of the lots required 4,520 density points, and when computing the subject lots' density, with the dedicated area included, the lots had 15,077, which more than met the Plan's requirement of two to three dwelling units per acre.

Ms. Kelsey replied to Mr. Hart's questions concerning the sizes of certain lots that she used for her comparison.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, said the subject variance was the first staff received for a variance requested for an averaged sized lot. She explained that the lots Ms. Kelsey noted were within a platted subdivision, and subdivision lots must average a lot size of 11,500 square feet with the minimum lot size of 10,500 square feet; therefore, there would be a range between those and larger lots. She concurred with Mr. Hart's determination that Lot 2 was at the minimum, and Lot 1 was approximately 300 square feet above the minimum, but both were below the average lot size.

Responding to Mr. Hart, Mr. Shriber stated that without the street dedication, the lots met average lot width and average lot size.

Ms. Langdon explained that under today's standards, to become a public street so as to access the lots, street dedication was required. She noted that before the dedication, for which credit would be given, the lots met the density requirements, but technically did not meet the density requirements after the dedication. She concurred with Mr. Pammel's determination that a lot was defined as being on a public street or public right-of-way, and the subject application was, in effect, the subdivision of one lot into two, and the two must meet the requirements of being on a public street. To clarify for Ms. Gibb, Ms. Langdon said the application was before the Board because a variance for a minimum lot size, although uncommon, was one of the provisions in the Ordinance that can be varied and, therefore, can go before the Board of Zoning Appeals. She concurred that the dedication was a separate issue. She noted that although standards for dedication were contained in the Subdivision Ordinance, it was the County's Department of Transportation (DOT) or Virginia Department of Transportation who determined the amount to be dedicated based on the Comprehensive Plan's proposal for the road or what already existed in the area.

Ms. Kelsey pointed out that although there were not variances requested for an average lot size, the Board had had variance requests for minimum lot size. She noted that the applicant met with DOT to determine the required road dedication.

Chairman DiGiulian called for speakers.

Deborah A. Ramsey, 2713 Oldewood Drive, Falls Church, Virginia, came forward to speak. She pointed out that other than the certified notice, she was not contacted by anyone. She wanted her concerns addressed regarding privacy, the removal of trees, what might be done with the fence separating the two properties, the exacerbation of the existing water runoff problem, vehicle congestion, safety of children playing in the neighborhood because of traffic, and any impact on the neighborhood's school bus stop. She stated that if the variance were approved, a serious precedent might be set. She said the developer had approached her to grant an easement for the water runoff, and she was still considering it. Ms. Ramsey pointed out that she

~ ~ ~ January 6, 2004, GARY A. MARSHALL, EDWARD C. GALLICK, TR., AND LINDA C. ZEMKE, TR., VC 2003-PR-157, continued from Page 300

was the one who would be most affected by the proposal.

Mr. Shriber responded to Mr. Hart's questions concerning stormwater runoff, noting the flow direction, the fact that a waiver was requested, and if granted, a development condition would be imposed in accordance with the Public Facilities Manual and consistent with the variance application.

In her rebuttal, Ms. Kelsey apologized to Ms. Ramsey for her not being contacted, and although Ms. Ramsey was on the "friendly letters" mailing list notifying adjacent property owners of the application, she could not guarantee the recipient's receipt. She pointed out that Ms. Ramsey's privacy concern would be addressed with the applicants' proposal for additional plantings. Ms. Kelsey said a deferral was acceptable, and during that time she would meet with Ms. Ramsey to address her privacy concerns, the matter of tree save, and to discuss any water runoff issues which would later be addressed through a stormwater management plan at the time of subdivision.

Chairman DiGiulian closed the public hearing.

Mr. Pammel commented that Ms. Kelsey's presentation was thorough and compelling; however, he did not agree with the rationale to support the application because his basic issue was with the average lot size. He noted that the County treated average lot size as a requirement after dedication, and because this was a subdivision, his opinion was that the average lot size must be met in order to be a subdivision under the County's requirements. He submitted that if it could not be done, the alternative was a rezoning, and his discomfort was that this application basically was a request tantamount to rezoning, which was not a power within the BZA's purview. Mr. Pammel pointed out that the staff report indicated that Standards 4, 6, and 9 were not met. Mr. Pammel moved to deny VC 2003-PR-157 for the reasons stated in the resolution.

Mr. Hammack seconded the motion.

Mr. Hart commented that he would support the motion because the circumstances associated with the application, the fact that it was a corner lot and there was a street dedication, were not justification for a variance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GARY A. MARSHALL, EDWARD C. GALLICK, TR., AND LINDA C. ZEMKE, TR., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with Lot 1 having a lot width of 89.99 ft. for a corner lot and both lots with average lot area less than 11,500 square feet. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The County determines the average lot size after dedication, and the average lot size must be met in order for this application to meet the subdivision standards required by the County.
3. This application is tantamount to a rezoning request which is not within the Board of Zoning Appeals' purview on which to make decisions.
4. The BZA should not get involved with the controversial area of approving lots that don't meet the

~ ~ ~ January 6, 2004, GARY A. MARSHALL, EDWARD C. GALLICK, TR., AND LINDA C. ZEMKE, TR., VC  
2003-PR-157, continued from Page 301

average lot size.

5. As noted by staff, the applicant has failed to meet Standards 4, 6 and 9.

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 reasonable use of the land and/or buildings involved.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004.

**THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE REFERENCED APPLICATION ON FEBRUARY 10, 2004. A NEW PUBLIC HEARING WAS SCHEDULED FOR MAY 18, 2004, AT 9:00 A.M**

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.6 ft. with eave 8.6 ft., 9.1 ft. with eave 8.1 ft. and 14.8 ft. from side lot line, 36.6 ft. with eave 35.8 ft. from front lot line, deck 36.6 ft. from front lot line, fence greater than 4.0 ft. to remain in front yard of a corner lot, and accessory structure to remain in the minimum required front yard. Located at 1168 Chain

~ ~ ~ January 6, 2004, STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 and SP 2003-DR-031, continued from Page 302

Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with SP 2003-DR-031). (Deferred indefinitely from 10/7/03).

9:00 A.M. STEVEN A. NEWMAN & JANICE NEWMAN, SP 2003-DR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 5.3 ft. with eave 4.3 ft. and dwelling 9.2 ft. with eave 8.2 ft. from side lot line. Located at 1168 Chain Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with VCA 89-D-065). (Deferred indefinitely from 10/7/03).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan F. Earman, Esquire, 1364 Beverly Road, Suite 20, McLean, Virginia, the applicants' agent, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants sought approval of a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit a roofed deck to remain 5.3 feet with eave 4.3 feet and a dwelling to remain 9.2 feet with eave 8.2 feet from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet in the minimum side yard; therefore, reductions of 14.7 feet, 12.7 feet, 10.8 feet, and 8.8 feet were requested.

The applicants requested a variance to permit construction of a one-story addition 9.6 feet with eave 8.6 feet from the side lot line; a one-story addition 9.1 feet with eave 8.1 feet from the side lot line; a porch addition 14.8 feet from a side lot line; a one-story addition 36.6 feet with eave 35.8 feet from the front lot line; and a deck 36.6 feet from the front lot line. A minimum side yard of 20 feet and a minimum front yard of 40 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and front yards; therefore, variances of 10.4 feet, 8.4 feet, 10.9 feet, 8.9 feet, 5.2 feet, 3.4 feet, 1.2 feet, and 3.4 feet, respectively, were requested. The applicants also requested a variance to permit a fence greater than 4.0 feet in height to remain in a front yard of a corner lot; and an accessory structure, specifically a pool and patio, to remain in the minimum required front yard.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, clarified that Dogwood Drive was a public, gravel-paved, dedicated street.

Ms. Earman presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. She commended staff on their helpfulness and professionalism. She said the lot was exceptionally narrow with 100 feet of frontage on Chain Bridge Road, had a narrow building envelope because of its two front yards with the required 40-foot setback, two side yards, and topography with a severe slope down to the pool area. The property had a lot of nonconformance because of previous owners, and there were two variance requests filed in 1980 and 1989 that dealt with the side yard closest to the Ramsey property at 1170 Chain Bridge Road. Ms. Earman explained that the two houses were built too close to one another, and with the roofline addition, a special permit was requested to allow the house to remain and for the side stoop to have the roof on it. The applicants sought to square off and proportion the shape of the house and improve the internal circulation. The narrow nonconforming staircase to the basement needed to be remodeled for elderly parents to navigate safely. She said a variance was requested for the accessory pool structure because of the property's two front yards and the required setback on Dogwood Drive. She pointed out that the pool was built in good faith as the Newmans contracted Town & Country Builders, a reputable pool company, and were not informed that their pool and its slate apron encroached in the front and side yard setbacks. Ms. Earman assured that the neighboring homes would not be adversely impacted by the improvements.

Discussion followed among Mr. Hammack, Mr. Hart, Ms. Earman, and Mr. Shriber concerning proposed elevations, the home's design, a planned pitched roof, the requested two-story addition, and the stoop.

Susan Langdon, Chief, Special Permit and Variance Branch, responding to Mr. Hammack's question concerning building elevations, clarified that the plat listed the existing dwelling's height at 26.6 feet, and the proposed structures were 14 feet high. She confirmed that the application was advertised correctly.

~ ~ ~ January 6, 2004, STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 and SP 2003-DR-031, continued from Page 303

Ms. Earman clarified that the plat was correct except the distance measured to the porch was 14.8 feet, and she added that they were requesting a variance for the porch.

Mr. Shriber pointed out that although the plat did not show the 14.8-foot measurement for the front porch, it was verified by the surveyor through a conversation.

In response to Mr. Hart's question concerning the pool's location, Mr. Shriber explained that the pool contractor placed the pool in the side yard because when the permit was issued in 1999, yards were not taken into consideration, and the yard on Dogwood Drive was not viewed as a front yard. He clarified which building permit was issued for which addition.

Ms. Langdon pointed out that there was language in the standard conditions stipulating that an applicant was not relieved from compliance with all provisions of the Ordinance, regulations, and adopted standards.

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

Mr. Hart moved to approve SP2003-DR-031 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

STEVEN A. NEWMAN & JANICE NEWMAN, SP 2003-DR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 5.3 ft. with eave 4.3 ft. and dwelling 9.2 ft. with eave 8.2 ft. from side lot line. Located at 1168 Chain Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with VCA 89-D-065). (Deferred indefinitely from 10/7/03). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The errors warranting this special permit were made by the previous owners.
3. There is not a significant difference between what had been approved and what was constructed.
4. The application has the support of the one neighbor who is most affected.

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;

~ ~ ~ January 6, 2004, STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 and SP 2003-DR-031, continued from Page 304

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

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

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

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

1. This Special Permit is approved for the location of a roofed deck and a dwelling, as shown on the plat prepared by Guy H. Briggs/Apex Surveys, dated February 10, 2003, revised through September 12, 2003, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to approve VCA 89-D-065 for the reasons stated in the Resolution.

Mr. Hammack said he did not believe the application satisfied Standards 1, 2 and 3, and, therefore, he could not support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.6 ft. with eave 8.6 ft., 9.1 ft. with eave 8.1 ft. and 14.8 ft. from side lot line, 36.6 ft. with eave 35.8 ft. from front lot line, deck 36.6 ft. from front lot line, fence greater than 4.0 ft. to remain in front yard of a corner lot, and accessory structure to remain in the minimum required front yard. Located at 1168 Chain Bridge Rd. on approx. 40,859 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-1 ((5)) (2) 10A. (Concurrent with SP 2003-DR-031). (Deferred indefinitely from 10/7/03). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ January 6, 2004, STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 and SP 2003-DR-031, continued from Page 305

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The property is unusual in that it is very narrow in relation to its size and length.
3. The house is placed almost up against one side of the lot.
4. The lot is greatly impacted by the front yard setback along Dogwood Drive with its front yard greatly reduced because of the gravel road along its front.
5. The proposed changes are architecturally compatible and complementary to the existing design.
6. There is no adverse impact on adjoining property owners.
7. Both the pool and its retaining wall is an attractive feature.
8. The neighbor most affected has submitted a letter supporting the application.
9. All issues or concerns are addressed and resolved through the development 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of the additions, fence and accessory structure (pool and patio), as shown on the plat prepared by Guy H. Briggs/Apex Surveys, dated February 10, 2003, revised through September 12, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ January 6, 2004, STEVEN A. NEWMAN & JANICE NEWMAN, VCA 89-D-065 and SP 2003-DR-031, continued from Page 306

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the proposed height as noted on the plat, the proposed additions shall not exceed 26.6 feet in height.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Ms. Gibb voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. SINGH GIAN AND SINGH RITA, VC 2003-LE-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.0 ft. with eave 14.0 ft. and 17.4 ft. with eave 16.4 ft. from front lot lines of a corner lot and 11.8 ft. from side lot line. Located at 4900 Upland Dr. on approx. 10,817 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((3)) (C) 7.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ike Okoye said he was the applicants' agent, but as he was not listed on the affidavit, Rafik Bazikian, Bazikian Consultants, LTD., the project engineer, reaffirmed the affidavit.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of a two-story addition 15.0 feet with eave 14.0 feet from one front lot line of a corner lot; and an addition 17.4 feet with eave 16.4 feet from the other front lot line of a corner lot and 11.8 feet from the side lot line. A minimum front yard of 30 feet and a minimum side yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 15 feet, 13 feet, 12.6 feet, 10.6 feet, and 0.2 feet, respectively, were requested.

Mr. Okoye presented the variance request as outlined in the statement of justification submitted with the application. A two-car garage was requested so that Mr. Singh could park his commercial vehicle and store equipment and materials, but the yard's unusual shape constrained expansion to only the front or side, and the side was where the garage addition was proposed.

In response to Chairman DiGiulian's question, Mr. Okoye indicated the vehicle sight distance along the property where the one-story addition was proposed would not be blocked.

Mr. Okoye responded to Mr. Hart's questions concerning the garage's proposed dimensions to include the mechanical room and storage space.

Mr. Hart stated that he found the proposed configuration to be a very large, tall structure that was unusually close to the street on a corner lot with a justification that it needed to be a two-car garage with an area for mechanical equipment and storage. He said the explanation to warrant it, in his opinion, had not addressed

the need for a second floor over it, which increased the bulk as well as its function. He questioned why the rear area could not be configured behind the house rather than closer to the street. Mr. Hart submitted that a slight reconfiguration would allow the house to conform more to the constraints of the lot instead of the convenience of having an aesthetically squared house.

In response to Mr. Hart's comments, Mr. Okoye said they sought to optimize the storage space. He explained that the bedrooms were in the rear of the house with the family room extending outwards towards the street. He responded to Mr. Beard's question concerning the architectural integrity and harmony with the neighborhood and clarified for Mr. Hammack the direction of the garage doors' entrance.

Chairman DiGiulian called for speakers.

Ronald C. Hughes, 4814 Upland Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He said that since the applicants moved in, two huge trucks had been parked in the driveway and on the street, which obstructed one's vision. He questioned whether or not the applicants were operating a home plumbing business in a residential neighborhood. He noted that many changes had been made to the house and grounds, but he had not seen a permit posted. Utilizing the overhead projector, Mr. Hughes pointed out changes to the applicants' property over time as well as his own various home improvements, for which he affirmed he had obtained all the necessary permits. Mr. Hughes said he encouraged home improvements, but he had serious concerns about the size and scope of the proposal as well as whether there was a home business being run out of the applicants' house.

Renee Smith, 4900 Larno Drive, Alexandria, Virginia, came forward to speak in opposition to the application. She said the sight distance would definitely be affected as people already have knocked down the stop sign. With the proposed storage space, she said it would appear as if the applicants intended to run a business out of their home.

Rita Singh, 4900 Upland Drive, Alexandria, Virginia, one of the applicants, came forward to speak. She said they had tried to improve their property since moving in. She stated that there was no business being run out of the house, that her husband did not have his own company, but worked for a plumbing company, and that only for a brief time while he was temporarily out of work had he parked their trucks in the driveway or on the street. Ms. Singh said the house was quite old, and to accommodate their family, renovations were necessary to enlarge the living space, the master bedroom, and garage. In response to Mr. Hart's question, she explained that they poured the concrete slab to fix the existing cracks and to make the driveway smooth and attractive.

Chairman DiGiulian closed the public hearing.

Mr. Ribble commented that he concurred with Mr. Hammack's suggestion that the design could be reconfigured to be less intrusive into the setbacks. He acknowledged that the applicants did have a double front yard and that there was somewhat of a hardship with the placement of the house on the lot. Mr. Ribble stated that the applicants were charged with presenting a viable plan with justification for the additions, but he found the presentation confusing. He said he believed there was a sight distance problem and that the integrity of the neighborhood would be diminished. He said he understood that the applicants wanted to build their proposal to the maximum, which he could not fault them for, but it was the whole situation that concerned him.

Mr. Ribble moved to deny VC 2003-LE-156 for the reasons stated in the Resolution.

Mr. Pammel stated that there was an inconsistency with the elevation for the addition on the north side, which would house the garage, that showed the structure at slightly over 20 feet in width, whereas the plat and what was requested showed a distance of 14 feet. He noted that a considerable variance on the front yard adjacent to Larno Drive would be required if the applicants put the elevation that they proposed on the property, and he had concerns about that.

Ms. Gibb said she could support some but not the entire proposal, suggesting that the applicants consider the issues regarding the sight distance, the bulk, and the inconsistencies in measurements. She pointed out that it would be beneficial if the trucks could be garaged, that she thought that would soothe the neighbors, and that she believed no more than one commercial vehicle could be parked at a residence.

~ ~ ~ January 6, 2004, SINGH GIAN AND SINGH RITA, VC 2003-LE-156, continued from Page 308

Mr. Hart said he supported the motion. He concurred that the lot was oddly shaped with the house placed at an odd angle and with a double front yard. He said that under certain circumstances, the applicants would be entitled to a one-car garage, but the rest of the proposal was just too big and too close to the street. He added that, with the information provided, he did not understand all the dimensions in the drawings.

Mr. Hammack stated that the design would cause a sight distance problem; the other homes in the neighborhood showed considerable setbacks; and, the proposed extension would not be consistent with the character of the neighborhood.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SINGH GIAN AND SINGH RITA, VC 2003-LE-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.0 ft. with eave 14.0 ft. and 17.4 ft. with eave 16.4 ft. from front lot lines of a corner lot and 11.8 ft. from side lot line. Located at 4900 Upland Dr. on approx. 10,817 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((3)) (C) 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 6, 2004; and

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

1. The applicants are the owners of the land.
2. The applicant is charged with presenting a concise and clear proposal that clarifies the need for the requested variance.
3. There is a site-distance problem for vehicular traffic.
4. The integrity of the neighborhood will be diminished.
5. Although there is a degree of hardship demonstrated due to the house's placement on the lot, and the fact that it is a double front yard, the proposed design/plan does not warrant the variance requested.

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:

~ ~ ~ January 6, 2004, SINGH GIAN AND SINGH RITA, VC 2003-LE-156, continued from Page 309

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

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

Mr. Hammack seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 12-month wait period for refileing an application. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004.

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. ROBERT R., SR. AND SHIRLEY L. AMBROGI, VC 2003-BR-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. with eave 18.8 ft. from rear lot line. Located at 10034 Wheatfield Ct. on approx. 12,170 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 57-4 ((16)) 179. (Concurrent with SP 2003-BR-040).

9:00 A.M. ROBERT R., SR. AND SHIRLEY L. AMBROGI, SP 2003-BR-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.9 ft. with eave 7.5 ft. from side lot line and 2.3 ft. with eave 2.0 ft. from other side lot line. Located at 10034 Wheatfield Ct. on approx. 12,170 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 57-4 ((16)) 179. (Concurrent with VC 2003-BR-162).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert R. Ambrogi, 100343 Wheatfield Court, Fairfax, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, specifically a shed, to remain 7.9 feet with eave 7.5 feet from one side lot line and 2.3 feet with eave 2.0 feet from the other side lot line. A minimum side yard of 8.0 feet is required; therefore, reductions of 0.1 feet, 0.5 feet, 5.7 feet, and 6.0 feet, respectively, were requested.

The applicants also requested a variance to permit construction of an addition consisting of a screened porch 20.1 feet with eave 18.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 4.9 feet and 3.2 feet, respectively, were requested.

Mr. Ambrogi presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He said they wanted a screened porch to enjoy the back yard. He explained that the variance was necessary because there was no other area to place the porch. He said the porch was in harmony with the neighborhood; a reputable building firm was contracted to do the job; and, the

~ ~ ~ January 6, 2004, ROBERT R., SR. AND SHIRLEY L. AMBROGI, VC 2003-BR-162 and SP 2003-BR-040, continued from Page 310

project would meet all County requirements. Mr. Ambrogi said he owned the house, had lived in the house for 13 years, intended to stay there, and he just wanted to finish his house and make it the way they wanted it.

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

Ms. Gibb moved to approve VC 2003-BR-162 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT R., SR. AND SHIRLEY L. AMBROGI, VC 2003-BR-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. with eave 18.8 ft. from rear lot line. Located at 10034 Wheatfield Ct. on approx. 12,170 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 57-4 ((16)) 179. (Concurrent with SP 2003-BR-040). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The request is modest.
3. There is no adverse impact to the surrounding 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.

~ ~ ~ January 6, 2004, ROBERT R., SR. AND SHIRLEY L. AMBROGI, VC 2003-BR-162 and SP 2003-BR-040, continued from Page 311

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

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

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

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

1. This variance is approved for the location of a proposed screen porch, as shown on the plat prepared by Bryant L. Robinson, dated June 23, 2003, revised October 18, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried 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 14, 2004. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve SP 2003-BR-040 for the reasons stated in the resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ROBERT R., SR. AND SHIRLEY L. AMBROGI, SP 2003-BR-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.9 ft. with eave 7.5 ft. from side lot line and 2.3 ft. with eave 2.0 ft. from other side lot line. Located at 10034 Wheatfield Ct. on approx. 12,170 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 57-4 ((16)) 179. (Concurrent with VC 2003-BR-162). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

~ ~ ~ January 6, 2004, ROBERT R., SR. AND SHIRLEY L. AMBROGI, VC 2003-BR-162 and SP 2003-BR-040, continued from Page 312

1. The applicants are the owners of the land.
2. Although the shed appears quite close to the property line, the lot's configuration greatly limits where the shed could be placed.
3. The lot's ample vegetation and mature trees screen the unit well.
4. The shed's design, building material, paint and decorative flower boxes make it aesthetically attractive.

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

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

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

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

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

1. This Special Permit is approved for the location of the shed shown on the plat prepared by Bryant L. Robinson, dated June 23, 2003, revised October 18, 2003, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. CLAYTON W. COVEY, SP 2003-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.2 ft. with eave 0.8 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with VC 2003-MV-134). (Continued from 11/25/03) (Admin. moved from 1/13/04 at appl. req.)

9:00 A.M. CLAYTON W. COVEY, VC 2003-MV-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30% and construction of addition 5.0 ft. with eave 4.5 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with SP 2003-MV-035). (Continued from 11/25/03) (Admin. moved from 1/13/04 at appl. 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. Bill Reames, Patio Enclosures, Inc., 13230 Marina Way, Woodbridge, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reductions to the minimum yard requirements based on an error in building location to permit an accessory structure, specifically a shed, to remain 2.2 feet with eave 0.8 feet from the side lot line. A minimum side yard of 8.0 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 5.8 and 4.2 feet were requested.

The applicant also requested a variance to permit minimum rear yard coverage of greater than 30 percent and construction of an addition 5.0 feet with an eave 4.5 feet from the side lot line. Variances of 3.0 feet and 0.5 feet, respectively, were requested.

With regard to Mr. Hammack's concern about the shed that he raised at the initial hearing, Mr. Reames said he reevaluated the area, and there was about 2.5 feet to pull the shed forward, and if that was not acceptable, the applicant was prepared to move it. He said the sunroom was designed to the smallest scale that would allow for the therapeutic hot tub.

In response to Mr. Beard's question as to what was different between today's hearing and the first public hearing, Mr. Sherman explained that there was a question concerning the correctness of the advertisement because the lot had two front yards with a reversed frontage, and the front yard adjacent to Pohick Road takes on the characteristics of a rear yard. It was determined that the case did not need to be re-advertised.

In response to Mr. Hammack's question, Susan Langdon, Chief, Special Permit and Variance Branch, explained the difference between the subject front yard and other rear yards that were considered front yards. She noted that there was a definition in the Zoning Ordinance that referenced major thoroughfares and outlined major and minor arterials. The subject lot was considered to have a front yard along the local street, and the other part of the lot along the section of Pohick Road was considered a rear yard.

Mavis Stanfield, Senior Staff Coordinator, stated that the section of Pohick Road by the subject parcel was a part of the Springfield Parkway.

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

Mr. Beard moved to approve SP 2003-MV-035 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CLAYTON W. COVEY, SP 2003-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.2 ft. with eave 0.8 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft.

~ ~ ~ January 6, 2004, CLAYTON W. COVEY, SP 2003-MV-035 and VC 2003-MV-134, continued from Page 314

of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with VC 2003-MV-134). (Continued from 11/25/03) (Admin. moved from 1/13/04 at appl. req.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicant is the owner of the land.
2. It is more detrimental to move the shed, even by a few feet, than to let it remain where placed.

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

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

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

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

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

1. This Special Permit is approved for the location of the shed shown on the plat prepared by Bryant L. Robinson, dated May 2, 2003, revised August 12, 2003, submitted with this application and is not transferable to other land.

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

~ ~ ~ January 6, 2004, CLAYTON W. COVEY, SP 2003-MV-035 and VC 2003-MV-134, continued from Page 315

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Hart and Mr. Pammel voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Beard moved to approve VC 2003-MV-134 for the reasons stated in the Resolution.

Mr. Hammack said he could not support the motion because he believed the additional encroachment of the proposed size was a convenience for a hot tub and that the design could be reconfigured to be smaller and extend straight out from the house.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLAYTON W. COVEY, VC 2003-MV-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30% and construction of addition 5.0 ft. with eave 4.5 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with SP 2003-MV-035). (Continued from 11/25/03) (Admin. moved from 1/13/04 at appl. req.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicant, Clayton W. Covey, and Jane E. Corbett are the owners of the land.
2. The lot is zoned R-5 and is 11,050 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

~ ~ ~ January 6, 2004, CLAYTON W. COVEY, SP 2003-MV-035 and VC 2003-MV-134, continued from Page 316

all reasonable use of the subject property, or

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

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

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

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated May 2, 2003, revised August 12, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Mr. Hart voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 6, 2004, Scheduled case of:

- 9:00 A.M.      WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 8.0 ft. from one side lot line and 9.0 ft with eave 7.0 ft. from other side lot line. Located at 1612 Great Falls St. on approx. 7,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((2)) 16. (Concurrent with VC 2003-DR-152).
- 9:00 A.M.      WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 8.0 ft. from one side lot line and 9.0 ft. with eave 7.0 ft. from other side lot line. Located at 1612 Great Falls St. on approx. 7,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((2)) 15. (Concurrent with VC 2003-DR-153).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wael Almousa, 1612 Great Falls Street, McLean, Virginia,

~ ~ ~ January 6, 2004, WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 and VC 2003-DR-152, continued from Page 317

replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested variances to permit construction of two dwellings to be located 10 feet with an eave 8.0 feet from one side lot line and 9.0 feet with an eave 7.0 feet from other side lot line. The existing lot lines for both Lots 15 and 16 (VC 2003-DR-153) would be modified to provide a lot width of 60 feet for each lot, where each lot now had a lot width of 50 feet. This modification was permissible under the requirements of the Zoning Ordinance, Sect. 2-405, and was the result of the acquisition of the abutting abandoned right-of-way by the previous owner of the property. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 2.0 feet for the dwelling and 1.0 foot for one side of each lot was required and variances of 3.0 feet for the dwelling and 2.0 feet for the eave were required for the other side of both lots. She noted that a revised affidavit was submitted that morning.

Vice Chairman Ribble assumed the Chair.

William B. Lawson, Jr., Esquire, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, representing the applicants, presented the variance requests as outlined in the statements of justification submitted with the applications. He said the hardship was that Lots 15 and 16 were only 50 feet wide, and with the incorporation of the abandoned right-of-way, they became 60 feet wide. He noted that with the 12-foot setbacks, the building envelope was reduced to a width of 36 feet. Mr. Lawson pointed out that the home's design would have to be narrow and extend back into the lot, but with the variance, the footprint could be slightly widened to allow a more functional internal layout. He pointed out that the neighbors supported the proposal and submitted written copies of their statements.

Chairman DiGiulian resumed the Chair.

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

Mr. Hammack moved to approve VC 2003-DR-153 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 8.0 ft. from one side lot line and 9.0 ft with eave 7.0 ft. from other side lot line. Located at 1612 Great Falls St. on approx. 7,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((2)) 16. (Concurrent with VC 2003-DR-152). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The lot size is substandard by today's building requirements.
3. The applicant's proposal is minimal to create a more livable, or better, dwelling unit on the property; one that will serve the needs of the neighborhood and County better than if he were required to build within the strict building envelope of a 60-foot lot width.
4. Although the area is in transition, the character of the zoning district will not be changed.
5. Because of the lot's size, the variance is in harmony with the intended spirit and purpose of the

~ ~ ~ January 6, 2004, WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 and VC 2003-DR-152, continued from Page 318

### 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a dwelling, shown on the plat prepared by C.B. DeLashmutt, dated July 2, 2003, as revised through September 9, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this variance.

~ ~ ~ January 6, 2004, WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 and VC 2003-DR-152, continued from Page 319

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Mr. Hammack moved to approve VC 2003-DR-152 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 8.0 ft. from one side lot line and 9.0 ft. with eave 7.0 ft. from other side lot line. Located at 1612 Great Falls St. on approx. 7,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((2)) 15. (Concurrent with VC 2003-DR-153). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2004; and

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

1. The applicants are the owners of the land.
2. The lot size is substandard by today's building requirements.
3. The applicant's proposal is minimal to create a more livable, or better, dwelling unit on the property; one that will serve the needs of the neighborhood and County better than if he were required to build within the strict building envelope of a 60-foot lot width.
4. Although the area is in transition, the character of the zoning district will not be changed.
5. Because of the lot's size, the variance is in harmony with the intended spirit and purpose 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.

~ ~ ~ January 6, 2004, WAEL ALMOUSA AND SUSANNA MURSULA, VC 2003-DR-153 and VC 2003-DR-152, continued from Page 320

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

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

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

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

1. This variance is approved for the location of a dwelling, shown on the plat prepared by C.B. DeLashmuth, dated July 2, 2003, as revised through September 9, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 6, 2004, Scheduled case of:

9:00 A.M. MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seating. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1((1)) 20A and 20B. (Admin. moved from 12/2/03 per appl. req.)

Chairman DiGiulian noted that this case had been administratively moved to February 17, 2004, at the applicant's request.

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~ ~ ~ January 6, 2004, Scheduled Appeal case of:

9:00 A.M. JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants purchased an affordable dwelling unit without obtaining a Certificate of Qualification from Fairfax County Redevelopment and Housing Authority and are not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 7818 Liberty Spring Ci. on approx. 1,732 sq. ft. of land zoned R-20, HC and CRD. Mt. Vernon District. Tax Map 102-1 ((42)) 144. (deferred from 10/7/03 at appl. req.)

Chairman DiGiulian asked staff if a request for a deferral had been received.

~ ~ ~ January 6, 2004, JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034, continued from Page 321

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that staff received a request for a deferral from the appellants' agent, William B. Lawson, Jr., Esquire, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, who was present and intended to speak.

Mr. Lawson said they sought a solution, had been meeting with staff, and were requesting a one-month deferral to pursue a resolution that would satisfy the housing program.

Ms. Stehman concurred that the appellants had met with staff, and staff supported the requested short deferral. She suggested the date of February 10<sup>th</sup>.

Mr. Hammack moved to defer A 2003-MV-034 to February 10, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ January 6, 2004, After Agenda Item:

Status update for John D. Bobolsky, III  
A 2003-SP-033

John Bobolsky said he recently met with the Zoning Administration staff and a County attorney regarding his case, the nature of his suit against the Heath Trust, in which they were to clean up his property, and the fact that the mess encroaching on his property, for which he was cited, was being addressed in the lawsuit. He met with Doris Douglass, the trustee of the Joseph F. Heath Trust, and they verbally agreed on a solution of transferring the property, with the provision that Ms. Douglass sign off on the zoning violation and take legal responsibility for the zoning violation and its resolution.

Jan Brody, County Attorney's Office, briefed the Board on the status of the Heath case, noting that the Heaths were served with Notices of Violation and that the County would be filing suit against the Heaths in the immediate future. The goal of the lawsuit was to get mandatory injunctions to require the Heaths, or the trustee, to clear the violations from the property to a lawful site, and in doing that, the County would request the Court to mandate that the whole violation be cleared, to include the encroachment onto Mr. Bobolsky's property. Ms. Brody stated that it was important that it be established that there was an illegal use on Mr. Bobolsky's property to assure his property could not be considered a lawful site. She said she informed Mr. Bobolsky of the County's intent, but could not advise him on what he should do about his appeal. She said she explained to Mr. Bobolsky that if he did go forward with his appeal, that issue would still be up in the air when the County went forward on the Heath case.

In response to Mr. Hammack's question, Ms. Brody said that transferring ownership of the property would not make a difference with how the County was pursuing the case because the violation was the issue of whether or not the agricultural use and the junk yard storage was a violation on Mr. Bobolsky's property. She said either Mr. Bobolsky or his successor in interest would have to deal with that issue as it still needed to be resolved.

Discussion followed among the Board members and Ms. Brody concerning what action was required on the Bobolsky appeal.

Susan Langdon, Chief, Special Permit and Variance Branch, reminded the Board that they deferred decision on the case to April 20, 2004, and today was not a hearing, but a status update.

The Board agreed that the matter would be settled April 20, 2004.

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~ ~ ~ January 6, 2004, After Agenda Item:

Request for Additional Time  
Unitarian Universalist Congregation of Fairfax, SPA 83-P-053-3

Mr. Pammel moved to approve 60 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was February 1, 2009.

Mr. Hammack and Mr. Ribble questioned the timeframe of five years, commenting that it seemed a very long deferral time.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant requested a five-year deferral and had only requested one previous deferral. She said that although staff did not normally get requests for five-year deferrals, the total deferral amount of eight years was consistent with other deferrals. She noted that staff probably would not support any more additional time requests.

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~ ~ ~ January 6, 2004, After Agenda Item:

Request for Additional Time  
Record the Subdivision Approved by VC 00-H-22, William and Barbara Weiss

Mr. Pammel moved to approve six months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was July 26, 2004.

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~ ~ ~ January 6, 2004, After Agenda Item:

Request for Additional Time  
Centreville Presbyterian Church, SP 99-Y-065

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Pammel moved to approve four months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was May 1, 2004.

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~ ~ ~ January 6, 2004, After Agenda Item:

Request for Additional Time  
Mount Vernon Congregation of Jehovah's Witnesses, SP 99-V-013

Mr. Pammel moved to approve 12 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was December 6, 2004.

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~ ~ ~ January 6, 2004, After Agenda Item:

Request for Additional Time  
Hopkins House, SP 01-V-016

Mr. Pammel moved to approve 18 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was May 19, 2005.

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~ ~ ~ January 6, 2004, continued from Page 323

As there was no other business to come before the Board, the meeting was adjourned at 12:13 p.m.

Minutes by: Paula A. McFarland

Approved on: September 27, 2005

K. A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 13, 2004. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; Paul Hammack; and V. Max Beard.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. RICHARD S. VOLLMER, VC 2003-SP-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less and fence greater than 4.0 ft. in height in front yard. Located at 5198 Dungannon Rd. on approx. 20,953 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((4)) 30. (Decision deferred from 12/9/03)

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 S. Vollmer, 5198 Dungannon Road, Fairfax, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure to remain in the front yard of a lot containing 36,000 square feet or less and to permit a fence greater than 4.0 feet in height to remain in the front yard. Par. 10(B) of Sect. 10-104 of the Fairfax County Zoning Ordinance states, "An accessory structure shall not be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less." The proposed height for the fence was 4.5 feet and 5.0 feet. The maximum height permitted for a fence located in a front yard is 4.0 feet; therefore, variances of 0.5 feet and 1.0 feet were requested for the fence. Mr. Shriber noted that the revised information requested at the previous public hearing had not yet been received. He stated that additional letters of opposition had been submitted subsequent to the prior hearing. He also indicated that staff was aware that the applicant had met with the Department of Health concerning the size of the septic field, and with Merrifield Gardens concerning a revised landscape plan.

Mr. Vollmer presented the variance request as outlined in the statement of justification submitted with the application. Referring to a document presented by him, he called attention to information pertaining to the exact limit of the drainage field, improved screening of the shed, and choice of colors.

Chairman DiGiulian stated that the Board had received four letters in opposition.

Mr. Hammack moved to deny VC 2003-SP-155 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD S. VOLLMER, VC 2003-SP-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less and fence greater than 4.0 ft. in height in front yard. Located at 5198 Dungannon Rd. on approx. 20,953 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((4)) 30. (Decision deferred from 12/9/03) 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 13, 2004; and

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

1. The applicant is the owner of the land.
2. There was opposition to the variance.
3. The shed is large and located in a prominent position.
4. Although the lot has double front yard requirements and a septic field to work around, the shed could have been put in a different location, with a variance, that would not impact on the neighbors.
5. The application fails to satisfy the required standards for variances, particularly Numbers 7 and 8.
6. There is impact to the properties across the street from and adjacent to the subject property.
7. The location of the large shed in the front yard, even with the proposed screening, changes the character of the district.

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 reasonable use of the land and/or buildings involved.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 21, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. MATTHEW & PATRICIA LEOPARD, VC 2003-SP-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.2 ft. and deck to remain 11.0 ft. from rear lot line. Located at 9508 Retriever Rd. on approx. 9,030 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 387.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alvin Good, 103 Ashtree Lane, Washington, Virginia, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition 14.2 feet from the rear lot line and to permit a deck to remain 11 feet from rear lot line. A minimum rear yard of 25 feet is required; however, decks are permitted to extend 12 feet into the minimum rear yard; therefore, variances of 10.8 feet and 2.0 feet, respectively, were requested.

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

Chairman DiGiulian called for speakers.

Matthew Leonard, the applicant, said he was requesting the addition of a screened porch over an existing deck.

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

Mr. Pammel moved to approve VC 2003-SP-159 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTHEW & PATRICIA LEOPARD, VC 2003-SP-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. and deck to remain 11.0 ft. from rear lot line. Located at 9508 Retriever Rd. on approx. 9,030 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 387. 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 13, 2004; and

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

1. The applicants are the owners of the land.
2. There is very little rear yard to the subject property.
3. The deck exists on the property at the current dimensions as shown on the plat.
4. The lot is shallow with a little over 100 feet in depth.
5. The residence is located almost 36 feet from the street, which exceeds the front yard requirements, thus creating a situation where the structure is located towards the rear portion of the lot.
6. In enclosing the structure for a screened porch and permitting the deck to remain where it is located, which was created by the previous property owner, the applicant demonstrated the hardship necessary to meet the requirements 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a screened porch addition and deck, as shown on the plat prepared by Larry N. Scartz, dated February 12, 2003 revised through September 2, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 21, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. HAROLD PALACIOS, SP 2003-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure to remain 3.2 ft. from side and 7.3 ft. from rear lot lines. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with VC 2003-LE-158).

9:00 A.M. HAROLD PALACIOS, VC 2003-LE-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure 1.8 ft. with eave 0.8 ft. from side lot line. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with SP 2003-LE-038).

Chairman DiGiulian informed the Board members that the notices for SP 2003-LE-038 and VC 2003-LE-158 were not in order and the hearings had been administratively moved to March 2, 2004.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. JOSE FLORES, SP 2003-LE-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 addition to remain 5.0 ft. with eave 4.0 ft. from side lot line. Located at 6607 Buckskin St. on approx. 8,400 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (1) 508.

Chairman DiGiulian informed the Board members that the notices for SP 2003-LE-039 were not in order and the hearing had been administratively moved to March 16, 2004.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. JAMES & MICHELLE NOLAN, VC 2003-LE-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line such that side yards total 13.4 ft. Located at 6721 Stoneybrooke Lane on approx. 9,870 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-2 ((22)) 251.

Chairman DiGiulian noted that VC 2003-LE-163 had been withdrawn.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. JAMES V. PATTAN AND HEATHER MULLEN, VCA 2002-PR-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 19.9 ft. from front lot line of a corner lot and 15.7 ft. from side lot line and construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 2354 Central Ave. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 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. James Pattan, 2354 Central Avenue, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to permit a dwelling to remain 19.9 feet from the front lot line of a corner lot and 15.7 feet from the side lot line; and construction of an accessory structure, specifically a garage, in the front yard of a lot containing 36,000 square feet or less. Per Sect. 10-104 of the Zoning Ordinance, no accessory structure may be constructed in any front yard of any lot containing 36,000 square feet or less. The subject property consisted of 9,050 square feet. A minimum front yard of 40 feet and a minimum side

~ ~ ~ January 13, 2004, JAMES V. PATTAN AND HEATHER MULLEN, VCA 2002-PR-061, continued from Page 329

yard of 20 feet are required; therefore, variances of 20.1 feet and 4.3 feet, respectively, were requested for the dwelling. On June 25, 2003, the Board of Zoning appeals approved VC 2002-PR-061 to permit the construction of a dwelling 20 feet from the front lot line of a corner lot and 16 feet from the side lot line for the subject property. The dwelling was subsequently built 19.9 feet from the front lot line and 15.7 feet from the side lot line, resulting in the requirement for an amended variance.

Mr. Pattan presented the variance amendment request as outlined in the statement of justification submitted with the application. He said the lack of needed parking posed a hardship on him. In response to comments that had been made by some of his neighbors, Mr. Pattan stated that the garage would be located five feet inside the lot line and would not be an eyesore.

A discussion ensued between Mr. Hart, Ms. Langdon, and Mr. Sherman concerning shifting the location of the garage and whether or not a variance would be needed in other potential locations.

At Chairman DiGiulian's request, Mr. Pattan proceeded with his justification of hardship. He advised the Board that a neighbor had built a one-car garage in his front yard that blocked his bay window.

Mr. Pattan responded to questions posed by Mr. Hammack concerning the size of the proposed garage. Mr. Pattan stated that his front lot line was identical to that of his neighbor.

Chairman DiGiulian called for speakers.

Lian Zhang, 2350 Central Avenue, Vienna, Virginia, came forward to speak in opposition to the application. He said he thought the driveway was too short and the garage was too large and tall.

In his rebuttal, Mr. Pattan stated that if the garage was cut into the hill, the driveway would have the same slope as Mr. Zhang's driveway.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve-in-part VCA 2002-PR-061 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES V. PATTAN AND HEATHER MULLEN, VCA 2002-PR-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 19.9 ft. from front lot line of a corner lot and 15.7 ft. from side lot line and construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. **(THE BZA APPROVED THE DWELLING ONLY.)** Located at 2354 Central Ave. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 44. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 13, 2004; and

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

1. The applicants are the owners of the land.
2. With respect to the house, the applicant presented testimony showing compliance with the required standards for a variance.
3. A variance for the construction of the house was previously granted with the difference between what was granted and what was constructed on the street side of 0.1 foot on one side and 0.3 foot on the

~ ~ ~ January 13, 2004, JAMES V. PATTAN AND HEATHER MULLEN, VCA 2002-PR-061, continued from Page 330

other side.

4. Two of the corners of the house are slightly skewed.
5. Consistent with the earlier approval, the changes are not going to be perceptible by anyone.
6. With respect to the proposed garage, it is too large and too close to the street.
7. The Board did not have enough information to make a decision, whether it is a 2-car or 3-car garage; enough was not shown to meet 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 reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a dwelling, as shown on the plat prepared by William E. Ramsey, dated August 11, 2003, revised through October 16, 2003, submitted with this application and is not transferable to other land.
2. The building height for the residential structure shall not exceed 2 ½ stories as measured from the average grade.

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

~ ~ ~ January 13, 2004, JAMES V. PATTAN AND HEATHER MULLEN, VCA 2002-PR-061, continued from Page 331

Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. Hart made a motion to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 21, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. CLAYTON W. COVEY, SP 2003-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.2 ft. with eave 0.8 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with VC 2003-MV-134). (Continued from 11/25/03)

9:00 A.M. CLAYTON W. COVEY, VC 2003-MV-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30% and construction of addition 5.0 ft. from side lot line. Located at 8311 Timber Brook La. on approx. 11,050 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 98-1 ((12)) 218. (Concurrent with SP 2003-MV-035). (Continued from 11/25/03)

Chairman DiGiulian noted that SP 2003-MV-035 and VC 2003-MV-134 had been administratively moved to January 6, 2004, at the applicant's request.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 88-S-091 previously approved for a church and related facilities to permit building additions, increase in parking and site modifications. Located at 12409 Henderson Rd. on approx. 14.44 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-4 ((1)) 7. (Decision deferred from 9/16/03 and 11/25/03)

Mr. Hart recused himself from the public hearing.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant had revised its application. Staff continued to feel that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SP 88-S-091 subject to the approval of the revised proposed development conditions dated November 18, 2003.

Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, agent for the applicant, indicated that she had given the Board members a packet of information pertaining to the application and noted that it was her feeling that all issues raised at previous hearings had been addressed. Ms. Strobel addressed an issue that had arisen concerning the number of vehicles parked on the church and surrounding properties when a funeral was being held. She said that she was not aware of any current zoning violations on the property. She stated that information concerning the definition of a mission church was included in the information presented to the Board. Ms. Strobel presented 24 letters and a petition in support of the application. She presented a proposed additional development condition regarding the provision of adequate sight distance, which was crafted with input from and approval of representatives from the Virginia Department of Transportation, and allowed the provision of a turn lane if necessary.

~ ~ ~ January 13, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 88-S-091, continued from Page 332

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

Mr. Pammel moved to defer decision on SPA 88-S-091 to January 27, 2004, at 9:00 a.m., for the purpose of reviewing the material already before the Board, with the record being closed and the Board accepting no additional material. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing. Mr. Hammack requested that revised sets of development conditions proposed by the applicant and staff be provided to the Board. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the development conditions distributed at the hearing were the latest ones proposed by staff.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:30 A.M. FAI OLD CENTREVILLE LLC, A 2003-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the shopping center on property located at Tax Map 54-4 ((1)) 87C has frontage on only one major thoroughfare and, therefore, only one freestanding sign may be erected in accordance with Zoning Ordinance provisions, and that there is no nonconforming right to allow two freestanding signs to be located on the property. Located at 13810 Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 87C and 87F. (Def from 6/10/03 and 7/8/03.) (Admin moved from 9/30/03 for notices) (Admin moved from 10/21/03).

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, distributed copies of a letter received from the attorney for the appellant, Bob Lawrence, the prior afternoon withdrawing the appeal.

Mr. Hammack moved that the Board accept the withdrawal of appeal application A 2003-SU-023. Mr. Pammel seconded the motion, which passed by a vote of 7-0.

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~ ~ ~ January 13, 2004, Scheduled case of:

9:30 A.M. LAWRENCE J. GRAY, PRESIDENT, GHT ENTERPRISES, INC./VILLAGE HARDWARE, A 2003-MV-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing outdoor storage and display which exceeds the maximum amount of accessory outdoor storage allowed in the C-5 District in violation of Zoning Ordinance provisions. Located at 7934 - 7938 Fort Hunt Rd. on approx. 1.27 ac. of land zoned C-5. Mt. Vernon District. Tax Map 102-2 ((2)) (1) 1. (Admin. moved from 11/4/03 at appl. req.)

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, agent for the appellant, stated that she had requested a deferral of the application. She said she had recently reached the landlord and the architect who had prepared the latest parking study, both of whom had moved to Georgia. She said her client wanted to resolve the issue so that the application would be permitted by right, rather than having to ask the Board to reverse the Zoning Administrator's decision. Ms. Kelsey stated that if the application was to be permitted by right, it would require a lengthy parking study that would have to be reviewed by the Department of Public Works & Environmental Services (DPWES); therefore, she requested a six-month deferral.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff did not support a deferral and would prefer that the application go forward. She said the appeal was of a violation for which the notice had been issued in June of 2003, and the application had already been deferred from the original public hearing date of November 4, 2003. Ms. Stehman stated that sufficient time had elapsed and there should have been more progress toward a resolution.

~ ~ ~ January 13, 2004, LAWRENCE J. GRAY, PRESIDENT, GHT ENTERPRISES, INC./VILLAGE HARDWARE, A 2003-MV-038, continued from Page 333

Mr. Ribble said he had spoken to Supervisor Hyland, who had urged that the applicant be granted a deferral.

Ms. Gibb, Mr. Beard, and Mr. Pammel stated that they would support a deferral.

Mr. Hammack moved to defer the application. Mr. Ribble seconded the motion.

In response to Mr. Hart's question concerning the length of time required to sort out the number of parking spaces and whether they were in excess, Ms. Stehman stated that there were three excess parking spaces, and the applicant was one over for the required number of parking spaces. She also noted that in addition to the parking tabulation the applicant was willing to provide, staff thought it would also be necessary to do a minor site plan if there was over 250 square feet of storage. Also in answer to Mr. Hart's query concerning the length of time required to process, Ms. Stehman said it was her opinion that six months was excessive.

Ms. Kelsey said she had been involved in many parking studies and would be pleased if this one could be done in less than six months.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0, and A 2003-MV-038 was deferred to July 13, 2004, at 9:30 a.m.

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~ ~ ~ January 13, 2004, After Agenda Item:

Letter dated January 12, 2004, from Jane Kelsey regarding  
VC 2003-PR-157, Gary A. Marshall, Edward C. Gallick, Trustee, and Linda C. Zemke, Trustee

Mr. Hammack stated that Jane Kelsey, Jane Kelsey & Associates, Inc., had requested a two-week deferral on the finalization of the decision regarding VC 2003-PR-157, Gary A. Marshall, Edward C. Gallick, Trustee, and Linda C. Zemke, Trustee, to provide the applicant time to do research the issues. He said that because there was some uniqueness in that the Board had not previously ruled on many cases regarding average lot sizes, he thought the request was reasonable.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that procedurally the Board could grant a reconsideration, but could not change its decision, which was a denial. She said that if the denial was not reconsidered, the Board could waive the one-year waiting period for refiling.

A discussion ensued between the Board and Ms. Langdon regarding the aforementioned request. In response to Mr. Hart's question, Ms. Langdon said the Board had deferred decision on other applications regarding whether or not to grant a reconsideration; however, she advised that a motion should be put in those terms rather than deferring the approval of the resolution. She emphasized that deferring the approval of resolutions was not a precedent she would like to have set.

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~ ~ ~ January 13, 2004, After Agenda Item:

Approval of January 6, 2004 Resolutions

Mr. Hammack moved to defer the approval of the resolution for VC 2003-PR-157 for two weeks and to approve the remaining resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion.

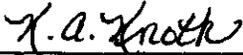
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~ ~ ~ January 13, 2004, continued from Page 334

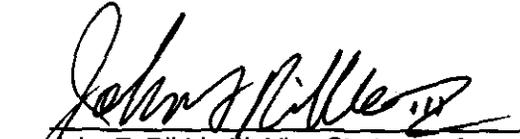
As there was no other business to come before the Board, the meeting was adjourned at 10:26 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: June 28, 2005



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 20, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M.      NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church with child care center and private school of special education to permit a reduction in land area. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. (Admin. moved from 11/25/03 and 1/13/04 at appl. req.).

CB

Chairman DiGiulian noted that SPA 68-D-955-4 had been administratively moved to February 10, 2004.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M.      DOUGLAS CLAVEL, VC 2003-BR-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from rear lot line. Located at 5701 Tender Ct. on approx. 8,455 sq. ft. of land zoned R-4. Braddock District. Tax Map 80-1 ((10)) 42.

Chairman DiGiulian noted that VC 2003-BR-164 had been administratively moved to February 10, 2004.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M.      CENTREVILLE LAND CORPORATION/TARMAC MID-ATLANTIC, INC., VC 2003-SU-168 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit accessory structures to remain 0.0 ft. to 7.0 ft. from front lot line. Located at approx. 1,200 ft. N.W. of the intersection of Bull Run Post Office Rd. and Lee Hwy. approx. 200 ft. N. of Lee Hwy. on approx. 1.64 ac. of land zoned I-6 and WS. Sully District. Tax Map 64-1 ((4)) 3, 4, and 5A.

Mr. Hart gave a disclosure, but indicated that he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynn Strobel, with Walsh, Colucci, Lubeley, Emerich & Terpak, PC, 2200 Clarendon Blvd., Arlington, VA., the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit accessory structures consisting of a self-contained truck wash out area, aggregate bins for sand and other building material storage, and an above-ground diesel fuel facility to be located on the property line or as far as a maximum of seven feet from the property line. The minimum required front yard is 25 feet; therefore, variances of 18 feet to 25 feet were requested. Ms. Stanfield noted that subsequent to publication of the staff report, it had been revealed that there were some structures in the minimum rear yard that exceeded seven feet in height. She stated that the applicant had agreed to a development condition that would require lowering the height of the structures to seven feet or below prior to the issuance of a non-residential use permit. If the Board intended to approve the application, she said it should be approved based on the development conditions dated January 14, 2004.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the applicant was the owner/operator of a concrete mixing and batching plant, for which a special permit had been approved in 1963. She explained that a mapping error had occurred in 1978, which was resolved in 1999, and a special exception to address all the zoning issues had been

approved by the Board of Supervisors on May 22, 2000. Ms. Strobel said one of the approval conditions required the applicant to receive approval of a variance, if necessary. She noted that in the course of the approval of the site plan, there was a verbal determination given by the Zoning Administration Division (ZAD) that a variance was not necessary; however, after the approval of the site plan, the applicant learned that a variance was necessary. The site plan approval was revoked, and the applicant filed the variance application. Ms. Strobel said the applicant satisfied the standards for variances outlined in the statement of justification, but she said the statement had not been included in her copy of the staff report, so she had brought copies to distribute to the Board. She said the property had been acquired in good faith in 1975 and had several unique characteristics, including its unusual shape and the unusual condition of being bisected by a separate parcel that was encumbered by an access road. She stated that the existing structures had been in their current locations since the applicant purchased the property and that a strict application of the Ordinance would produce undue hardship on the applicant because it would be unable to continue to use the property in a manner compatible with surrounding uses and its existing operation.

In response to a question from Mr. Pammel, Ms. Strobel said she was not sure how much time had elapsed between the approval of the site plan and when the applicant was told a variance would be required. She referred the question to John A. Andrews, II, owner of Centreville Land Corporation/Tarmac Mid-Atlantic, Inc., who then asked Jordan Dimoff, project engineer, to respond.

Mr. Dimoff stated that shortly after the approval of the site plan, the applicant submitted a request for a building permit to erect a concrete silo; however, approximately two to three weeks after the site plan was approved, ZAD had revoked that permit and informed the applicant that a variance would be required.

Mr. Hart stated that the site was located very close to a national park and he and many people in the neighborhood were concerned about the appearance of the property. In response to Mr. Hart's query, Ms. Strobel indicated that the holdup of constructing the berm that was required in the special exception development conditions resulted from the revocation of the site plan. She advised that if the variance application was approved, the applicant would resubmit the site plan, obtain approval, and then comply with all the development conditions of the special exception. Also in response to a question from Mr. Hart regarding the timeframe, Mr. Dimoff said that construction was anticipated to begin in the summer.

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

Mr. Pammel moved to approve VC 2003-SU-168 for the reasons stated in the Resolution.

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## REVISED

### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE LAND CORPORATION/TARMAC MID-ATLANTIC, INC., VC 2003-SU-168 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit accessory structures to remain 0.0 ft. to 7.0 ft. from front lot line. Located approx. 1,200 ft. N.W. of the intersection of Bull Run Post Office Rd. and Lee Hwy. and approx. 200 ft. N. of Lee Hwy., on approx. 1.64 ac. of land zoned I-6 and WS. Sully District. Tax Map 64-1 ((4)) 3, 4, and 5A. 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 20, 2004; and

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

1. The applicant is the owner of the land.

~ ~ ~ January 20, 2004, CENTREVILLE LAND CORPORATION/TARMAC MID-ATLANTIC, INC., VC 2003-SU-168, continued from Page 338

2. The applicant met the prescribed standards as set forth in the Zoning Ordinance for the granting of a variance.
3. The use has been in existence since 1963.
4. The need for a variance comes about as a result of structures that were already existing on the property as part of the batching plant use of the property and resulted when the access road was constructed to the quarry operation to the north.

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

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

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

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

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

1. This variance is approved for accessory structures shown on the plat prepared by Paul D. Noursi, dated May, 1999, as revised through October 10, 2003, submitted with this application and is not transferable to other land.
2. Structures located in the minimum rear yard of the subject property will be reduced to seven (7) feet or less in height prior to issuance of a Non-Residential Use Permit (Non-RUP).
3. All applicable conditions as set forth in Special Exception SE 93-Y-035 shall be complied with.

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

~ ~ ~ January 20, 2004, CENTREVILLE LAND CORPORATION/TARMAC MID-ATLANTIC, INC., VC 2003-SU-168, continued from Page 339

Mr. Beard 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 11, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M. MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit accessory structure to remain 2.8 ft. with eave 2.7 ft. from side lot line and 2.8 ft. with eave 1.8 ft. from rear lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with VC 2003-LE-165).

9:00 A.M. MANUEL DE JESUS RODRIGUEZ, VC 2003-LE-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. with eave 22.3 ft from front lot line and 8.3 ft. with eave 6.8 ft. from side lot line and fence greater than 7.0 ft. in height to remain in side and rear yards. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with SP 2003-LE-041).

Chairman DiGiulian noted that SP 2003-LE-041 and VC 2003-LE-165 had been administratively moved to March 9, 2004, for notices.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M. SYLVIA & JAMES A. LOVELACE, VC 2003-LE-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 6.8 ft. with eave 5.5 ft. from one side lot line and 13.2 ft. with eave 12.0 ft. from other side lot line. Located at 3131 Clayborne Ave. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 23.

Chairman DiGiulian noted that VC 2003-LE-160 had been administratively moved to March 9, 2004, for notices.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M. FORREST STIEG, VC 2003-DR-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line and less than 200 ft. from Dulles Airport Access Rd. Located at 1720 Baldwin Dr. on approx. 12,470 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((15)) 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. Forrest Stieg, 1720 Baldwin Drive, McLean, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 6.7 feet from the side lot line and less than 200 feet from the Dulles Airport Access Road. The addition would be located 69.2 feet from the edge of the right-of-way of the Dulles Airport Access Road. A minimum side yard of 12 feet is required; therefore, a variance of 5.3 feet was requested. Sect. 2-414 states that a minimum distance of 200 feet shall be maintained between all residential buildings and the rights-of-way of interstate highways and the Dulles Airport Access

~ ~ ~ January 20, 2004, FORREST STIEG, VC 2003-DR-170, continued from Page 340

Road. Mr. Sherman noted that subsequent to the publishing the staff report, staff had determined that a variance to permit construction within 200 feet of the Dulles Airport Access Road was not required.

Mr. Stieg presented the variance request as outlined in the statement of justification submitted with the application. He said the variance for construction of a two-car garage was being requested because it was the only spot on their lot that was large enough to permit it. He stated that the construction would conform to the rest of the neighborhood.

In response to questions from Mr. Hart, Mr. Stieg said he had requested the additional footage in the rear of the proposed garage to replace an existing storage shed. Mr. Hart said he thought the addition could be configured in such a way that it would not require a 45-foot-long intrusion into the side yard. Mr. Stieg said he would take that recommendation into consideration and acknowledged that the addition would be two stories high. He responded to Mr. Hart's queries stating that the basement was partially underground in front of the house only, and the driveway was approximately three feet above the basement level of the house. He said he did not want to dig down to the basement level when constructing the garage, and two bedrooms would be built over the garage. Mr. Hart asked why the upstairs needed to go into the setback, and Mr. Stieg replied that they designed it that way to enable him to get the size he was looking for, with the upstairs of the addition going 45 feet back. Mr. Hart asked if Mr. Stieg had drawings of the proposed addition. Mr. Stieg presented copies of the proposed elevation drawings. Mr. Hart asked how far away the house on Lot 9 was in relation to the proposed addition. Mr. Stieg replied that the house was the same size as his, and they were both the same distance from the street and rear yard. He stated that his neighbors did not oppose the construction, and the roof lines would be at the same level as his neighbors.

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

Mr. Hart moved to approve VC 2003-DR-170 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FORREST STIEG, VC 2003-DR-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line and less than 200 ft. from Dulles Airport Access Rd. Located at 1720 Baldwin Dr. on approx. 12,470 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((15))  
10. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 20, 2004; 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 showing compliance with the required standards for a variance.
3. The subject lot is only 86 feet wide.
4. The house is oriented with the long axis across the short side of the lot.
5. In order to have a 2-car garage, the proposed garage is about the minimum that could be done.
6. With the dimensions that are shown, this is a very narrow 2-car garage.
7. The proposed location is on the logical side of the lot where the driveway is existing and where the side yard is slightly wider.
8. The yard is somewhat impacted by a VEPCO easement in the front, a utility easement in the back, and a gas easement on the side.
9. There is an elevated addition on piers at the left side and a deck in the middle, so it is reasonable to expect the addition, if additional space was required, be in the location chosen.
10. Based on the drawings, there will be no significant impact on anyone.

~ ~ ~ January 20, 2004, FORREST STIEG, VC 2003-DR-170, continued from Page 341

11. 45 feet is a long intrusion into a minimum side yard, but at the same time, there is no opposition.
12. The applicant has done it in a logical way on a lot that has some constraints on it.

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

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

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

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

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

1. This variance is approved for the location of a garage, as shown on the plat prepared by L. Carl Gardner, Jr., dated September 5, 2003, revised January 8, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

~ ~ ~ January 20, 2004, FORREST STIEG, VC 2003-DR-170, continued from Page 342

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 11, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M. PAUL KEARNEY, VC 2003-PR-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered deck 26.9 ft. with eave 26.4 ft and steps 23.2 ft. from front lot line of a corner lot. Located at 6727 Chestnut Ave. on approx. 10,120 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (6) 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. Paul Kearney, 6727 Chestnut Avenue, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a covered deck 26.9 feet with eave 26.4 feet and steps 23.2 feet from one front lot line of a corner lot. A minimum front yard of 30 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard, and steps are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 3.1 feet, 0.6 feet, and 1.8 feet, respectively, were requested.

Mr. Kearney presented the variance request as outlined in the statement of justification submitted with the application. He said the addition of a covered deck was requested because the property was purchased in 1999 with the intention of renovating the house. The remodel design of the property was completed with all attempts to maintain the architectural style of the neighborhood, and the design conformed with most of the structures in the neighborhood and did not impact any adjacent boundaries.

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

Mr. Ribble moved to approve VC 2003-PR-167 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL KEARNEY, VC 2003-PR-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered deck 26.9 ft. with eave 26.4 ft and steps 23.2 ft. from front lot line of a corner lot. Located at 6727 Chestnut Ave. on approx. 10,120 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (6) 22. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 20, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has an extraordinary situation with his lot having double front yards, and he wants to put in a portico on the front of the house.

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

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a porch and steps, as shown on the plat prepared by Bryant L. Robinson, dated June 27, 2003, revised October 8, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 11, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:00 A.M. RONNIE GOLLEHON, VC 2003-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 2 lots with proposed Lot 27B having a lot width of 15.58 ft. Located at 6917 Cherry La. on approx. 1.24 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((7)) 27. (Moved from 7/22/03 and 9/30/03 at appl. req.) (Continued from 10/28/03).

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 M. Baskin, with Baskin, Baskin, Jackson & Hansbarger PC, 301 Park Avenue, Falls Church, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, noted that the application had been continued from a previous date to allow the applicant time to address several issues. He advised the Board that the applicant had revised his original request and was currently requesting a lot width variance to permit the subdivision of one lot into two lots, with Lot 27A having a lot width of 176.56 feet and Lot 27B having a lot width of 15.58 feet. A minimum lot width of 100 feet is required. He said Lot 27A would consist of 22,738 square feet, and Lot 27B would consist of 31,157 square feet. He advised that staff continued to believe the application failed to meet the required standards for the granting of a variance. He noted that a revised affidavit, including a contract purchaser, had been distributed to the Board. Mr. Sherman also noted that staff had received revised plats dated December 11, 2003, and date stamped January 16, 2004; however, it was staff's understanding that the applicant had decided to withdraw those plats and proceed with the plats in the addendum.

Mr. Baskin advised the Board that the December 11, 2003, revised plat had not been withdrawn; however, the plat filed on Friday, January 16, 2004, had been. He said the revised plan had been submitted in response to questions raised by the Board at the previous hearing. He stated that most of the trees would remain, the existing driveway would serve both houses, clearing and grading was now shown on the plat, and stormwater management issues were also addressed by the plat. Mr. Baskin also said the applicant was working with the Department of Public Works & Environmental Services on other methods to address stormwater runoff on the front right corner close to Cherry Lane. He presented a vegetation map showing the new plan. He took issue with staff's comment that the application would result in lots significantly smaller than the existing lots in the subdivision. Mr. Baskin advised that the average of the two new lots would be larger than half of the lots that currently existed on Cherry Lane. He took exception to the neighbor's objections citing: violations of existing requirements for the Zoning Ordinance, the angle of the front of the house next door that faced the applicant's property, which he believed was their reason for objecting to the applicant developing his property, the lack of reasonableness of their objections when their lot was unusual. He noted that other property owners had benefited from subdivision of their own properties. He said two neighbors supported the application, and those that did not were farther away from the subject property. Mr. Baskin said it was the only lot remaining in the area that may be subdivided, the property had been acquired in good faith, the lot was narrow, and the frontage was only 192 feet instead of 200 feet; however, he advised that neither the character of the zoning district nor that of the neighborhood would be adversely affected. Mr. Baskin said the application met all the requirements for a variance and requested approval by the Board.

In answer to Ms. Gibb's queries concerning the height of the potential homes, the topography, stormwater alternatives, and clearing, Mr. Baskin explained that the houses would be sited so they were screened by large existing trees and would be facing away from other houses. He said the subject house being proposed for the rear of the property would not loom over other houses. He indicated that rain gardens and swales were being considered, and clearing would be required only along the driveway where the rain gardens would be located. He said it was the applicant's desire not to put in a stormwater pond because too many trees would have to be removed. In response to a question posed by Ms. Gibb concerning whether or not the stormwater pond would be low enough to capture water, Mr. Baskin said the water would come from impervious surfaces, and the driveway would be made porous.

In response to Mr. Ribble's questions concerning whether the lot was excluded from the restrictive covenants and how long those covenants ran, Mr. Baskin said they were recorded on March 19, 1949, and restriction No. 4 of that covenant stated, "No lot shall be subdivided without the written consent of owners of a majority of the lots except Lot 21, 27 and 36, which may be subdivided into not more than two lots." He said the subject property was Lot 27, and it was his understanding that the other two lots had been divided previously, and the existing restrictive covenants ran in perpetuity.

In answer to Mr. Pammel's question, Mr. Baskin said the applicant had owned the property for two years.

Chairman DiGiulian called for speakers.

Elliot Roberts, 6921 Cherry Lane, Annandale, Virginia, came forward to speak in support of the application. His main points were that the character of the neighborhood would be improved, and property values and stability would increase,

The following persons came forward and spoke in opposition to the application: Thomas E. Gause, 6900 Oak Court, Annandale, Virginia; Robin Kline Browder; 4504 Hillbrook Drive, Annandale, Virginia; Susan Gause, 6900 Oak Court, Annandale, Virginia; Barbara Eckhert, 4501 Hillbrook Drive, Annandale, Virginia; Sara Denby, 4505 Hillbrook Drive, Annandale, Virginia; James Lincoln, 6901 Oak Court, Annandale, Virginia; Imogene Lincoln, 6901 Oak Court, Annandale, Virginia; Faith Klein, 6912 Pacific Lane, Annandale, Virginia; John Beier, 6917 Oak Court, Annandale, Virginia; Lynn Hamon, 6905 Oak Court, Annandale, Virginia; David Tannous, 6912 Oak Court, Annandale, Virginia; Sue McWilliams, 4905 Kingston Drive, Annandale, Virginia; Josephine Tannous, 6912 Oak Court, Annandale, Virginia; and Michael McHugh, Esq., agent for James and Carolyn Rauch, 6913 Cherry Lane, Annandale, Virginia. Their main points were: loss of privacy; runoff; failure to meet lot standards; disturbance of wildlife; other owners would subdivide; eight standards were not being met; subdivision was not in the community's interest; destruction of trees; increase in trash pickup; added load on other facilities; a precedent would be set; narrow footage; no covenants; destabilization of the neighborhood; after subdivision applicant would sell property; other lots did not have pipestems; and, relocation of the applicant's driveway.

Mr. Gause presented a petition and letters signed by owners in opposition and diagrams of homes with a potential to subdivide and said he saw no obvious hardship to the applicant.

Mr. Pammel noted that Mr. Gause had served many years as the Chairman of the Environmental Quality Advisory Council.

In response to a question by Ms. Gibb, Mr. Lincoln said he thought the effectiveness of the 1949 restrictive covenant would be questionable in future years when the properties were be passed down to heirs or sold.

In answer to a question by Ms. Gibb, Ms. Harmon said she did not know why the developer would treat Lot 27 differently from the other lots.

Ms. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's question regarding Lot 11B. She stated that the lot did not have any access, and because of its limited size, it was questionable whether anything could be built on it

Mr. Hart questioned Ms. Harmon regarding the division of the lots. She explained that she had purchased her home from the original owner who had chosen to sell Lot 11A to a builder and had adjoined Lot 11B to the property she had purchased.

Mr. Hart asked Mr. Tannous if he could explain why three of the lots could be divided and other lots could not. Mr. Tannous replied that the restrictive covenants of 1949 had been put into place many years before the Comprehensive Zoning Act of 1978 and was an attempt to protect the large wooded lots and the character of the neighborhood. He said there were provisions in the covenant for the subdivision of lots as long as a majority of property owners within the various sections where each of the covenant restrictions applied were in agreement. He also explained that a subdivision of the three lots in question had been provided because they were larger lots and it was envisioned that they could be divided down the middle. Mr. Tannous explained that covenants are not maintained or enforced by the County, and he found through research that a number of subdivisions had occurred in their neighborhood, and there was no information in the land records to indicate that the required number of signatures had been obtained. He further explained that the only way a covenant could be maintained was if an individual property owner brought a civil suit against a neighbor. Responding to Mr. Hart's query, Mr. Tannous acknowledged that there had been several instances where lots had been subdivided with the concurrence of the neighborhood, specifically Lots 31A and B. He stressed that the Zoning Ordinance was the only means to protecting their properties.

Mr. McHugh stated that he did not consider the approval of a variance to be appropriate. He noted that it was the unavailability of the variance in the R-2 District that prevented the mass subdivision of all the other lots. He stated that if the pipestem became available, there would be no basis for turning down any other

~ ~ ~ January 20, 2004, RONNIE GOLLEHON, VC 2003-MA-070, continued from Page 346

owner's request for a pipestem. Referring to the map provided by Mr. Tannous, he stressed that it would become the new pattern for subdivision for the area and would be a stacking pattern that would not be permitted under the Facilities Standards Manual. Mr. McHugh noted that the lot in question was a little larger than the others, but that was not an unusual use of the property. He said it was, by definition, a reasonable use, and unless there was a new Ordinance amendment, the lot would be eligible for subdivision. He stressed that the applicant had the opportunity to go to the Board of Supervisors and ask for a general amendment to the Ordinance in order to permit pipestems either by right in the R-2 area, to change the width requirement for the R-2 District, or to request a special exception and get a waiver of various requirements. He said the applicant had not done that because he knew the Board of Supervisors would deny the request.

In answer to Mr. Beard's question, Mr. McHugh identified himself as an attorney for the Rauches.

Ms. Gibb said she was interested in the restrictive covenants with respect to the scheme of development and to what the developer may have anticipated. She also said she was curious about the impact of this one division and whether the neighborhood would be destabilized.

Mr. McHugh indicated that the Board of Supervisors had already solved the problem by indicating that the lot in question was not large enough to be subdivided into two lots. He stated that the covenant was a private agreement among a small number of people, and the Zoning Ordinance was a covenant with all the people of Fairfax County and applied to everyone. Mr. McHugh stated that to change the FAR through a variance was contrary to public policy. He requested that the covenants be set aside because they were irrelevant and that the Zoning Ordinance be strictly adhered to.

In his rebuttal, Mr. Baskin said there would not be a change to the zoning district, and granting the variance would not set a precedent because the lots were large enough to accommodate the subdivision. He stated that the character of the lots would be maintained as a result of the development plan which preserved nearly all of the trees and utilized the existing driveway. He indicated that the pipestem shown on the plat was not where the driveway was proposed to be. He said he did not agree that the adjoining properties would be adversely affected. He pointed out that the Rauch home was improperly located too close to the side lot line under the Zoning Ordinance and was at such an angle as to be less conforming than the Gollehon property. He said the issue was not whether the continued use of the property for one house was reasonable because it was almost three and a half times the minimum. The issue was whether permitting two houses on lots that met all other requirements of the R-2 District was unreasonable. Mr. Baskin quoted from the Supreme Court decision on the case of the Board of Zoning Appeals vs. Fowler, "The amelioration of the intended purpose of the BZA was to allow for the amelioration of the rigors of necessarily general zoning statutes by eliminating the necessity for slavish adherence to the precise letter of the Ordinance where in a given case little or no good on the one side and under hardship on the other would result from literal enforcement." He said he thought that was what was occurring with this case.

Ms. Gibb noted that the revised staff report concluded that the applicant had addressed all issues except for neighborhood destabilization and asked if that was still staff's opinion. Mr. Sherman replied that staff was still of the opinion that granting the application would result in destabilization of the neighborhood because of the presence of other lots in the neighborhood which had similar characteristics and may be developed in the same way. He said staff was concerned that granting the application would set a precedent for the Board of Zoning Appeals because there would be no other way to subdivide the lots. Further discussion ensued between Ms. Gibb and Mr. Sherman concerning compatibility. Mr. Sherman said staff was concerned because the proposed subdivision of the lots would be much smaller than the adjacent lots and because there were no other pipestems in the neighborhood.

Ms. Langdon responded to Ms. Gibb's question concerning a statement made by Mr. Baskin. She said she thought he had said the lots met the minimum average lot size for two lots. She pointed out that there were other surrounding lots that were as large or almost as large directly adjacent to the lots as well as in other places in the neighborhood. She acknowledged that there were other smaller lots on other streets that met the minimum lot width. Ms. Langdon said the Gollehon property would be a double stacked lot, and there were no other lots like that in the neighborhood.

Chairman DiGiulian closed the public hearing.

Ms. Gibb referred to a letter the Board had received stating that the writer was concerned that the Board had

~ ~ ~ January 20, 2004, RONNIE GOLLEHON, VC 2003-MA-070, continued from Page 347

shown favoritism to the applicant's attorney by deferring the case. She explained that deferring cases was commonly done to ensure that the Board received as much information as possible before making a final decision.

Ms. Gibb moved to deny VC 2003-MA-070 for the reasons stated in the Resolution.

Mr. Pammel said he did not think the applicant had provided any evidence that lack of granting of the variance would result in a hardship that would deprive him of reasonable use of the land. He noted that there was a single-family dwelling on the property, the owner was currently making use of that dwelling, the lot was consistent with other lots in the subdivision, and it would not be a hardship to deny him the right to put two dwellings on the same property.

Mr. Hart stated that he had missed part of the October 28, 2003 discussion of this case, but had watched the tape and would participate in the decision and would support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONNIE GOLLEHON, VC 2003-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 2 lots with proposed Lot 27B having a lot width of 15.58 ft. Located at 6917 Cherry La. on approx. 1.24 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((7)) 27. (Moved from 7/22/03 and 9/30/03 at appl. req.) (Continued from 10/28/03). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 20, 2004; 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 a lot of the standards and has done his best to make this work, but the fact that one house is behind the other makes it quite a bit different than the scheme in the neighborhood.
3. The applicant did not meet Standard 8, that the character of the Zoning District will not be changed by the granting of the variance.
4. There is evidence that it was the intent of the developer, and certainly relied upon by the homeowners that lived there, that there would be large, deep lots or lots with trees in the back, and the proposed subdivision is contrary to that.

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

~ ~ ~ January 20, 2004, RONNIE GOLLEHON, VC 2003-MA-070, continued from Page 348

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. 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 11, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 20, 2004, Scheduled case of:

9:30 A.M. TITAN MOVING & STORAGE, LLC, MR. EDMUND C. BOWLER, A 2003-MV-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has established a storage yard on property in the C-6 District in violation of Zoning Ordinance provisions. Located at 1602 Belle View Blvd. on approx. 6.57 ac. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 2. (Admin. moved from 11/18/03 at appl. req.)

Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, agent for the appellant, requested a two-month deferral of the application.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that the appeal requested by the appellant was a result of a notice of violation that was issued in June of 2003, and the hearing had previously been deferred. She said staff had hoped that the applicant would have made more progress by this date on the resolution of the appeal, but if the Board approved the deferral request, staff would be willing to work with the applicant in an effort to resolve the issue on appeal.

Chairman DiGiulian stated that the Board had received a facsimile from the Chairman of the Board of Supervisors, Gerald Hyland, suggesting that a short deferral would be appropriate.

Mr. Beard moved to defer the application to March 23, 2004.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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--- January 20, 2004, Scheduled case of:

9:30 A.M. YOUNG K. LEE AND YOUNG A. LEE, A 2003-PR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants' property consists of a single lot. Located at 10414 Miller Rd. on approx. 2.12 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((2)) 1. (Decision deferred from 10/28/03).

Tom Nelson, Department of Public Works and Environmental Services (DPWES), explained that the appeal was of the determination of DPWES that the appellants' property consisted of a single lot rather than three individual lots. He said that at the October 28, 2003 public hearing, the Board requested staff respond to questions regarding the creation of the lot and the surrounding subdivision, and he indicated that the questions and staff's responses were included in an addendum to the staff report.

There was discussion between the Board and staff regarding the definition of a lot and the process by which lots and subdivisions were created and whether it required recordation in the land records.

Lonnie Bryan, Assistant Director, Real Estate Division, Department of Tax Administration, reported that in 1959 the property tax records referred to the three lots individually under the legal description, but they had been taxed as one lot.

There was discussion between the Board and John Foster, County Attorney's Office, regarding subdivision of property being done through the recordation of the metes and bounds description reflecting the intent of the parties to that deed. Mr. Foster said that with respect to the subject case, the intent of all of the owners of the subject property consistently indicated they intended to treat the property as a single lot because that metes and bounds description had consistently referred to it as 2.12 acres of land from 1944 though the present and the house was located since 1954 such that it straddled the three parcels depicted on the 1924 plat.

Mr. Hart commented that there were numerous situations where houses were built on multiple parcels and there may have been one tax bill, but it would not cause the underlying lots to no longer exist. He said there was no statute or ordinance that required the recordation of the April 1, 1924 plat in the land records.

Mr. Foster stated that as a matter of common law in 1924 and going back to the beginning of the Anglo-American approach to the law, land was divided by recording a metes and bounds description in the land records, and the only metes and bounds description of the subject property recorded in the land records indicated treatment as a single lot.

There was discussion between the Board and staff regarding the location of pipes on the property and dashed lines on the tax map. Mr. Nelson said there was no record of the pipes being there and he had no knowledge regarding the pipes. Ms. Stehman said the reason for the dashed lines on the subject property was unknown. She said it was a standard symbol used by the mapping office for properties that may have been in dispute at some point in the past. She explained that there have been instances where smaller lots had been consolidated through the building of a house on two or more lots and the pulling of a building permit with no approved consolidation plat that oftentimes showed dash lines.

Chairman DiGiulian referred to a document from the Real Estate Division of the Fairfax County Department of Tax Administration, which he said listed Miller's Oakton Heights, Lots 1, 2, and 5 under the legal description, and he asked why that was not a valid legal description versus the metes and bounds. Ms. Stehman indicated it was staff's position that there was a subdivision plat dated 1924 that was unrecorded that served as guidance to the people that developed it. She said that the only recordation that had occurred of Lots 1, 2, and 5 shown on the unrecorded subdivision plat had been as one lot, which was designated as Lot 1 in the tax records. She conceded that the 1924 subdivision plat was available to and filed with the County, but had no status, given that the plat was not recorded and the three lots were never recorded as separate lots.

The appellants' agent, William Baskin, presented his response to Mr. Nelson's memorandum. His position was that the lots were created by the plat at the time it was prepared, and since it was prepared by the County Surveyor and was found in the mapping records of the County, he concluded that it was filed contemporaneously with its preparation and had been part of the County records since 1924.

Mr. Baskin submitted deeds and plats to the Board that he said described lots both by metes and bounds and lot numbers, one of which was a plat of validation that had been approved by the County and validated

~ ~ ~ January 20, 2004, YOUNG K. LEE AND YOUNG A. LEE, A 2003-PR-042, continued from Page 350

Lots 12 and 14 of Oakton Heights Subdivision.

Mr. Baskin reported that Wilson Avenue was dedicated by deed in 1947 and did not include a plat. He said he had contacted VDOT and that they acknowledged it was in the public street system and had a route number, but they had no knowledge of when it was taken into the system. He commented that the County had not taken any action to invalidate or vacate Wilson Avenue and that its acknowledgement and approval of the existence of Wilson Avenue evidenced that the County had approved the existence of the subject lots.

Mr. Baskin discussed the exhibits attached to a letter from the Tax Administration Department that was provided to the Board and noted that the documents listed Lots 1, 2, 5, and identified other lot numbers as the legal descriptions and Miller's Oakton Heights as the subdivision, which indicated the subdivision was properly created and had been acknowledged by the County as properly created.

Mr. Baskin described research he had done regarding subdivision requirements and concluded that at the time this plat was prepared and recorded among the County's records, there were no legal requirements describing how property could be properly subdivided, and he submitted that the plat presented constituted a legal subdivision of property.

Mr. Baskin said that the iron pipes referenced in an attachment to the staff report were also shown on a 1996 plat, which indicated iron pipes found at the corners of the lots that established Lots 1, 2, and 5.

Mr. Baskin indicated he had made inquiries regarding the dashed lines on the tax map and the only reason he had been given was that, similar to other situations, at some point the owner of the property may have requested a consolidated tax bill for all of his property and not three separate bills.

Mr. Baskin said he did not think the cases cited in Mr. Nelson's memorandum regarding the issue of the recording of the deeds and the descriptions were pertinent to the subject case because they related to disputes between two parties to a deed or a contract when a court could look outside the deed for extrinsic evidence as to what the intent was.

Mr. Baskin stated that the purpose of recordation was to provide constructive notice as to who owned property and to what encumbrances existed on the property and that the County was attempting to disavow its own records that it had maintained for 80 years that these were three lots. He requested that the Board formalize that with a decision.

Ms. Gibb asked Mr. Baskin to confirm that a subdivision did not occur until a metes and bounds description was in the land records in a deed. Mr. Baskin replied that the division occurred when the plat was prepared and filed in the County's records and that there was no prohibition against dividing the property that way at the time it was done. He said that the conveyance of properties describing them in metes and bounds did not undo that. He added that the placement of the pipes at the property corners where the land was surveyed and physically laid off with the corners set was more indicative of the intent of the owner than anything else.

Mr. Hart and Mr. Baskin had a brief discussion to clarify the facts surrounding the 1921 and 1924 plats and concluded that the 1921 recorded plat accompanied a deed of conveyance to Mr. Miller, and the 1924 plat was recorded in the County mapping office when Mr. Miller was still the owner.

Mr. Beard commented that staff had made some compelling arguments in their memorandum, but that he concurred with Mr. Hart's comments regarding a house straddling more than one lot and that a tax bill did not make the underlying lots cease to exist. Mr. Beard said that although the chain of title referenced one lot, the 1924 plat showed the intent. He said he was prepared to make a motion.

Ms. Gibb and Mr. Nelson discussed some of the conveyances after 1947 contained in the documents.

Chairman DiGiulian called for speakers. There were no speakers.

Chairman DiGiulian asked Mr. Nelson if he had any additional comments. Mr. Nelson replied that he did not.

Mr. Foster asked if he could comment. He indicated that he did not agree with Mr. Baskin's claim that the tax

records from Mr. Bryan distributed to the Board supported the appellants' position that the Department of Tax Administration (DTA) treated the subject property as three separate lots. Mr. Foster discussed some examples from the documents and stated that where DTA taxed a lot as a separate lot, it consistently broke it out into its own separate block. He said the same consistent treatment was shown with the chain of title where instead of relying on the unrecorded 1924 plat, there was a recordation of a metes and bounds description where the intent was to treat it as a separate lot.

Chairman DiGiulian closed the public hearing.

Mr. Beard reiterated his previous statements and said the burden had been met. He moved to find the appellants' property did indeed consist of three lots. Mr. Hart seconded the motion.

Mr. Hart commented that the requirements in 1924 were very minimal compared to the current requirements and that there was no statute or ordinance in 1924 that regulated the division of land or required recordation of a plat. He said that based on the evidence presented to the Board, it could be presumed that the actions of the County Surveyor in 1924 were the appropriate ones and that the 1924 plat showed a division of the land with pipes set at the corners. Mr. Hart noted that the 1924 plat referred to a subdivision, and later the name of the subdivision, Oakton Heights Subdivision, property of C. E. Miller, was picked up in the tax records. He said that the drawing and filing of the plat and the monumentation of the corners showed the intent by the owner to do something.

Mr. Hart stated that there was a consensus on the Board that the 1929 Subdivision Ordinance did not require the recordation of a plat unless a public street was being dedicated and that the plain English on the face of that confirmed that recordation of a plat was not required. He added that thousands upon thousands of lots in the County were done that way after the 1929 Ordinance without recordation of a plat.

Mr. Hart said that within the previous couple years the issue arose regarding the fact that the BZA should not be hearing Subdivision Ordinance cases as if the Director of DPWES was charged with some independent power to make determinations regarding the subdivision of lots as opposed to determinations of buildability. Mr. Hart stated that, as with other similar cases the Board had heard, the agent for the appellants raised the question about the buildability of the three lots, and under the Zoning Ordinance, it was the Zoning Administrator's job to respond to questions such as that, questions regarding the Zoning Ordinance, including questions of buildability, and must, in making such a determination, review certain other provisions which were incorporated by reference. He said that within the scope of 18-603 of the Zoning Ordinance, there were some other Ordinances incorporated, specifically including the Subdivision Ordinance. Mr. Hart stated that in making a determination of buildability, the Zoning Administrator could be assisted by DPWES, but DPWES could not make the call, and that in answering the question about whether specific lots were buildable lots, it may involve the Subdivision Ordinance or other applicable laws and regulations.

Mr. Hart commented that he was not sure the Subdivision Ordinance had anything to do with the subject case because the time frame involved was some years before the Subdivision Ordinance was enacted. He said that in the absence of any authority that recordation of the plat was required in April of 1924, or of any case law suggesting that recordation was the exclusive way of dividing land, there was no basis for concluding that there was something improper in what was done with the paperwork, and he concluded that the determination, whoever made it, regarding whether the subject property was three lots or one lot was incorrect.

Mr. Hart added that he thought to the extent that the determination was delegated, the Zoning Administrator would not have had the power to do so and the Zoning Administrator had to answer questions regarding buildability.

Mr. Pammel stated that he would oppose the motion. He briefly outlined his understanding of how the events transpired over the years regarding the subdivision, the subject property, and the documentation, and said the plat was prepared, but never was recorded, and he thought the 1924 plat had basically been forgotten. He noted that all the actions seen over the years were metes and bounds and conveyances by metes and bounds recorded in the land records of the County, with the exception of one in 1956, 50 years past, where lots were referred to. Mr. Pammel said the County was correct in its rationale.

Ms. Gibb said the question was whether it was required that a plat be recorded. Mr. Pammel replied that he

~ ~ ~ January 20, 2004, YOUNG K. LEE AND YOUNG A. LEE, A 2003-PR-042, continued from Page 352

was not sure that was required. He stated that it was a fact that in 1944 there was a conveyance by metes and bounds of a single parcel, although it represented three lots. He said it was clear that the subdivision plat was a working guide as to what was available and the possible development or division of the property, and it never was recorded, and there was no basis for the Board to legitimize a fact that never occurred.

There was discussion regarding the difficulties of the case due to the records, what was the intent of prior owners, and whether Mr. Berry had been working in the capacity of a County surveyor or in a freelance capacity when he authored the plat. Mr. Pammel said it was difficult to determine what did occur, but that the Board could not make decisions that would legalize something based on the record before them.

Chairman DiGiulian called for a vote, and the motion carried by a vote of 4-2. Mr. Pammel and Ms. Gibb voted against the motion, and Mr. Hammack was absent from the meeting.

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~ ~ ~ January 20, 2004, After Agenda Item

Approval of January 13, 2004 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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As there was no other business to come before the Board, the meeting was adjourned at 12:13 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: October 25, 2005

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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 10, 2004. The following Board Members were present: John F. Ribble III; Nancy E. Gibb; Paul W. Hammack Jr.; and, James D. Pammel. Chairman John DiGiulian; V. Max Beard; and James R. Hart were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:03 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church with child care center and private school of special education to permit a reduction in land area. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. (Admin. moved from 11/25/03, 1/13/04, and 1/20/04 at appl. req.).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carson Lee Fifer, Jr., Esquire, McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, agent for the applicant, replied that it was. He stated that the matter was before the BZA because of an action by the Planning Commission (PC), who had deferred its decision, and he was requesting that the BZA's public hearing be deferred until after the PC's decision date of February 19, 2004.

Vice Chairman Ribble asked if there was anyone present who wished to speak to the deferral request.

Y. T. Hung, 8447 Clover Leaf Drive, McLean, Virginia, representing Chesterbrook Taiwanese Church, the lessee of the property, said they opposed the deferral because they had not been informed of the proceedings for some time, and they were present to hear the matter. He said they opposed both the application and the deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff had no comment regarding the deferral and suggested the date of February 24, 2004, if the Board chose to defer the case.

Ying Shih, 1404 Southwind Court, Vienna, Virginia, said he opposed the deferral because he had prepared his testimony. He urged the Board to go forward with the hearing.

Mr. Fifer said he was aware of the issues between the Taiwanese church and his client, and they were currently being worked on; however, he could not guarantee its resolution before the deferral date. To clarify for Ms. Gibb, he noted that the Taiwanese church was not a lessee of the Presbytery church, but a portion of the property of his client.

Mr. Hammack suggested that before the BZA public hearing, the applicant and the Taiwanese Church seek counsel from the County Attorney to resolve outstanding issues. He further commented that another BZA member, James R. Hart, who also was a member of the Planning Commission, had informed him that the PC public hearing was very lengthy with over 50 speakers and a lot of issues involved. Mr. Hammack said he wanted to know the PC decision before the BZA hearing.

Mr. Hammack moved to defer SPA 68-D-955-4 to February 24, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Hart, and Mr. Beard were absent from the meeting.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. DAN AND JANE MATTOON, VC 2003-MA-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. with eave 18.3 ft. from rear lot line and roofed deck 33.2 ft. and stairs 18.5 ft. from front lot line. Located at 6344 Cavalier Cr. on approx. 12,875 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 545.

~ ~ ~ February 10, 2004, DAN AND JANE MATTOON, VC 2003-MA-180, continued from Page 355

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher J. Comeau, AIA, 4856 North 29<sup>th</sup> Street, Arlington, Virginia, the architect and applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 19 feet with an eave 18.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, variances of 6.0 feet for the addition and 3.7 feet for the eave were requested. The applicant also requested a variance to permit a roofed deck 33.2 feet and stairs 18.5 feet from the front lot line. A minimum front yard of 35 feet is required; therefore, variances of 1.8 feet for the roofed deck and 16.5 feet for the stairs were requested.

Mr. Comeau presented the variance request as outlined in the statement of justification submitted with the application. He explained that the house's style was a bi-level where the formal living area, the living room and dining room, were one level up, and the applicants sought to have the entranceway placed at that level. He displayed two stairway styles, Scheme A, which could be done by right and would be quite tall with its wall facing the street, or Scheme B, with the latter having a much lower, softer connection working its way down left and right, softly sloping to grade. He pointed out a drainage area on the property that provided an additional buffer area from the street. The variance requested for the minimum rear yard setback was to permit construction of an addition 19 feet from the rear property line, and Mr. Comeau pointed out the steep topography of the rear yard and that the variance would not adversely impact the neighbors.

Mr. Gibb asked Mr. Comeau to address the February 7<sup>th</sup> letter from the next-door neighbor, Robert Gibson.

Mr. Comeau stated that there was substantial distance from Mr. Gibson's property to the front elevation of the applicants' proposed entranceway and that Mr. Gibson would not be staring at a huge brick wall. He said that there was not a substantial impact. He clarified that the Scheme A stairway design could be done by right because it did not extend into the front yard and that there was an interior stairway. The basketball court mentioned in Mr. Gibson's letter had been reoriented to the other side of the rear yard and no longer was an issue, and the applicants had hired a landscape architect to do significant plantings for an aesthetic appeal and ample buffer.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel commented that Scheme B was far superior in terms of aesthetics and design, and he supported the requested variances as presented by the applicants.

Mr. Hammack said he supported the application because it allowed the construction of Scheme B, but he had reservations about it because he believed that the steps and height should have been taken into account during the renovation construction on the house, and to come back after the fact saying that they had not taken things into consideration, in his opinion, came close to being a self-inflicted situation.

Ms. Gibb moved to approve VC 2003-MV-181 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAN AND JANE MATTOON, VC 2003-MA-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. with eave 18.3 ft. from rear lot line and roofed deck 33.2 ft. and stairs 18.5 ft. from front lot line. Located at 6344 Cavalier Cr. on approx. 12,875 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 545. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10,

~ ~ ~ February 10, 2004, DAN AND JANE MATTOON, VC 2003-MA-180, continued from Page 356

2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The lot is difficult due to its steep grade.
4. The proposal makes sense and is aesthetically pleasing.
5. The variance will be less imposing and have less of an impact than the entrance allowed by-right.
6. The roofed-deck variance is very modest at 1.8, feet and the eave at 3.7 feet is a modest request.
7. The rear addition has been well designed by the architect to fit in with the steep grade.
8. There will be landscaping to enhance the front of the property.
9. Both for topographical and grade reasons, the applicant has justified the requested variances.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition with eave, roofed deck and stairs, as shown on the plat prepared by Richard J. Cronin, IV, Dewberry & Davis LLC, dated May 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

~ ~ ~ February 10, 2004, DAN AND JANE MATTOON, VC 2003-MA-180, continued from Page 357

3. The additions shall be architecturally compatible with the existing dwelling.
4. The applicant shall seek administrative approval from the Zoning Administration Division, DPZ to permit the chimney, located 14.1 feet from the side lot line, to remain.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. NATHAN D. BOZARTH AND DIANNE P. EDGAR, VC 2003-MV-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. from front lot line of a corner lot. Located at 9251 Plaskett La. on approx. 37,773 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 107-4 ((10)) 15.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diane P. Edgar, 10614 Belmont Boulevard, Lorton, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The parcel was vacant, and the applicants requested a variance to permit the construction of a dwelling 25 feet with an eave 23.5 feet from the front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, variances of 15 feet for the dwelling and 13.5 feet for the eave were requested.

Ms. Edgar presented the variance request as outlined in the statement of justification submitted with the application. She said she and Mr. Bozarth purchased the property July 2003 for the purpose of building their residence and that the property was an undeveloped corner lot with exceptional narrowness which limited reasonable development. The requested variance would allow space for a house with a maximum width of 62 feet, with public water and sewer hookup, and they would preserve the existing trees and bushes along the lot's sides. Ms. Edgar and Mr. Bozarth each responded to Ms. Gibb's and Mr. Hammack's questions concerning future development of the surrounding area.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2003-MA-180 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NATHAN D. BOZARTH AND DIANNE P. EDGAR, VC 2003-MV-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. from front lot line of a corner lot. Located at 9251 Plaskett La. on approx. 37,773 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 107-4 ((10)) 15. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ February 10, 2004, NATHAN D. BOZARTH AND DIANNE P. EDGAR, VC 2003-MV-181, continued from Page 358

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the prescribed standards for the granting of a variance.
3. The lot is a corner lot and very narrow, with a width of approximately 92 feet and a depth of close to 400 feet.
4. The applicants' proposal to put a reasonably-sized house on the property with a side setback of 25 feet from the corner lot is a reasonable request given the circumstances of the lot's 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling, as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated June 29, 2003, revised through October 17, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

~ ~ ~ February 10, 2004, NATHAN D. BOZARTH AND DIANNE P. EDGAR, VC 2003-MV-181, continued from Page 359

be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. DOUGLAS CLAVEL, VC 2003-BR-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from rear lot line and less than 200 feet from an Interstate Highway. Located at 5701 Tender Ct. on approx. 8,455 sq. ft. of land zoned R-4. Braddock District. Tax Map 80-1 ((10)) 42. (Admin. moved from 1/20/04)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Douglas Clavel, 5701 Tender Court, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a sunroom, 14.1 feet from the rear lot line and less than 200 feet from an interstate highway. A minimum rear yard of 25 feet is required; therefore, a variance of 10.9 feet was requested as well as a waiver of the minimum 200-foot setback from an interstate highway.

Mr. Clavel presented the variance request as outlined in the statement of justification submitted with the application. He said when they purchased the house in 1994, they planned to build a sunroom on top of the existing deck, and now they were in the position to go forward with their construction plans.

Ms. Hedrick responded to Mr. Hammack's question by calling attention to the February 3, 2004 development conditions that addressed the stair reduction and the shed's removal, which brought all into compliance with the Zoning Ordinance requirements.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2003-BR-164 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS CLAVEL, VC 2003-BR-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from rear lot line and less than 200 feet from an Interstate Highway. Located at 5701 Tender Ct. on approx. 8,455 sq. ft. of land zoned R-4. Braddock District. Tax Map 80-1 ((10)) 42. (Admin. moved from 1/20/04). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ February 10, 2004, DOUGLAS CLAVEL, VC 2003-BR-164, continued from Page 360

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2004; 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 (9) required standards for variance.
3. Although the backyard is very shallow, the topography is such that the sunroom addition will have no impact, nor is visible, to the Capital Beltway that borders the rear.
4. There is no impact to the character of the neighborhood, nor to the Zoning District.
5. The request is very reasonable for the use of the property.
6. The placement of the house is set well to the center creating a narrow backyard.
7. The variance is warranted.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition as shown on the plat prepared by Alexandria Surveys, dated August 22, 2003, revised through October 22, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ February 10, 2004, DOUGLAS CLAVEL, VC 2003-BR-164, continued from Page 361

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the height as depicted on the variance plat, the shed shall be reduced in height, removed or relocated as to comply with Zoning Ordinance requirements.
5. The steps shall be reduced in length to be within the rear yard, in conformance with Zoning Ordinance requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CHURCH AND SCHOOL), SPA 82-V-059-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-059 previously approved for a church and private school of general education to permit site modifications and building additions. Located at 2901 Popkins La. on approx. 15.65 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Esquire, Walsh, Colucci, et al., Arlington, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to an existing special permit and special exception for a church and school of general education to permit building additions and site modifications. The building addition consisted of a 10,200-square-foot building. The applicant also requested approval for an existing trailer consisting of 200 square feet and a proposed trailed consisting of 750 square feet. The larger trailer would be removed upon completion of the classroom buildings. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SPA 82-V-059-2, subject to the approval of the revised proposed development conditions dated February 3, 2004.

Mr. Sherman noted that there were minor errors on Development Condition 17 due to confusion on the plat, and he quoted the corrected language.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained that the applicant proposed the removal of an existing two-story convent building for the construction of a classroom building in order to meet the current needs of the school population. She noted that the proposed improvements were meant to serve the existing students, that there was no proposed increase in student enrollment, that the floor area ratio (FAR) after construction was 0.12, which was well below the 0.2 FAR permitted, and that there was no adverse impact on the surrounding neighborhood. She pointed out the two trailers, I and K, shown on the plat, clarifying that

~ ~ ~ February 10, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CHURCH AND SCHOOL), SPA 82-V-059-2, continued from Page 362

Trailer K was temporary and would be removed when the building was constructed, and Trailer I, leased by Fairfax County, accommodated students with learning disabilities and was to remain. Ms. Strobel concluded her presentation stating that the proposed improvements had the support of the surrounding neighborhoods.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve SPA 82-V-059-2 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CHURCH AND SCHOOL), SPA 82-V-059-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-059 previously approved for a church and private school of general education to permit site modifications and building additions. Located at 2901 Popkins La. on approx. 15.65 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 6. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has made its case to warrant the modifications.
3. The County is in need of school facilities and the applicant, the Catholic Church, is helping to meet that need by providing private schools.
4. It is a quality application.
5. The application has staff's recommendation of approval.

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 **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2901 Popkins Lane (15.53 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 BC Consulting, dated September 5, 2003, revised through January 2, 2004, 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.

~~~ February 10, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CHURCH AND SCHOOL), SPA 82-V-059-2, continued from Page 363

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the sanctuary shall be limited to one thousand (1,000).
6. The maximum number of employees for the school of general education shall be limited to 35.
7. The maximum daily enrollment of the school of general education shall be limited to 434 students.
8. The maximum hours of operation of the school of general education shall be limited to 8:00 a.m. until 5:00 p.m., Monday through Friday.
9. Ringing of the bell on site shall be limited to 9:00 a.m. Monday through Friday; 9:00 a.m. and 5:30 p.m. on Saturday; and 9:00 a.m., 10:30 a.m., 12:00 p.m., and 5:00 p.m. on Sunday.
10. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
11. Any new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet.
12. Transitional screening shall be modified as shown on the Special Permit Plat. The barrier requirement shall be waived along all lot lines.
13. The limits of clearing and grading shall be no greater than as shown on the Special Permit Plat.
14. The Applicant shall provide onsite storm water detention and best management practices in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. Notwithstanding what is shown on the plat, the applicant may meet the requirements through the provision of Low Impact Development (LID) techniques as determined appropriate by DPWES.
15. Right of Way of up 68 feet from the centerline of Richmond Highway shall be dedicated to the Board of Supervisors, in fee simple, along the entire Richmond Highway frontage of the site within sixty (60) days upon demand of the Department of Public Works and Environmental Services (DPWES) or the Virginia Department of Transportation (VDOT), whichever first occurs, at such time as a project to widen this segment of Richmond Highway is funded. Ancillary easements of fifteen feet in width along the Richmond Highway frontage of the site shall be conveyed to the Board of Supervisors within sixty (60) days upon demand of DPWES or VDOT, whichever first occurs, at such time as a project to widen this segment of Richmond Highway is funded.
16. The proposed classroom building shall be constructed of materials sufficient to reduce noise impacts inside the building to 45 dBA  $L_{dn}$  or less.
17. Notwithstanding what is shown on the plat, the trailer currently existing on site (Structure I) may remain. The proposed trailer (Structure K) shall be removed within 60 days of the issuance of a Non-Residential Use permit for the proposed classroom building (Structure J).

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,

~ ~ ~ February 10, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CHURCH AND SCHOOL), SPA 82-V-059-2, continued from Page 364

thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M.        DARSHAN S. PADDA AND KULWANT K. PADDA, VC 2003-DR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 3-A2 having a lot width of 20.09 ft. and proposed lot 3-A1 having a lot width of 148.6 ft. Located at 715 Walker Rd. on approx. 3.48 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((2)) 3A1.

Vice Chairman Ribble noted that there was a deferral request for two months on this application.

Jayne Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, reaffirmed the affidavit and confirmed that a deferral was requested in order to address the concerns raised by the Great Falls Planning & Zoning Committee. She said they sought to address the matter at the soonest date, but the attainment of an engineer's plat evidencing how many lots could be obtained by right required additional time.

Vice Chairman Ribble asked if there was anyone present who wished to speak regarding the deferral request and received no response.

Mr. Pammel moved to defer VC 2003-DR-178 to April 20, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M.        ADARSH MEHRA & SAGUNA MEHRA, SP 2003-SU-046 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 additions 10.8 ft. with eave 10.3 ft., 11.7 ft. with eave 11.2 ft., and chimney 9.5 ft. from from side lot line. Located at 15414 Meherrin Ct. on approx. 16,844 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 156.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Adarsh Mehra, 15414 Meherrin Court, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of a second-story addition 10.8 feet with an eave 10.3 feet from the side lot line; a two-story addition 11.7 feet with an eave 10.7 feet from the side lot line; and a chimney 9.5 feet from side lot line. The minimum required side yard in an R-1 Zoning District is 20 feet; however, both additions and the chimney met the minimum yard requirements of the R-2 Cluster District, which was applicable to this lot when the dwelling was built. An R-2 Cluster District requires a minimum side yard of 8.0 feet.

Mr. Mehra presented the special permit request as outlined in the statement of justification submitted with the application. When they purchased the house in 1998, they had decided that they would build an addition above the garage at some future date. He said that the addition was compatible with the neighborhood, and it was necessary because of the growing needs of his family as well as to house his parents during their regular two-month visits when they arrived from India. He confirmed that the proposed second-story addition followed the existing exterior garage wall line and that the second-story addition's roofline would be the same height and would align with that of the house.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2003-SU-046 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ADARSH MEHRA & SAGUNA MEHRA, SP 2003-SU-046 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 additions 10.8 ft. with eave 10.3 ft., 11.7 ft. with eave 11.2 ft., and chimney 9.5 ft. from from side lot line. Located at 15414 Meherrin Ct. on approx. 16,844 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 156. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have made a case that the proposal will not impact the neighbor because the structure will be in the same footprint as the existing garage that was allowed under the previous zoning.
3. The application 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 Sect(s). 8-903 and 8-913 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location of an addition and a second story addition, as shown on the plat prepared by Bryant L. Robinson, dated August 9, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 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

~ ~ ~ February 10, 2004, ADARSH MEHRA & SAGUNA MEHRA, SP 2003-SU-046, continued from Page 365

written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack and Mr. Pammel seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M.       INTEKHAB A. KHAN, VC 2003-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 5822 Atteentee Rd. on approx. 10,491 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (61) 11.

Vice Chairman Ribble called the case and asked if the applicant was ready to be heard. Receiving no response, he said the meeting would continue and they would return to this application if the applicant or his agent arrived.

(In order to establish a quorum, the Board took a brief recess, and after reconvening, Vice Chairman Ribble called the Khan case.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Intekhab Khan, 5822 Atteentee Road, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing fence, which ranged in height from 5.9 feet high along the southwestern corner of the lot to 7.8 feet in height in the northeastern corner of the property, to remain in the front yard of a corner lot. The Zoning Ordinance permits a fence with a maximum height of 4.0 feet to be located in a front yard; therefore, a variance of 3.8 feet was requested.

Mr. Khan said his wife was in poor health, and this was their first home since moving to the United States. He said he was unaware of zoning restrictions and Ordinance requirements, and he built the high fence after seeing many similar fences throughout the county and after calling the zoning office, who advised him that an eight-foot fence was allowed in his side yard. Mr. Khan said his property was exceptionally narrow and that he did not know his lot was considered a corner lot and, therefore, had front yard setback restrictions. His neighbors had no objections, and the fence was under construction when he received a notice of violation about its height. Mr. Khan said that because of religious reasons, the height of the fence provided the necessary privacy for the comfort of his wife and daughter.

Mr. Khan responded to Ms. Gibb's questions concerning the placement of the fence. He agreed to take off the fence finials, which would reduce the height by 10 inches.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb commented that she was not comfortable in finding the fence height acceptable. She said she wanted to visit the site to get a better look before making a decision.

Mr. Hammack commented that he was sympathetic with Mr. Khan on his reasons for wanting the fence, but he had reservations about a seven-plus-foot fence that was so close to a street as he thought it might impact the sight distance. Mr. Hammack said that there probably was some configuration for a double front yard that he could support, but he could not support the one requested, and he would like Mr. Khan to replace the fence further from Floris Street and reduce its height.

~ ~ ~ February 10, 2004, INTEKHAB A. KHAN, VC 2003-LE-182, continued from Page 367

In order to allow Mr. Khan the opportunity to explore modifications to the fence's height and location, Mr. Hammack moved to defer the decision on VC 2003-LE-182 to March 16, 2004, at 9:00 a.m. The motion was seconded by Mr. Pammel, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit building addition and site modifications. Located at 6525 Little Ox Rd. and 10915 Olm Dr. on approx. 17.13 ac. of land zoned R-1 and WS. Springfield District. Tax Map 77-3 ((3)) 27 and 87-1 ((1)) 2, 2A and 6.

Vice Chairman Ribble noted that SPA 90-S-057-2 had been administratively moved to May 4, 2004, at the applicant's request.

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~ ~ ~ February 10, 2004, Scheduled case of:

9:30 A.M. CRAFTSMAN AUTO BODY, MIKE MCCARROLL, A 2003-W-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the proposed use is a motor vehicle storage and impoundment yard and is allowable only on property in the I-4, I-5, and I-6 Districts in accordance with Zoning Ordinance provisions. Tax Map number not applicable. Applies Countywide.

Vice Chairman Ribble noted that A 2003-W-050 had been administratively moved to March 30, 2004, at the appellant's request.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that the case had not been administratively moved, and the agenda was incorrect. She said staff was working with the appellant to resolve the issues, and staff supported the request for a deferral. She said a deferral to March 30<sup>th</sup> was acceptable to all parties.

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So as to establish a quorum, the Board recessed at 10:06 a.m. and reconvened at 10:13 a.m.

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Mr. Hammack moved to defer A 2003-W-050 to March 30, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

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~ ~ ~ February 10, 2004, Scheduled Appeal case of:

9:30 A.M. JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants purchased an affordable dwelling unit without obtaining a Certificate of Qualification from Fairfax County Redevelopment and Housing Authority and are not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 7818 Liberty Spring Ci. on approx. 1,732 sq. ft. of land zoned R-20, HC and CRD. Mt. Vernon District. Tax Map 102-1 ((42)) 144. (deferred from 10/7/03 and 1/6/04 at appl. req.)

Vice Chairman Ribble called the appellants' representative to the podium to identify himself for the record.

~ ~ ~ February 10, 2004, JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034, continued from Page 368

Barnes Lawson, Jr., Esquire, Lawson & Frank, PC, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, said he was representing the appellants.

Jack Reale, Zoning Administration Division, presented staff's position as set forth in his staff memorandum dated February 2, 2004. The appellants had purchased the subject townhouse property, an affordable dwelling unit (ADU), without obtaining the required Certificate of Qualification and were leasing it rather than residing in it as is required under the program regulations. The appellants claimed that the ADU covenants were improperly recorded in the County's Land Records and that public notice was not served regarding the nature of its recordation and indexing, and consequently the appellants asserted that the property was not lawfully made a part of the Affordable Dwelling Unit Program and that it should not be subject to program restrictions. Mr. Reale pointed out that the County records clearly showed that the property was a part of the ADU program, that the County had not improperly recorded the deed, and that all recorded deeds included language that alerted prospective purchasers of restrictions.

Mr. Lawson called the Board's attention to specific language on page 8 of the staff report that attributed the three occasions where an ADU unit was offered for sale outside of the program regulations to a misunderstanding of the program rules as opposed to any deliberate wrongful intent, and he sought to show that his clients had no deliberate wrongful intent. He gave a brief history of the property's purchase indicating the mortgages and deeds of trust attained. He noted the amount of indebtedness and the fair housing value, pointing out that the indebtedness exceeded any achievable value under the housing program and questioned why his clients would knowingly put themselves in such a position. Mr. Lawson affirmed that his clients were not aware that the unit was in the ADU program, and he asked Mr. Mollenberg to give a statement.

Robert P. Mollenberg, 1209 Alder Road, Alexandria, Virginia, came forward to speak. He explained that it was a newly married friend of his daughter who originally purchased the property, but abandoned it after they separated. He became involved when his new business of handyman repairs took over the property to fix it up. He said his daughter's friend told him the property could be an ADU or some sort of County run property, and he told her he would attempt to prevent the foreclosure and save her credit if it could be done. He and his real estate friend contacted a title company and requested a title search to determine whether he could take over the property and repair it. Mr. Mollenberg stated that they had told the title company there could be a problem with the county ADU program, and if there were problems, he was prepared to walk away from the deal. He said the title search revealed no problems, and he and his partner proceeded to invest a great deal of time and money in the property to take it from something that was inhabitable and make it into a beautiful place where appliances, flooring, roof, ceiling, and carpeting some of the things repaired and/or replaced. Mr. Mollenberg said he was surprised when he was notified that they were not to have done anything to the place. Contrary to information contained in an affidavit from the daughter's friend, he said he had not received a black binder that explained her situation.

In response to questions by Ms. Gibb regarding title insurance and the assumption of loans, Mr. Mollenberg said he had not bought title insurance, and once the title search came back clean, the title company did a quick deed to deed the property over to him. He said they were paying the first and second mortgage for his daughter's friend while they repaired the property, and when they went to get financing to remove the woman from the loans, he was told by the finance company that the unit was in a program and they could not finance through them. He said that was when he first became aware that there was a problem.

In response to Ms. Gibb's question regarding whether the loans had been paid off, Mr. Mollenberg stated that the loans had not been paid and were still in the woman's name. He said that although he continued to pay the loans and the payments on the loans were current, he could not transfer it into his name because it was in the ADU program.

Continuing his presentation, Mr. Lawson read language from the covenant and the Ordinance. He again affirmed that the buyers, Messieurs Heath and Mollenberg, were unaware that the property was an ADU and that they were not advised of such by the sellers. He quoted language from the staff report that offered a remedy to the appellants stipulating the sale of the unit must be to an eligible buyer, certified by the Fairfax County Redevelopment and Housing Authority in accordance with the ADU program regulations. Mr. Lawson said that he understood that language to mean his clients only way out was to sell the unit to a qualified purchaser, which meant that the appellants had to pay off the second mortgage. Mr. Lawson

~ ~ ~ February 10, 2004, JOSEPH F. HEATH AND ROBERT P. MOLLENBERG, A 2003-MV-034, continued from Page 369

pointed out that that would require a great deal of money, and he said another way out would be to allow the unit to go to foreclosure. He said it seemed tragic to lose the unit out of the program, but his suggestions to staff for a remedy had been unsuccessful. Mr. Lawson said he suggested it be deeded to the County, subject to the two loans. He noted again that certain things had not occurred before the sale of the unit, one of which was that it was not recorded in the Deed of Conveyance that the unit was subject to the ADU Program. Mr. Lawson said that the County, his clients, the sellers, and the title company messed up, and his clients just wanted out.

In response to Mr. Hammack's question, Mr. Lawson stated that his clients had purchased the unit and were not residing in it. He pointed out that the Ordinance required that the covenant run with the land, and his contention was that the unit was not indexed properly and his clients had no notice of it being in the ADU Program.

Ms. Gibb pointed out the recordation of the lots on page 1877 of the Land Records, noting that that was the covenant running with the land. Mr. Lawson agreed, but submitted that one would see that information only if it was researched that far back.

In closing staff comments, Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff's position was that the appellants were in violation of the provisions of the Zoning Ordinance relative to qualification of ownership and living in the dwelling unit and that it was staff's determination that it could easily be tracked that the unit was in the ADU Program.

Ms. Gibb asked staff if they had a solution or some kind of remedy.

Bonnie Conrad, Program Manager with the ADU Program with the Department of Housing and Community Development, said the County was concerned about maintaining the affordability of its affordable dwelling units and that the regulations were clear that the ADU units must be resold at the resale price, which were the same covenants that all of the other ADU owners must abide by. She affirmed that simply by violating the Zoning Ordinance, someone should not be given the opportunity to transfer or sell the ADU at a higher price. She acknowledged that the covenants would be extinguished at foreclosure, and the unit would no longer be in the program. Ms. Conrad pointed out that there would be the loss of one unit, but ADU owners must not be permitted to sell out of the program and take the money as that endangered the entire ADU Program.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she was sorry the situation worked out as it did, but based on the facts presented to the Board, she believed that the evidence showed that the appellants purchased the ADU unit without obtaining the Certificate of Qualification, and they were not occupying the unit as their domicile, which was in violation of the Zoning Ordinance. She found that there was sufficient notice in the Land Records that there was a chain of title identifying the lot as an affordable dwelling unit, and although the case appeared to include a number of errors along the way with a novice home buyer, no title insurance, and a second trust holder who did not perform a title search, it seemed the Zoning Administrator's position should be upheld.

Mr. Hammack seconded the motion, which passed by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

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~ ~ ~ February 10, 2004, After Agenda Item:

Approval of January 6, 2004 Resolution for  
VC 2003-PR-157, Gary A. Marshall, Edward C. Gallick Tr., and Linda C. Zemke, Tr.

Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, requested a reconsideration of the Board's decision concerning the lot width variance only, and the variance for the average lot size would be withdrawn.

~ ~ ~ February 10, 2004, AFTER AGENDA ITEMS, continued from Page 370

Mr. Pammel said he would support Ms. Kelsey's proposal. He moved that the Board reconsider VC 2003-PR-157 on the basis that the average lot element of the variance was withdrawn, and the requested variance was restricted to the minimum lot width. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

Susan Langdon, Chief, Special Permit and Variance Branch, pointed out that the application must be re-advertised. The public hearing date was scheduled for May 18, 2004.

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~ ~ ~ February 10, 2004, After Agenda Item:

Approval of January 20, 2004 Resolutions

Mr. Pammel moved to approve the January 20, 2004 Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Hart were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Paula A. McFarland

Approved on: September 27, 2005



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
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 17, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John Ribble; James Hart; James Pammel; and Paul Hammack. Ms. Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to end SP 91-V-071 previously approved for a church to permit child care center and nursery school. Located at 8600 Plymouth Rd. on approx. 6.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((2)) 601B and 102-4 ((3)) A2. (Continued from 12/9/04) (Moved from 1/27/04 due to inclement weather.)

Chairman DiGiulian called the applicant to the podium. John Crumplar, the applicant's agent, requested that James Turner, a deacon at Plymouth Haven Baptist Church, speak.

Mr. Turner noted that at the December 9, 2003 hearing, staff had concerns about traffic on Plymouth Road and Fort Hunt Road. He said a traffic study had been done by the Fairfax County Department of Transportation since then that indicated there would be no impact. Referring to problems also raised by staff at the previous hearing regarding the number of children in attendance, hours of operation, and drop-offs, Mr. Turner submitted a letter to the Board dated February 16, 2004, and called attention to paragraph 3, which listed proposed revisions. He said there would be a limit of 75 children allowed to attend their programs; hours of operation would be from 8:00 a.m. to 2:30 p.m., Monday through Friday; and, no drop-offs would be allowed.

Mr. Ribble stated that at the previous hearing, the applicant had said that there would be 49 children in attendance, and the hours of operation would be from 9:00 a.m. to 2:30 p.m. Mr. Turner replied that it would be more prudent to have the children arrive at 8:00 a.m.; however, their programs would not begin until 9:00 a.m. He said they did not anticipate that any more than 49 children would be enrolled in their programs and stated that the applicant changed the number to 75 to avoid having to return to the Board in the future.

Mr. Hammack asked whether staff thought a development condition should be added that stated that there would be no drop-offs.

Susan Langdon, Chief, Special Permit and Variance Branch, said that was not a condition that staff normally suggested, but if the Board wanted to adopt it, they could. She said staff had determined that there was a sufficient drop-off area, and it was not an issue.

Mr. Turner said the applicant would be agreeable to stipulating to no drop-offs as a requirement.

Mr. Beard asked what the applicant was stipulating to. Mr. Turner replied that the stipulation would be no drop-offs. He said that parents would have to park their cars, bring their children into the facility, and check them in. Also in response to another question from Mr. Beard, Mr. Turner said the persons in charge of the daycare programs considered it to be more pragmatic to have the children brought into the facility. He advised that vehicles would enter and leave the property through the parking lot at the Plymouth Road entrance.

Mr. Ribble noted that when the original application had been heard, the anticipated number of children to be enrolled was in the 20s. Mr. Turner indicated that 25 children had been referenced in the initial request; however, staff had proposed that they request a higher number to avoid having to submit a future amendment. He said they would modify paragraph 2 in the aforementioned letter to reduce the number to 49 if the Board requested it.

Chairman DiGiulian called for speakers.

Mr. Turner said there were three persons from the church in attendance who were in support of the application, but waived their right to speak.

~ ~ ~ February 17, 2004, PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3, continued from Page 373

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 91-V-071-3 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Pammel stated that at the original hearing issues had been raised with respect to transportation. He noted that the County Transportation Department sent a memorandum to the Board addressing all of the issues. He said he was satisfied that the application, as presented with modifications, was a good application.

In response to Mr. Hart's question, Mr. Ribble agreed to amend the motion to stipulate a change in drop-off time to 8:45 a.m. Mr. Beard seconded the amendment.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 91-V-071 previously approved for a church to permit child care center and nursery school. Located at 8600 Plymouth Rd. on approx. 6.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((2)) 601B and 102-4 ((3)) A2. (Continued from 12/9/04) (Moved from 1/27/04 due to inclement weather.) 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 17, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general standards for special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the other appropriate sections 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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8600 Plymouth Road (6.06 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 Dominion Surveyors, Inc., dated January 7, 2003, revised through August 12, 2003, 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.

~ ~ ~ February 17, 2004, PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071-3, continued from Page 374

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity shall be three hundred seven (307).
6. The combined total maximum daily enrollment for the child care center and nursery school shall be 49.
7. The maximum hours of operation for the child care center and nursery school shall be from 8:45 am to 2:30 pm, Monday through Friday.
8. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
9. Notwithstanding what is shown on the special permit plat, the existing vegetation along the western portion of the southern lot line shall remain. The purpose of this screening modification shall be to permit the approximately 80 feet of existing vegetation to serve as the required buffer. All other transitional screening shall be modified as shown on the Special Permit Plat.
10. The barrier requirement shall be waived along all lot lines.
11. Stormwater management shall be provided on the site subject to the approval of the Department of Public Works and Environmental Services (DPWES) 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.
12. 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. If any lights are replaced, the replacements lighting shall be in conformance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
13. All signs on the property shall conform to the provisions of Chapter 12.
14. The trash enclosure shall be a six-foot high board-on-board fence.
15. Drop-off/pick-up of children for the child care center shall be done by parking vehicles in the parking lot at the rear of the church and accompanying them inside/outside. Children shall not be dropped off/picked up in the parking area.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 25, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. CLARE CHURCH), SPA 88-S-091 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to end SP 88-S-091 previously approved for a church and related facilities to permit building additions, increase in parking and site modifications. Located at 12409 Henderson Rd. on approx. 14.44 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-4 ((1)) 7. (Decision deferred from 9/16/03, 11/25/03, and 1/13/04) (Moved from 1/27/04 due to inclement weather.)

Mr. Hart indicated that he would recuse himself from the public hearing.

Chairman DiGiulian called the applicant to the podium.

Lynne J. Strobel, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, indicated that at the previous hearing some of the members of the Board had expressed reservations as to whether or not the requested improvements to the rectory and social hall had been considered with the original special permit. She referred to information she had submitted to the Board in January of 2004 that demonstrated that they had always been considered with the original approval. Ms. Strobel stated that a letter had been submitted to staff that specifically described what would be a permitted use of the social hall and stressed that activities would be limited to small receptions and activities solely associated with the parish. Ms. Strobel said that there were no zoning violations on the property.

Mr. Hammack asked Ms. Strobel why the applicant thought the Board needed to add the proposed new development condition dated November 24, 2003. Ms. Strobel stated that the new condition dealt with a potential turn lane from Henderson Road into the property. She said she and the applicant's civil engineer had met with the Fairfax County Department of Transportation to review that issue and to ensure that there was appropriate sight distance. If not, she said they had agreed to provide some improvements within the existing right-of-way.

Mr. Hammack asked if staff had a position on the proposed development condition. Bill Sherman, Staff Coordinator, indicated they did not.

Mr. Hammack asked if the proposal was covered in staff's development conditions, and Mr. Sherman said it was not.

Ms. Strobel noted for the record that the applicant had no additional plans for the property at the current time.

Mr. Hammack moved to approve SPA 88-S-091 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. CLARE CHURCH), SPA 88-S-091 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to end SP 88-S-091 previously approved for a church and related facilities to permit building additions, increase in parking and site modifications. Located at 12409 Henderson Rd. on approx. 14.44 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-4 ((1)) 7. (Decision deferred from 9/16/03, 11/25/03, and 1/13/04) (Moved from 1/27/04 due to inclement weather.)  
Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 17, 2004; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ February 17, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. CLARE CHURCH), SPA 88-S-091, continued from Page 376

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general standards for special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the applicable sections 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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 12409 Henderson Road (12.44 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Adtek Engineers, Inc., dated July 1, 2003, revised through October 27, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity for St. Clare Mission shall be limited to a total of 300.
6. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
7. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet. At the time when proposed lighting is constructed, all existing lighting shall be modified to meet the same standards.
8. Transitional screening shall be modified as shown on the Special Permit Plat. The barrier requirement shall be waived along all lot lines.
9. The limits of clearing and grading shall be no greater than as shown on the Special Permit Plat, labeled Limits of Disturbed Area, and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to the construct the improvements shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry Division, for review and approval. Irrespective of the limits shown on the special permit plat, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
10. The Applicant shall provide onsite storm water detention in accordance with the requirements of the

~ ~ ~ February 17, 2004, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. CLARE CHURCH), SPA 88-S-091, continued from Page 377

Public Facilities Manual unless waived or modified by DPWES. Additional required detention may be provided by the renovation of the existing Stormwater Management Pond, as depicted on the Special Permit Plat. The renovation shall not encroach beyond the Disturbed Area Limits, as depicted on the Special Permit Plat.

11. At the time of site plan approval, the applicant shall record among the land records of Fairfax County in a form approved by the County Attorney, a conservation easement, as shown on the Special Permit Plat, subject to the final approval of DPWES, including the Urban Forestry Branch. The easement shall run to the benefit of the Board of Supervisors, and shall prohibit the removal of trees, except for dead or dying trees or hazardous trees, as determined by DPWES.
12. Prior to the issuance of a Non-residential Use Permit (Non-RUP), the Applicant shall obtain approval of the septic system from the Health Department. If such approval is not received, this Special Permit shall be null and void.
13. The water storage standpipe shall be underground, as shown on the Special Permit Plat.
14. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
15. The activities in the Parish Center shall be limited to the uses as described in the letter submitted by the applicant, dated September 2, 2000, included as Attachment 1 to the development conditions.
16. Sight distance will be evaluated at time of site plan review. In order to ensure adequate sight distance for vehicles approaching from the south, the following measures may be required: posting of signs warning of stopped vehicles, improvements to Henderson Road, and/or shifting the access for the property. If a left turn lane is required, it will be constructed within the existing right-of-way. Appropriate measures will be reviewed and approved by 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 established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 25, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. MAROUN S. BECHARA & BARBARA M. BECHARA, VC 2003-HM-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 1 having a lot width of 36.41 ft. and lot 2 having a lot width of 102.33 ft. Located at 9832 Clarks Crossing Rd. on approx. 2.00 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 1.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maroun S. Bechara and Barbara Bechara, 9832 Clarks

~ ~ ~ February 17, 2004, MAROUN S. BECHARA & BARBARA M. BECHARA, VC 2003-HM-185, continued from Page 378

Crossing Road, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of one lot into two lots with proposed Lot 1 having a lot width of 36.41 feet and proposed Lot 2 having a lot width of 102.33 feet. A lot width of 150 feet is required per Sect. 3-106 of the Zoning Ordinance. Mr. Sherman noted that Lot 1 would consist of 47,779 square feet and Lot 2 would consist of 36,000 square feet. Also included in the application was a dedication of 3,438 square feet at the front of the property to facilitate improvements proposed by the Fairfax County Park Authority.

Mr. Bechara presented the variance request as outlined in the statement of justification submitted with the application. He explained why it was necessary to request a subdivision of his property and requested that the Board approve the necessary waiver for the frontage of his property.

In response to a question from Mr. Hammack, Mr. Bechara stated that he thought Outlot H had been included on the plat when the land was purchased by the original owner to ensure that there would be two acres available for future subdivision.

At Mr. Hart's request, Mr. Sherman pointed out where Outlot H was located on the plat.

Responding to Mr. Beard's question, Mr. Bechara said he and his wife lived in the existing dwelling and had no plans to develop the lot. He said he wanted assurance from the Board that once he deeds the 3,500 square feet to the Park Authority, he would not lose his right to subdivide. Mr. Bechara expressed concern that when the property was turned over, he would be left with less than two acres, and the R-1 zoning would prevent him from developing the land in the future.

Chairman DiGiulian called for speakers.

Doug Peterson, Fairfax County Park Authority, said they supported the variance application. He said this was the first opportunity the Park Authority had in 20 years to obtain the right-of-way to enable them to finish Clarks Crossing Road to Virginia Department of Transportation (VDOT) standards. He said they had coordinated with both subdivisions, VDOT, the Northern Virginia Regional Park Authority, and the applicant. He said the Park Authority considered the application to be the best solution for the existing parking problem. Mr. Peterson said that in coordination with the Regional Park Authority, they would be able to extend the existing parking lot, improve the road to cover and gutter with storm drainage outlets that would help address one of the reasons for disapproval by staff for stormwater management.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-HM-185 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAROUN S. BECHARA & BARBARA M. BECHARA, VC 2003-HM-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 1 having a lot width of 36.41 ft. and lot 2 having a lot width of 102.33 ft. Located at 9832 Clarks Crossing Rd. on approx. 2.00 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 17, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The owners presented testimony showing compliance with the required standards for a variance.
3. The one lot has very little public street frontage
4. The lot is about the largest lot in the area.
5. In order to subdivide the lot, some type of lot width variance would probably be necessary.
6. A pipestem in this situation would be compatible with what is around it, with the two lots immediately to the rear on Kohoutek Court being pipestems, and across Clarks Crossing Road on Aubrey Place Court, there is a condition with three or four lots sharing a pipestem driveway.
7. The lot sizes in the after condition are roughly comparable to the surrounding lots to the east.
8. While not necessarily a criterion for the variance, the dedication of the public street in the front will facilitate a resolution of the access to the park, which is an ongoing problem; therefore, rather than creating a negative impact on the neighborhood, it's alleviating an existing problem.
9. With the development conditions proposed by staff, any potential problems with stormwater management are being satisfactorily addressed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of Lot 1, as shown on the plat prepared by Gallifant, Hawes and Jeffers, dated September 22, 2003, revised November 20, 2003, submitted with this

~ ~ ~ February 17, 2004, MAROUN S. BECHARA & BARBARA M. BECHARA, VC 2003-HM-185, continued from Page 380

application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.

2. Stormwater Management and Best Management Practices (SWM/BMP) shall be provided in accordance with the requirements of the Public Facilities Manual as determined by the Department of Public Works and Environmental Services (DPWES). The applicant shall work with DPWES to implement Low Impact Development (LID) techniques to meet these requirements as determined appropriate by DPWES. A written disclosure shall be made to contract purchasers prior to entering into a contract of sale and shall be placed in the purchase contract and in the deed for each lot and recorded among the land records of Fairfax County notifying the landowner of the existence of the LID facilities and any associated maintenance responsibilities if applicable.
3. Notwithstanding what is shown on the variance plat, proposed Lot 2 shall access the existing driveway depicted on proposed Lot 1 and shall not directly access Clarks Crossing Road.
4. As depicted on the plat, the proposed dedication shall be made in fee simple upon demand of the Fairfax County Park Authority.
5. As depicted on the plat, temporary construction and grading easements shall be conveyed on demand of the Fairfax County Park Authority.
6. Subject to the approval of DPWES, all density and intensity of use attributable to land areas dedicated and conveyed to the Board of Supervisors pursuant to this Variance Application shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and density hereby reserved to be applied to the residue of the subject 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 the subdivision has been recorded in the land records. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 4-2. Mr. Pammel and Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 25, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. BRIAN BOOKER, VC 2003-HM-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.1 ft. with eave 17.9 ft. from rear lot line. Located at 12205 Lake James Dr. on approx. 22,351 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 36-1 ((17)) 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. Brian Booker, 12205 Lake James Drive, Oakhill, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a porch, 19.1 feet with eave 17.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 5.9 feet and 4.1 feet, respectively, were requested.

~ ~ ~ February 17, 2004, BRIAN BOOKER, VC 2003-HM-183, continued from Page 381

Mr. Booker presented the variance request as outlined in the statement of justification submitted with the application. He presented the Board with a petition signed by his neighbors indicating their approval, a letter from his homeowners association stating that their approval was not required, and photographs of where his neighbors' properties were located. Mr. Booker indicated that he wanted to put a screened-in porch on the rear of his home that would be approximately 21 feet by 14 feet. He said a variance was needed because the distance from the house to the rear setback varied from zero feet at one corner to 18 feet at the other corner.

In answer to a question from Mr. Beard, Mr. Booker referred to the photographs he had submitted showing the location of his closest neighbors and acknowledged that they had signed the petition in support.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-HM-183 for the reasons stated in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN BOOKER, VC 2003-HM-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.1 ft. with eave 17.9 ft. from rear lot line. Located at 12205 Lake James Dr. on approx. 22,351 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 36-1 ((17)) 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 17, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The house on the subject property is located to the rear 25 percent of the lot due to the drainage field occupying much of the front of the lot.
3. The applicant has a very restricted area to the rear of the house to locate what normally most take for granted, an addition, which is the hardship in place with respect to the application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

~ ~ ~ February 17, 2004, BRIAN BOOKER, VC 2003-HM-183, continued from Page 382

- the same vicinity.
6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the porch addition shown on the plat prepared by Bartlett Consultants, Ltd., dated July 24, 2003, revised and signed through November 13, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the height as depicted on the variance plat, the play equipment shall be reduced in height, removed or relocated as to comply with Zoning Ordinance requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 25, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. JOHN ALLISON AND JAN ALLISON, VC 2003-MV-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. with eave 3.8 ft. from side lot line. Located at 822 Empress Ct. on approx. 14,863 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (2) 17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stuart Whitson, 2804 Sherwood Hall Lane, Mt. Vernon, Virginia, the applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a carport/shed, 5.2 feet with eave

~ ~ ~ February 17, 2004, JOHN ALLISON AND JAN ALLISON, VC 2003-MV-184, continued from Page 383

3.8 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 6.8 feet and 5.2 feet, respectively, were requested.

Mt. Whitson presented the variance request as outlined in the statement of justification submitted with the application. He said the applicant proposed to build an open carport on the side of the garage to protect their second vehicle and noted that a cement pad already existed there. He said there would be no enclosure except for the tool shed to be built in the rear.

In answer to a question from Mr. Hammack concerning the type of materials to be used, Mr. Whitson said the carport would have posts at the corners that would be trim-wrapped with PVC-clad vinyl, and the same type of shingles used on the house roof would be used on the shed's roof. Mr. Hammack pointed out that the length of the carport would be shortened if a shed were to be built. Mr. Whitson explained that the shed would set back even with the back of the house and would be just outside the carport itself.

In answer to Mr. Hammack's question, Ms. Hedrick said the shed, which would be 7.5 feet high, could be built by right because it would be less than 8.5 feet.

In response to a question from Mr. Beard, Mr. Whitson indicated that the existing slab had ample footings to support the roof, and an additional few feet of cement would have to be poured to accommodate the shed.

Mr. Hart questioned Mr. Whitson concerning the length of the carport, the materials to be used for the walls of the shed, and whether there would be a gap between the shed and the house. Mr. Whitson said the carport would be 16 feet in length, the shed walls would be made of plywood with vinyl siding, and there would be a gap.

Mr. Hammack asked whether it was the eave that required the variance. Ms. Hedrick said the variance was required because the carport would not open on three sides; therefore, it was considered an addition, and it did not meet the side yard requirement and was not permitted the eave extension. She explained that the shed being in the rear corner created walls so that it would no longer have three open sides. Mr. Hammack noted that the shed was 7.5 in height and was allowed by right, and the applicant had said the shed would not be part of the carport. Susan Langdon, Chief, Special Permit and Variance Branch, said the plat and a drawing accompanying it showed the shed within the carport, and she explained that Ms. Hedrick had been told that the roof of the carport would be the roof of the shed in a discussion with the engineer who drew the plat. Ms. Langdon said the applicants would have to move the shed out of the carport and have it completely separate for it to not be considered an addition.

Mr. Beard said he did not see how the carport could be considered enclosed if the shed had open area around the top and side. Ms. Langdon said it may not be if that were the case, but the carport with the extension would still need a variance. She said the required setback on the side was twelve feet, and a carport could extend five feet into the setback, so the carport would have to be seven feet from the side lot line. She explained that the applicants would have gotten the advantage of the extension if the structure was considered a carport rather than an addition.

Mr. Hart asked whether there would be a space above the shed and below the roof. Ms. Langdon said staff understood that the roof of the carport incorporated the shed. Mr. Whitson explained that there would be open space between the top of the shed and the bottom of the roof. He said there would not be a ceiling inside the carport.

Mr. Hart asked for clarification as to what an approval of the variance would include. Ms. Langdon replied that it would include the carport with the shed underneath the carport and a combined roof.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-MV-184 for the reasons stated in the Resolution.

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~ ~ ~ February 17, 2004, JOHN ALLISON AND JAN ALLISON, VC 2003-MV-184, continued from Page 384

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOHN ALLISON AND JAN ALLISON, VC 2003-MV-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. with eave 3.8 ft. from side lot line. Located at 822 Empress Ct. on approx. 14,863 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (2) 17A. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 2004; 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 lot area is 14,863 square feet.
4. The applicants satisfied the Board that the physical conditions exist under which a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.
5. There is an issue about the enclosure that doesn't take it out of the realm of a carport.
6. There is not much of an increase in the slab; therefore, a problem is not created.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict

~ ~ ~ February 17, 2004, JOHN ALLISON AND JAN ALLISON, VC 2003-MV-184, continued from Page 385

interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the carport and shed shown on the plat prepared by Dominion Surveyors, Inc., dated October 4, 2003, submitted with this application and are not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 25, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048 Appl. under Sect(s) 3-203 of the Zoning Ordinance to permit a Home Child Care Facility. Located at 1870 Foxstone Dr. on approx. 10,694 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-2 ((34)) 27.

Mr. Hart indicated that he would recuse himself from the public hearing.

Chairman DiGiulian advised the Board that Ms. Gibb had requested that the hearing be held and the decision deferred until the following week to enable her to listen to the tape and participate in the vote.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Timothy Chesnutt and Gail Gordon, 1870 Foxstone Drive, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility with a maximum of 10 children on site at any one time and a maximum daily enrollment of 15 children in an existing single-family detached dwelling. She stated that a previous application from the applicants had been heard before the Board on October 7, 2003, and a motion to approve the application failed for lack of a fourth vote. She said the Board moved to waive the 12-month waiting period for reapplication. She indicated that the current application was substantially the same as the previous one; however, the rear yard play area had been reduced from 7,222 square feet to 4,232 square feet. Staff recommended approval of the application subject to the proposed development conditions contained in the staff report dated February 10, 2004.

In answer to Mr. Beard's question, Ms. Stanfield said the state and county codes were not consistent, but with respect to the Zoning Ordinance, seven children were permitted by right.

Mr. Chesnutt presented the special permit request as outlined in the statement of justification submitted with the application. He addressed concerns expressed by some of his neighbors at the public hearing citing

traffic and emergency vehicle access to homes on Foxstone Drive. He said he had spoken to Captain Summers of the Vienna Fire Department who had told him that additional cars on the street would not cause any issues for emergency vehicles and he did not foresee any issues as a result of having a home-based child care facility at 1870 Foxstone Drive. Mr. Chesnutt said another question raised by neighbors was a potential decline in property values. He cited an article by Dan Walberg, President of the American Institute for Certified Planners, that read, "I'd bet almost anything that such child care centers would produce zero negative impacts on property values." Mr. Chesnutt stated that the difference in the amount of noise created by ten children versus seven children would be so little, it would be indiscernible. He said that if weather permitted, the children would be allowed to play outside for one to two hours in the morning as well as in the afternoon.

Ms. Gordon stated that she had operated a daycare at home for over 10 years in Fairfax County with a state license for the 12 children allowed. Since moving the daycare to Foxstone Drive, she said she had reduced the number of children in her care to 10 and began requesting a zoning variance from the County. She explained that since she would continue to care for seven children by right in her home, she was asking for a permit to keep the three additional children, and the three newest children she cared for lived on Foxstone Drive. Ms. Gordon assured the Board that she would adhere to the regulations and be considerate of her neighbors' needs.

In response to Mr. Hammack's question, Ms. Gordon said some of the children attended in the morning and some in the afternoon; therefore, she was requesting a maximum of 15 children to allow for the part-time attendees.

Also in response to a question from Mr. Hammack, Mr. Chesnutt said the driveway had not been shown on the original plat and pointed out the existing parking area.

Ms. Stanfield responded to Mr. Hammack's question stating that an additional parking space would be required if the maximum enrollment was ten children because of the potential for having more than two drop-offs at one time.

Mr. Beard acknowledged that Mr. Chesnutt had the right to the facility they had now; however, he and his wife were asking for an increase in an established neighborhood on a tight street. He said there would be an increase in traffic and drop-offs. Mr. Chesnutt said he was trying to focus on the impact of the additional three children on the neighborhood and the program.

In answer to Mr. Hammack's question, Mr. Chesnutt responded that ten children were currently attending. Mr. Hammack noted that was in violation of the Ordinance, which allowed for seven children. Ms. Gordon said they had understood that they could continue with the ten children while they were in the application process.

Mr. Pammel asked how many of the children currently being cared for were from the immediate neighborhood. Mr. Chesnutt responded that three of the children lived in the neighborhood, with a fourth one on a waiting list.

Chairman DiGiulian called for speakers.

The following speakers came forward and spoke in support of the application: Lisa Gibb, 1875 Foxstone Drive, Vienna, Virginia; and Deborah Hunter, 9342 Tovito Drive, Fairfax, Virginia. Their main points were that a reduction of three children would not cause a substantial decrease in noise; there were many children who did not attend the daycare who enjoyed playing outside; the sound of children playing outdoors was not disruptive; traffic would not be significantly impacted since three children lived on Foxstone Drive; no more than two cars had been seen in front of the applicants' house; the one employee did not leave a car at the site; some neighbors owned and parked five or six cars in front of their house and other houses; property values would not be negatively impacted by the addition of three children to the facility; the applicants responded to requests or complaints from the neighbors and informed the parents. Ms. Hunter said she carpooled with another family, so three children were transported in one car, and she was aware of others who transported siblings in one car and other families who walked to the facility. Both speakers had children attending the program.

The following speakers came forward and spoke in opposition to the application: Ken Osterlund, 1868 Foxstone Drive, Vienna, Virginia; William Green, 1864 Foxstone Drive, Vienna, Virginia; Eileen Kragie, 1876 Foxstone Drive, Vienna, Virginia; James Watson, 1871 Foxstone Drive, Vienna, Virginia; Elizabeth Gebbie, 1866 Foxstone Drive, Vienna, Virginia. Their main points were too much noise from children and riding toys heard in other backyards; a petition presented at the public hearing containing signatures of 26 neighbors in opposition; loss of sense of privacy and tranquility; narrowness of the street; speeding on the street; use of neighbors' driveways for turning around; potential of property values decreasing; neighborhood too crowded and dense; the applicants being cited for being in violation; threats made by parents after the previous hearing; providing child care for seven children by right required that the provider lived in the house, and the applicants having houses in Annandale and Springfield; neighbors entitled to quiet enjoyment of their homes; willingness to consider a reduction of the number of children through attrition from ten to seven over the next year or so if monitored; cars from the business parked on both sides of the street with doors left open and cars parked half in the driveway and half on the street; limited accessibility for rescue vehicles.

Mr. Pammel discussed the zoning of the Vienna area and related that during three seasons of the year, soccer practice was held with 20 to 40 children on the property to the rear of his home with associated noise, but it was a part of suburbia and had to be lived with.

Edward Tobin, Zoning Enforcement Branch, stated that the Zoning Administrator had taken the position that as long as Ms. Gordon had diligently pursued approval of a special permit, no further enforcement action would be taken during that period, and he said that was not unusual.

Mr. Hammack, referring to a letter dated August 8, 2003 in the staff report, indicated that the definition of a home child care facility was a dwelling where 10 or fewer children receive care protection during part of a 24-hour day. He noted that the application was for a home care facility with 10 children on site at any one time with a maximum of 15. Mr. Hammack said he did not see that maximum stated in the Ordinance and asked where the maximum came from. Susan Langdon, Chief, Special Permit and Variance Branch, said the Ordinance had been interpreted to mean that just as a daycare provider could take care of seven children at any one time, they could take care of 10 children at any one time. She said that putting a maximum daily enrollment of 15 resulted in fewer children because without the maximum, there could be 10 children in the morning and 10 children in the afternoon. Mr. Hammack asked what would prevent a provider from having seven children in the morning, seven in the afternoon, and seven in the evening. Ms. Langdon responded that it would be allowed by right.

In answer to Mr. Pammel's question, Ms. Kragie indicated that when facing the subject property from the street, her home was located two houses to the left of the subject property on the same side of the street, and all the vehicles traveling to the subject property passed by her house.

Mr. Chesnutt stated in his rebuttal that if he and his wife had any indication that the existence of a home-based child care center would cause this sort of an upheaval within the neighborhood, they would not have moved there and started the business. He said they regretted the divisiveness their application had led to. He said there were more than two neighbors in support of the application. Mr. Chesnutt referred to his opening remarks regarding his conversation with the fire department concerning emergency vehicle access. He said two cars could fit in the driveway, one behind another, without blocking the sidewalk. He said speeding on the street did not apply to them. Mr. Chesnutt noted a rental property on the street where five 20-something single men lived and all had cars. He stated that he and his wife had been married for three years, and when they were married, they each had individual residences, one in Annandale and one in Springfield. Mr. Chesnutt said that when they bought the subject property, they sold the house in Springfield and sold the house in Annandale four months later. He said that when the center was initially opened, it was opened with 12 children in compliance with the state regulation, and when she was informed that it needed to be 10, she immediately adjusted.

Chairman DiGiulian closed the hearing.

Mr. Pammel said he had visited the subject property, and it was very well-designed and pleasant with an area for the children to nap and a tastefully done play area in the backyard.

Mr. Hammack moved to defer decision on SP 2003-HM-048 to February 24, 2004, at 9:00 a.m. Mr. Ribble

~ ~ ~ February 17, 2004, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048, continued from Page 388

seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M.      ANDREW SHERIDAN, VC 2003-BR-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 1 having a lot width of 76.24 ft. Located at 4716 Wakefield Chapel Rd. on approx. 2.61 ac. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 285. (Deferred for decision only from 12/16/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Baskin, Jr., Baskin, Baskin, Jackson & Hansbarger, P.C., 301 Park Avenue, Falls Church, Virginia, replied that the submitted application had listed Seville Homes as a contract purchaser of the property and he had just learned that they were now the owners. He then reaffirmed the affidavit with the change as noted.

Chairman DiGiulian asked staff if they had information concerning the boxwoods located on the property. Mavis Stanfield, Senior Staff Coordinator, displayed the plat on the overhead projector and noted that the applicant had reduced the rear yards from 92 feet to 64.9 feet on proposed Lot 2 and from 80.3 feet to 59.4 feet on proposed Lot 3. She said a conservation easement area had been established around the boxwoods to the rear of the two lots, and the applicant had provided proposed development conditions that would address the conservation easement. Ms. Stanfield also noted that driveways had been reoriented to face each other. She said the development conditions that had been submitted on December 16, 2003, committed to preservation of the conservation area encumbering the boxwoods, but it omitted the commitment to preserve the house. She said it did not contain staff's Condition Number 5 as presented in the staff report that would permit the Park Authority access for the purpose of archeological surveys.

The Chairman asked Mr. Baskin to address Ms. Stanfield's comments. Mr. Baskin stated that it was the applicant's intent to preserve the house if the variance was granted. With respect to the proposed development conditions, he said the applicant was requesting that their proposed conditions be adopted, not those proposed by staff. He said it was his understanding that the application had been deferred in part to allow additional discussions between Seville Homes and the Park Authority or Conservation Trust. He stated that discussions had been held, but no determination had been made that either of the agencies would acquire the property. Ms. Baskin stated that the applicant would like the plat dated December 16th and the development conditions they proposed be approved. He said he thought those conditions would be better than building the development by right because that would cause at least six or seven houses to be built on a cul-de-sac resulting in none of the historical aspects of the property being preserved.

Mr. Beard and Mr. Baskin discussed the aspects of preserving the historic house currently on the property. Mr. Baskin indicated that it would depend upon whether or not the variance was adopted and provided the Park Authority or Trust purchased the conservation easement to offset the cost of the land.

In response to Mr. Beard's question, Mr. Baskin agreed that if an arrangement could be reached with the Park Authority or the Trust to purchase the easement over the portion of the property shown on the plat and the application was approved as submitted, the other two houses would be developed. He indicated that it was a two-phase situation. Mr. Baskin agreed with Mr. Beard's comment that if the Board did not approve the application as submitted, the applicant could build by right. He said the applicant's request would make it easier for the Park Authority or the Trust to preserve the house and most of the boxwoods at a lesser cost. If the option was to acquire the entire parcel in fee, he said it would cost more than putting an easement over the entire house and those portions of the boxwoods shown on the plat. Mr. Baskin stated that in its current state, approval of the variance would make the preservation of the house and most of the grounds more feasible.

Mr. Hart said it was his understanding that negotiations with the Park Authority or Conservation Trust were to have been resolved before this meeting. He also said he recalled that the new plat had been submitted on the morning of the public hearing, and the development conditions in the staff report did not coincide with the

~ ~ ~ February 17, 2004, ANDREW SHERIDAN, VC 2003-BR-147, continued from Page 389

new plat and still did not. He noted that other agreements were that the homes would be architecturally compatible with the neighborhood, supplemental plantings would be provided for the next-door neighbor's yard outside the bedroom, that both of the houses would be brought up to the building restriction line in the front providing more space in the rear, and the neighbors would have an opportunity to move the boxwoods if the applicant was going to remove them. Mr. Hart said it was also his understanding that a new set of conditions would be provided with the inclusion of the agreements made at the public hearing, and that had not been done.

Mr. Baskin said the applicant was willing to make the exterior of the buildings brick and compatible with other homes in the vicinity and was willing to allow relocation of the boxwoods and move the buildings up to the restriction line in the front.

Ms. Langdon stated that staff was under the impression that another plat would be submitted and further discussion would be held with the applicant. She said staff had not received any additional information, and the development conditions had not been revised. Ms. Langdon said a citizen, representing the neighborhood, had asked to address the Board. With respect to the condition to keep the house, she said staff strongly encouraged the Board to adopt the condition and put it in writing.

Mr. Beard said he wanted to review the public hearing videotape because he had the impression that the applicant was further along with negotiations with the Park Authority and the Trust.

Mr. Baskin said negotiations were ongoing and indicated that an appraisal had been received by the applicant that morning. He said follow-up discussions had not been held subject to receipt of that document.

Mr. Beard said he was concerned about the by-right issue and wanted to see some movement toward consensus.

Ms. Langdon said a copy of the videotape of the public hearing would be provided to Mr. Beard. She requested that the Board defer decision for a few weeks to enable staff to review the revised development conditions. Mr. Baskin concurred.

Mr. Beard moved to defer decision on VC 2003-BR-147 to March 16, 2004, at 9:00 a.m. Mr. Ribble seconded the motion.

Mr. Hart indicated he would support the deferral and requested that wording be included in the development conditions regarding the architecture and exterior of the proposed homes, supplemental plantings, preservation of the house, and correlation of the conservation easement on the new plat to the condition about preserving the boxwoods.

Mr. Hammack said that the 40 feet of blacktop leading to the reoriented side-loading garages did not conform to the neighborhood. He said it would be preferable to have the garages frontloaded, as originally planned, to avoid compromising the boxwoods.

Mr. Pammel concurred with Mr. Hammack's concern regarding the driveways.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:00 A.M. MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to end SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seating. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1((1)) 20A and 20B. (Admin. moved from 12/2/03 and 1/6/04 per appl. req.)

Chairman DiGiulian noted that SPA 95-S-071 had been administratively moved to March 23, 2004, at 9:00

~ ~ ~ February 17, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 390

a.m., at the applicant's request.

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~ ~ ~ February 17, 2004, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, and 1/27/04 per appl. req.)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, and 1/27/04 per appl. req.)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, and 1/27/04 per appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to March 23, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ February 17, 2004, After Agenda Item:

#### Approval of February 10, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Mr. Hart abstained from the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 17, 2004, After Agenda Item:

#### Memorandum from William E. Shoup dated February 17, 2004, regarding Proposed Zoning Ordinance Work Program for 2004

Susan Langdon, Chief, Special Permit and Variance Branch, said the Zoning Administrator had asked her to advise the Board that staff would be willing to attend the meeting the following week to discuss the Work Program and requested that they let her know if they wanted staff to do that.

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~ ~ ~ February 17, 2004, continued from Page 391

As there was no other business to come before the Board, the meeting was adjourned at 11:32 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 10, 2007

*K.A. Knoth*

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Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
\_\_\_\_\_  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 24, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church with child care center and private school of special education to permit a reduction in land area. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. (Admin. moved from 11/25/03, 1/13/04, and 1/20/04 at appl. req.) (Continued from 2/10/04 at app. req.)

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carson Lee Fifer, the applicant's agent, replied that it was.

Cathy Belgin, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow the deletion of the land area comprising Parcels 26B, and 26C from the previously approved special permit for a church with a child care center and adult daycare center, leaving the 3.42 acres of parcel 26A with an FAR of 0.09 for the existing church. The request was in association with the special exception request on Parcels 26B and 26C to permit an assisted living facility with 97 units and up to 109 total beds, which the Planning Commission voted to recommend approval to the Board of Supervisors on February 19, 2004. The only change proposed on Parcel 26A was a realignment of the northern portion of the circular entrance drive, which would be constructed in conjunction with the special exception use, if approved. This access drive would also accommodate the proposed change in school vehicle circulation which would include drop-off and pick-up traffic exiting to Westmoreland Street, separating it from the entering and bus traffic. No building use or modifications were proposed for the church. Staff recommended approval of SPA 68-D-955-4 subject to the proposed development conditions.

Mr. Fifer presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the only change that occurred on the plan for the previously approved special permit was at the direction of the Fairfax County Department of Transportation and the Virginia Department of Transportation to align the roadway access. He said the application met all the normal standards for such an amendment.

In response to a question by Mr. Hart, Mr. Fifer stated that the applicant was in full agreement with the revised proposed development conditions dated February 13, 2004.

Chairman DiGiulian called for speakers.

Y. T. Hung, 8381 Old Courthouse Road, Vienna, Virginia, came forward to speak in opposition to the application. He indicated he was a member of and counsel for the Chesterbrook Taiwanese Presbyterian Church and was speaking on behalf of the church. He said his church opposed the application. Mr. Hung said his church owned the property identified as Tax Map 40-2 ((1)) 26A and 26B and under certain conditions also owned 26C. He said the church had operated at the location since it moved there on February 1st, 2001, in accordance with a resolution passed by the National Capital Presbytery. Mr. Hung said his church was not a tenant, and because the application and staff report did not mention the name of his church, the applicant had misrepresented the material facts to the Board, which could not make its decision based upon a false affidavit and incorrect report.

Mark Zetz (phonetic), representative of the Kirby Court Homeowners Association, no address given, came forward to speak in opposition to the application. Mr. Zetz stated that the applicant's affidavit signed on February 5th was invalid because it had been modified, but not re-signed and re-notarized. He reported that a copy provided by Jan Brodie of the County Attorney's Office had been signed, but in Section 1D on page 4,

no boxes had been checked. He said the Taiwanese Presbyterian Church was listed on the affidavit as a tenant and agent without their knowledge and consent. He stated that the special permit was removing Parcels B and C from the previous special permit, but the dissolution agreement that was authorized by the National Capital Presbytery specifically gave the Taiwanese Presbyterian Church rights to Parcel B. Mr. Zetz said County staff and the County Attorney's Office claimed that it was a private dispute, but there was a standing legal agreement. He said the church had been there since 1957, had operated a daycare since 1968, had added an adult Alzheimer's daycare center several years later, had always been good neighbors, and the community had supported them. He reported that the church had two congregations, English-speaking and non-English-speaking. It was growing and wished to expand the sanctuary, with which the community was in full agreement. He asked the Board to address the issues he had raised.

Chairman DiGiulian said someone from the County Attorney's Office would have to do so because the County Attorney reviewed the affidavits.

Ms. Belgin said that she understood that members of the community had requested a copy of the most current affidavit from the County Attorney's Office, which they had been provided, but it may or may not have been prior to it having been finalized and approved. She stated that the affidavit dated February 5th which the Board had was the most current, and it had been approved by the County Attorney's Office, did have the Taiwanese Church included on it, and all the boxes filled in.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that an affidavit could go through several iterations and that it is submitted to the County Attorney's Office, and if there are changes to be made, the County Attorney's Office generally contacted the applicant directly and got revisions submitted.

Mr. Fifer stated that the application was somewhat of a technical matter to address changes going on adjacent to the existing property that was currently occupied by the Taiwanese Presbyterian Church, which began in 2001. Prior to that, he said the Chesterbrook Presbyterian Church had existed there since 1965. He stated that all the standards the BZA would consider had been reviewed in the staff analysis, consistent with a favorable recommendation from staff and the unanimous recommendation for approval from the Planning Commission to the Board of Supervisors. In terms of the issue of ownership, Mr. Fifer said a resolution from the National Capital Presbytery dealt with the issue of ownership, and the resolution was an ecclesiastical document he was not qualified to make a legal judgment about. He said that after having received multiple reviews and approval from the County Attorney's Office, he was confident that the applicant was in compliance with all the typical standards for an affidavit.

Mr. Hammack asked what the relationship was between the Presbyterian Church USA and the National Capital Presbytery, Inc. James Williams, staff member of the National Capital Presbytery, Inc., stated that the Presbyterian Church USA was the national denomination headquartered in Kentucky. He said there were 177 presbyteries in the United States called mid-level judicatories. He explained that the Presbyterian Church used the same form of government as the county, state, and federal governments, a representative democracy. The local session sends representatives to the presbytery, and the presbytery sends representatives to the general assembly and the senate. Mr. Williams said all the property of the denomination was held by either the presbytery or the denomination, and all the property of a particular congregation was held either in trust for the presbytery or by the presbytery. He stated that the subject property was in a little different situation because when a congregation ceased to exist, any property would go directly to the presbytery, who would then own it fee simple, which is what happened when the Chesterbrook Presbyterian Church dissolved. Mr. Williams said the presbytery wanted the property to be used as a church, and it gave the Taiwanese Presbyterian Church permission to use the property, so the congregation was then an authorized user, but did not have an ownership interest in the property.

Mr. Hammack said the resolution that Mr. Hung had given the Board said that a deed was to convey title to the property in February of 2001 from the Chesterbrook Trustees to the National Capital Presbytery, and he asked whether that had been done. Mr. Williams replied affirmatively and said the deed had been recorded.

Mr. Hammack stated that, according to the resolution, the Taiwanese Presbyterian Church was authorized to use Parcel B and sometimes Parcel C, and the applicant was asking that those parcels be removed. Mr. Williams said the Taiwanese Presbyterian Church was authorized to use Parcels A and B, and in paragraph 12 of the resolution, it indicated that the expectation of the presbytery at the time of the change in the title

~ ~ ~ February 24, 2004, NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4, continued from Page 394

had been that there would be an assisted living facility built on Parcel C, with access to Parcel C by way of Parcel B or other access over a portion of Parcel A. He said the intent had been to use as small amount of the property as possible, so a small corner of Parcel A was to be used as the access road. Mr. Williams stated that the National Capital Presbytery, Inc., owned the subject property, was subject to the discipline of and in this instance was speaking on behalf of the national denomination, the Presbyterian Church USA.

Mr. Hung said that when the Chesterbrook Presbyterian Church was going to dissolve, they had called him, and he understood that the property was to transfer to the Taiwanese Presbyterian Church. He said that because the deed was in the name of the Chesterbrook Presbyterian Church, according to the book of order and the constitution of the presbytery, it was recalled back to the presbytery, so the presbytery had stepped in at the last stage. He said that at a meeting, the resolution authorized Presbyterian, Inc., to record the deed under their title and authorized the Taiwanese Presbyterian Church to use Parcels A and B; therefore, the applicant's right was not above the Taiwanese Presbyterian Church's right. He said that without the written authorization of the Presbyterian Church USA on file, the applicant did not have the right to apply. He said he was not asking the Board of Zoning Appeals to make a judgment regarding the ownership; however, he wanted the applicant to clearly write the status of the Taiwanese Presbyterian Church because the affidavit said nothing about its right.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 68-D-955-4 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church with child care center and private school of special education to permit a reduction in land area. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. (Admin. moved from 11/25/03, 1/13/04, and 1/20/04 at appl. req.) (Continued from 2/10/04 at app. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; 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 showing compliance with the required standards for a special permit amendment.
3. The need for an affordable living facility has been demonstrated.
4. The planning commission recommends approval of the associated special exception.
5. The staff report recommends approval of the SPA.
6. The county attorney's office has reviewed and approved the affidavit.
7. Regarding the dispute between the congregation occupying the church on the front parcel and the presbytery, it doesn't necessarily rise to the level of a land use issue and is more of an internal issue for the church to resolve between the congregation and the presbytery or with the assistance of the Court as to the meaning of the dissolution resolution of the previous congregation.
8. It is undisputed that the applicant on the SPA is the record owner of all three parcels.
9. With respect to the land use issues, the development conditions and the changes to them mitigate any impact on the surroundings.
10. The change in the transportation with respect to the entrance, aligning it with the entrance across the

way, will help with some of the transportation concerns in the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, National Presbytery, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This Special Permit Amendment is granted only for the purpose(s), structure(s), and/or use(s) indicated on the Special Permit Plat prepared by Post, Buckley, Schuh, & Jernigan, Inc., dated May, 2003 and with engineering seal dated 1/9/04, approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment plat and these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity of the church sanctuary shall be limited to 220 seats.
6. The maximum daily enrollment for the child care center shall be limited to a total of 60 children.
7. The maximum daily enrollment for the adult day care center shall be limited to 28 persons.
8. The existing 81 parking spaces shall be maintained and no additional parking shall be required or constructed. All parking shall be provided on-site.
9. The hours of operation for the child care center shall be limited to 7:00 am to 6:00 pm, Monday through Friday; and the hours of operation for the school of special education (adult day care) shall be limited to 7:00 am to 7:00 pm, Monday through Friday.
10. The existing vegetation shall be used to satisfy the transitional screening requirement along the southern property line, provided it is maintained and protected in accordance with the Public Facilities Manual. No additional plantings shall be required.
11. The barrier requirement along the southern property line shall be waived.
12. The transitional screening and barrier requirement along the eastern property line (along Westmoreland Street) shall be waived.
13. Any new or replacement outdoor lighting fixtures shall be in conformance with Section 9 of Article 14 of the Zoning Ordinance. New or replacement freestanding fixtures shall not exceed a height of twelve (12) feet.
14. The school of special education (adult day care) shall incorporate the use of shuttle service for members of the program.

~ ~ ~ February 24, 2004, NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-4, continued from Page 396

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 Amendment shall not be valid until this has been accomplished. This SPA use shall be deemed to be established upon approval by the Board of Zoning Appeals, and a Non-RUP may be obtained immediately thereafter.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048 Appl. under Sect(s) 3-203 of the Zoning Ordinance to permit a Home Child Care Facility. Located at 1870 Foxstone Dr. on approx. 10,694 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-2 ((34)) 27. (Decision deferred from 2/17/04.)

Chairman DiGiulian noted that the case had been deferred for decision only.

Mr. Hart indicated that he would recuse himself from the public hearing.

Ms. Gibb stated that she had not been present at the prior meeting when the decision had been deferred, but had carefully watched the tape. She said she had thought a lot about the original hearing on the applicants' previous application, and she had been surprised at how the vote went because what she had heard was a case that she thought was very positive, made sense to her, and the applicants should have been allowed to have the three additional children. She said she was sorry she had not said anything during the discussion, but that was because she thought everyone had been thinking the same way she was.

Ms. Gibb stated that she had watched the tape, listened carefully to the opposition, read the letters, and listened to the Board members' questions. Ms. Gibb said there might have been a question as to whether the applicants had acted in good faith initially because they had 12 children and were not supposed to have 12. The husband's testimony was that he had been a County employee, which raised the question of why he had not known that just because the State said 12 children were allowed did not mean 12 children were allowed. Ms. Gibb said she had called staff after the hearing, and staff had confirmed for her that mistake had been made in the past with others, and there were a lot of people who were confused about the issue and many aspects about the Zoning Ordinance and who had received conflicting information from different sources. She said she believed the applicants thought they could have 12 children because the license said 12.

Ms. Gibb said there had also been testimony of the impact on the neighborhood; noise and traffic. She reported that she had gone and looked at the house from the outside. She said it was on a narrow street, one of many in Fairfax County, and was located a couple houses from the corner, so people would not have to drive a long way in to get to the house. Ms. Gibb stated that the staff report had been in favor of the applicants, and the input from transportation had indicated there would be no impact. She said that when she visited the site, there had been one car parked in front of the subject house, and there had been four or five at the house on the corner, including a truck hauling an enclosed horse trailer. Ms. Gibb said the sound of children playing was not what she considered to be noise, and having children in a neighborhood

~ ~ ~ February 24, 2004, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048, continued from Page 397

humanized everyone. In present Fairfax County, a very dense, intensely populated area with starter homes beginning at \$400,000, both parents had to work and needed childcare. She said the subject case was not a perfect situation, but there was an overriding need for quality childcare. Ms. Gibb discussed her experiences in looking for childcare as a working mother.

Ms. Gibb moved to approve SP 2003-HM-048 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Ribble stated that it was an emotional issue; however, he was concerned that over 67 percent of the neighbors were opposed to the additional children, but they accepted seven. He said Fairfax County permitted 40 percent more children than the neighboring jurisdictions allowed by right, but the neighbors had rights, too, so he would not support the motion.

Mr. Hammack asked whether the motion was for not more than 10 children at any one time and a total of 15. Ms. Gibb replied that it was, and added that opposition for any kind of increase or expansion seemed to be growing continually. She said the details of each case needed to be considered, and in the subject case, it was especially important to grant the application.

Chairman DiGiulian stated that he reluctantly would not support the motion. He said the common theme of the neighbors was that they knew they could not stop the seven, but that seven was enough.

Mr. Hammack stated that there was substantial opposition in the neighborhood, with the neighbors on both sides of the property expressing objection to the proposed larger number of students and indicating that noise was a problem. He said the lot was small, and the development conditions required additional off-street parking in the front yard. Mr. Hammack said that under Sect. 8-006 of the general standards, Subsection 3 stated that a proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of the neighboring properties. He said that given the testimony of the opposing neighbors who objected to the noise and traffic, he could not conclude that the proposed larger number satisfied the requirement, and he would not support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a Home Child Care Facility. Located at 1870 Foxstone Dr. on approx. 10,694 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-2 ((34)) 27. (Decision deferred from 2/17/04) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

~ ~ ~ February 24, 2004, GAIL L. GORDON & TIMOTHY J. CHESNUTT, SP 2003-HM-048, continued from Page 398

limitations:

If it is the intent of the Board of Zoning Appeals to approve SP 2003-HM-048 located at Tax Map 38-2 ((34)) 27 to permit a home child care facility pursuant to Sect. 3-203 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1870 Foxstone Drive (10,694 square feet), 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 E. Janson, dated December 5, 2002, revised by Timothy Chesnutt and Gail L. Gordon, dated through November 19, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation of the home child care facility shall be limited to a maximum of 7:30 a.m. to 5:30 p.m., Monday through Friday.
5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time, with a maximum daily enrollment not to exceed 15 children.
6. The number of staff for the home child care facility shall not exceed one (1) employee in addition to the proprietor.
7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.
8. There shall be no signs associated with this use.
9. Prior to the issuance of the Non-Residential Use Permit (Non-RUP) an additional third paved parking space shall be constructed in the front yard of the subject property, adjacent to the existing driveway.

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 establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which **FAILED\*\*** by a vote of 2-4. Mr. Beard, Mr. Ribble, Mr. Hammack, and Chairman DiGiulian voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final decision date of this special permit.

\*\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. TERRY L. PLUMMER, VC 2003-HM-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additon 21.5 ft. from rear lot line. Located at 13346 Point Rider La. on approx. 8,848 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 24. (Moved from 1/27/04 due to inclement weather.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Terry L. Plummer, 13346 Point Rider Lane, Herndon, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a sunroom, 21.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 3.5 feet was requested.

Mr. Plummer presented the variance request as outlined in the statement of justification submitted with the application. He explained that the proposal was to enclose an existing deck into a glass sunroom. He said there would be no adverse impacts on adjacent properties, and it would be a substantial improvement both visually and structurally because the existing deck did not meet current code regarding its attachment to the house.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-HM-173 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TERRY L. PLUMMER, VC 2003-HM-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line. Located at 13346 Point Rider La. on approx. 8,848 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 24. (Moved from 1/27/04 due to inclement weather.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant satisfied the nine required standards for variance applications.
3. The house is set to the rear of the property, making a very shallow rear yard.
4. The subject property backs up to community property and a wide sanitary sewer easement, so the proposed addition should have no impact on anything to the rear of it.
5. The proposed addition will not change the intended spirit or 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

~ ~ ~ February 24, 2004, TERRY L. PLUMMER, VC 2003-HM-173, continued from Page 400

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys International, LLC, dated August 13, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. JIMMY W. SMITH & ENID K. SMITH, SP 2003-MV-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.1 ft. with eave 2.2 ft. and stoop 0.0 ft. from side lot line. Located at 8815 Lagrange St. on approx. 10,640 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 19.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning

~ ~ ~ February 24, 2004, JIMMY W. SMITH & ENID K. SMITH, SP 2003-MV-049, continued from Page 401

Appeals (BZA) was complete and accurate. Jimmy Smith and Enid Smith, 8815 Lagrange Street, Lorton, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to allow an addition, consisting of the enclosure and expansion of an existing carport, to remain 3.1 feet with eave 2.2 feet from a side lot line and a stoop to remain 0.0 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, reductions of 8.9 feet, 6.8 feet, and 7.0 feet, respectively, were requested.

Mr. Hart asked whether the building permit had been issued by mistake. Ms. Hedrick replied that the building permit had been issued to construct an addition and that it had been built too close to the side lot line. She stated that the permit had no change in the side yards, and looking at the plat contained in the street files, it appeared they were going to the rear of the house and not to the side of the house.

Mr. Hart asked whether if had been built three feet from the side lot line instead of 13 feet, and Ms. Hedrick replied affirmatively.

Mr. Smith stated that the error committed had been that the permitted additions were extended on the side close to the fence, but the original foundation had not been extended. He stated that he built on top of the foundations which existed prior to his purchase of the property. He said he bought the house with future plans to build an addition on the carport foundation. The addition had been built, and the permit had been given to build an addition on the same foundation, but because the integrity of the foundation had been accepted by the zoning office, the foundations were extended a little more than what had been granted. Mr. Smith said he prepared and submitted an addendum to the zoning office, and the zoning office had told him a variance was needed. He stated again that the foundation had not been extended, and the only additional construction had been the stoop.

Referring to a plat in the staff report, Mr. Hart asked whether the foundation the applicant had described was shown. Mr. Hart said it looked like part of the addition was built at 3.5 feet instead of 13.5 feet. Mr. Smith replied that the foundation was shown on the plat, and he had only built on top of the existing foundation.

Mr. Hart referred to a plat in the staff report, and Mr. Smith replied that it was the house location as it had been when he bought the property. He stated that when he filed for the first permit, he did not file to enclose the entire carport, and the first application was to fill a portion of the carport which was approved.

Mr. Hart asked whether the addition that was built longer than on the plat went further into the backyard. Mr. Smith replied that it further into the backyard, but not as far as to create any zoning problem.

In response to Mr. Hart's question regarding who had filed the papers for the building permit, Mr. Smith said he had filed them.

Mr. Hart asked why the applicant had not used the plat showing the whole carport when obtaining the building permit. Mr. Smith responded that all of the plats showed the same property, and he found the plat showing the whole carport only after the special permit process had begun and brought it to establish the originality of the foundation. Mr. Smith stated that the date of the drawing was November 22, 1994.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked whether inspections had been done on the construction, given the building permit application said to enclose carport under an original roof, concrete floor, and an addition of the one bedroom to extend the carport from rear. Mr. Smith said they were two phases of inspections. The footings and foundation had passed the inspection, and the final phase remained to be done. He said that when the original inspection had been done, the additional space on top of the foundation was not included, which was why he had filed an addendum with the zoning office. Ms. Hedrick said that when the second addendum was filed, that was when it was brought to the attention of building permitting that the addition was too close to the side lot line, and they had informed Mr. Smith that he needed to file the special permit to allow the first phase of the addition to remain where it had been built.

~ ~ ~ February 24, 2004, JIMMY W. SMITH & ENID K. SMITH, SP 2003-MV-049, continued from Page 402

Mr. Hammack stated that inspections were not done on the second phase, the "as built." Ms. Hedrick said she was not aware of it, other than the inspections that were on the building permit itself. Mr. Smith said the original inspection, which included the foundation, had been done based on the existing foundation, a solid concrete foundation of the same quality and integrity that was approved for the permit, and he had built on top of the existing foundation. He said he had no way of knowing that he was in violation of the setback rules because the foundation had been existing.

Mr. Hammack asked whether there were any foundations 3.5 feet from the side lot line. Mr. Smith said the same original foundation was there, and no foundations were built to the side, only in the rear.

Mr. Hammack stated that the part of the addition he was concerned about was shown as 8.8 feet in the front, 9.9 feet in the rear, and 42 feet long, and it did not show on the original plat that was approved to enclose a carport. He said the surveyor was supposed to show that. Mr. Smith said there was a second permit and approval for the extension in the rear.

Mr. Hammack asked whether the applicant had a plat showing the second approval stamped by the County. Mr. Smith said he did not bring it with him, but could submit it to the Board. He stated that the first plan and the amended plan both were approved with the stamps on them.

Mr. Pammel stated that he wanted to see the plan, and he moved to continue the hearing for one week to allow the applicant to furnish the document. Mr. Hammack seconded the motion.

Mr. Smith asked if the plan the Board wanted was the one with the extension in the rear. Mr. Pammel and Mr. Hammack said it was the one to the side.

Mr. Pammel asked whether the applicant had a permit to extend the building to within 3.5 feet of the side lot line. Mr. Smith said he did not.

Mr. Pammel withdrew his motion, and Mr. Hammack withdrew the second.

Mr. Beard asked whether the applicant's neighbor to the side had expressed any opinion regarding what had been built. Mr. Smith responded that the addition posed no inconvenience to his neighbor, and he had said he had no problem with it. Mr. Smith stated that the photographs he had submitted showed there were no obstructions, no safety hazards, and it did not alter the face of the community.

Mr. Beard asked whether the foundation of the carport had been 3.5 feet from the lot line when the applicant purchased the house. Mr. Smith responded that it had been.

Mr. Hammack asked whether the addition was being used for living space. Mr. Smith responded affirmatively. He said it provided additional space for his family, which included four daughters and two sons. He said he had heard no complaints from neighbors, and others in the neighborhood had done the same thing.

Mr. Hammack asked whether Mr. Smith had done the construction. Mr. Smith responded that he had with minimal help.

Mr. Pammel said the request was difficult for him because he was a staunch defender of the position of the County that you cannot expand rights issued under a building permit for your own convenience and then come back to the Board and ask for a waiver of those provisions. He said the applicant needed to have a building permit for what he had done and did not have one. Mr. Pammel said that not only was it 3.5 feet to the property line, but the 42 feet of depth was a massive amount. He said that if the applicant had come before the Board for a variance, he doubted the Board would have given him one. He said he appreciated the need the applicant had, but he had violated the County codes, had not sought additional advice from the County as to what was needed, but had just added on to the structure. Mr. Pammel said the applicant had not met the required standards, and he moved to deny SP 2003-MV-049. Mr. Hart seconded the motion.

Ms. Gibb said she could not support the motion because although it was a big addition, it was done in good faith, and since the foundation was already there, it would be too great of a hardship to remove it.

Chairman DiGiulian said he agreed with Ms. Gibb and could not support the motion.

Mr. Hammack said he agreed with Mr. Pammel that it would be very difficult to grant a special permit for an error in building location when it was clear that the applicant knew he should get a building permit and did not. He said he did not believe there were footings three feet from the side lot line and was concerned that the addition was being used for living space without electrical or foundation inspections. Mr. Hammack said it would be a great hardship for the applicant to remove the addition, but he would not have approved of a 42-foot addition in length and possibly not within 3.5 feet of the side lot line if it were shorter. He said he wanted more information about what was in the addition and stated that it was not approvable without inspections and meeting all applicable code requirements. He suggested a deferral for one to two weeks to get more information on whether the work done actually met the code.

Mr. Beard stated that he would not support the motion to deny.

Ms. Gibb asked whether a development condition could be added which required inspections and compliance with code. Ms. Hedrick said the development conditions could be revised, but the applicant could not get the final approvals until he had gone through the special permit process to allow the addition to remain as it had been built because the building permit had been denied.

Mr. Hart said he agreed that it would be a tremendous hardship to remove the addition, but on the record before the Board, the applicant who owned the property throughout the operative time period applied for a building permit using the 1960 plat instead of the 1994 drawing and then proceeded to do something else without first getting approval. He said that even applying the special permit standards, the 42-foot-long addition with an eave 2.2 feet and steps 0.0 feet from the side lot line was still too much and too close, and he was not satisfied that the applicant's burden had been met with respect to what was submitted to the County in terms of the accuracy of the drawings.

Ms. Gibb said she thought there was testimony that the second plat had not been discovered until later. She said that from looking at the photos, there was a lot of vegetation between the subject lot and the lot next door, a six-foot-high fence on the neighbor's land, and the neighboring house was some distance away. Ms. Gibb said it was not for a garage or something considered a luxury, but living space for six children.

The motion to deny SP 2003-MV-049 failed by a vote of 3-4. Mr. Beard, Ms. Gibb, Mr. Ribble, and Chairman DiGiulian voted against the motion.

Ms. Gibb moved to approve SP 2003-MV-049 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Pammel stated for the record that it was his opinion that it was a self-imposed hardship.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JIMMY W. SMITH & ENID K. SMITH, SP 2003-MV-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.1 ft. with eave 2.2 ft. and stoop 0.0 ft. from side lot line. Located at 8815 Lagrange St. on approx. 10,640 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 19. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ February 24, 2004, JIMMY W. SMITH & ENID K. SMITH, SP 2003-MV-049, continued from Page 404

1. The applicants are the owners of the land.
2. It was not done in bad faith.
3. The impact on the neighborhood will not be great.
4. It would be a substantial hardship to remove it.
5. The applicant has met standards A through G under the special permit mistake section of the Ordinance.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition, an enclosed carport, and a stoop, as shown on the plat prepared by Gallifant, Hawes & Jeffers, Ltd., dated August 11, 2003, as revised through November 11, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits and approval of final inspections must be obtained for the addition, as shown on the plat.

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. Beard seconded the motion, which carried by a vote of 4-3. Mr. Pammel, Mr. Hart, and Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. PHILLIP ANDREW & ELLEN R. FEERST, VC 2003-HM-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. with eave 16.4 ft. from side lot line and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 9948 Woodrow St. on approx. 30,599 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-1 ((9)) 102.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition 16.9 feet with eave 16.4 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.1 feet and 0.6 feet, respectively, were requested. The applicants also requested a variance to permit an existing 156.8-square-foot shed to remain in the front yard of a lot containing 36,000 square feet or less. The Zoning Ordinance states an accessory structure shall not be located in any front yard on a lot containing 36,000 square feet or less. She noted that revised development conditions had been distributed to the Board.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She said the proposed addition was 14 feet long and 4.0 feet wide to the right side of the existing home to provide more room for the dining room. The home was built in the 1950s in a rambler style with the living areas and bedrooms all on one floor. She stated that a larger addition had been constructed in the rear for a family room. Currently the only exit from the main floor was the front door, and the proposed addition would also provide for a second exit from the main floor, which could not be located elsewhere because the steps would be too steep. Ms. Kelsey stated that the application met the standards for a variance for both the addition and shed. She said the shed had been in its unobtrusive location for 17 years, and the problem with its location was discovered when the application was filed for the addition. She said that although the subject lot was one of the largest in the subdivision, it consisted of a large amount of floodplain and wet soils, and the soil to the right was the best location to build upon. Ms. Kelsey said there were other areas in the county which were adjacent to flood plains which had similar problems, but it was not a general condition which would warrant a Zoning Ordinance amendment. She said that the inability to build on the right side of the existing dwelling would produce an unreasonable hardship. She explained that the applicants believed that the proposed area would be outside the Resource Protection Area (RPA), but even if it was in the RPA, the addition was designed to be constructed on stilts, so if water went over the floodplain line over to the right side of the building, it had been accommodated for with stilts. She noted that there was an existing chimney and bay window that extended out into the four-foot area where the addition would go. Ms. Kelsey said that although there many homes in the subdivision that were similar in design, they were not all situated on the lot like the subject home. She stated that the strict application of the Ordinance would unreasonably restrict the reasonable use of the land and the buildings involved because the bedrooms were on the opposite side of the house and it was much steeper on that side; therefore, the proposed location was reasonable for the addition. Ms. Kelsey stated that it would not be detrimental to the use or enjoyment of the adjacent properties, and she had submitted eight statements from property owners indicating support of the application. Ms. Kelsey stated that the character of the zoning district would not be changed, and the addition would be in harmony with the zoning district regulations, with the subdivision, and with the community, and would not be contrary to public interest. A tax map with lots shaded in green to indicate they had similar variances approved in the subdivision was shown. She said the property across the street is on a hill and slopes down to the property, which continues to slope down, so from the street only the roof of the shed was visible, and there had been no complaints in 17 years regarding the shed. Ms. Kelsey stated that the application met the requirements of 18-405 because it was the minimum variance which would afford relief.

A discussion ensued between Mr. Hart and Ms. Hedrick regarding revised Development Condition 4. Ms. Hedrick stated that the applicants had to go through the Department of Public Works and Environmental Services (DPWES) process first to determine whether the Chesapeake Bay Review Committee needed to review the addition or not. She said the purpose of the condition was to ensure that the applicants and their agent coordinated the addition, the existing shed, and footbridge with DPWES to ensure that they were permitted within the floodplain and within the RPA since the new RPA limits were established. Ms. Hedrick said she understood that the applicant had talked to someone in DPWES, and the applicants were under the understanding that they could do the addition within the RPA. She explained that the existing dwelling was

~ ~ ~ February 24, 2004, PHILLIP ANDREW & ELLEN R. FEERST, VC 2003-HM-186, continued from Page 406

permitted by right because the Chesapeake Bay Ordinance was adopted after it was built, but any additions had to go through a review, and if the location of the addition was changed during the process, it might be necessary to come back before the BZA.

Ms. Kelsey said the applicants had spoken with John Friedman, DPWES, concerning the subject addition, footbridge, shed, and the other addition on which the construction had begun prior to the most recent amendment to the Chesapeake Bay Ordinance. She said the applicants were aware of the 100-foot requirement and had measured from the banks of the stream to make sure the proposed addition was outside of the RPA, but the addition was being put on stilts to ensure there would be no impediment to the water flow.

Mr. Pammel referred to Development Condition 3 and asked whether it was 150 square feet or greater for a shed that required a building permit? Ms. Hedrick said that was correct. She said that when she had done the calculation for the shed, she had included a ramp, which made it 156.8 square feet; however, subsequently it was brought to her attention that the ramp was removable. Ms. Hedrick said that without the ramp, the shed was 137.6 square feet, and anything less than 150 square feet was exempt from the building permit requirement.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-HM-186 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILLIP ANDREW & ELLEN R. FEERST, VC 2003-HM-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. with eave 16.4 ft. from side lot line and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 9948 Woodrow St. on approx. 30,599 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-1 ((9)) 102. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. All the burdens have been met pursuant to the situation.
3. There is a comfort level with this situation, especially with this addition being on stilts.
4. The applicant has 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and shed as shown on the plat prepared by Dominion Surveyors, Inc., dated October 29, 2003, submitted with this application and are not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. A building permit shall be obtained for the existing frame shed located in the front yard of the subject property, if necessary.
4. The addition shall comply with the current Chesapeake Bay Ordinance requirements. An exception for the addition shall be obtained, if necessary, from the Department of Public Works and Environmental Services (DPWES), prior to construction. The applicant shall provide documentation to and coordinate with the Environmental and Facilities Review Division, within DPWES, regarding the location of the addition to the eastern side lot line, the accessory structure and the footbridge on 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. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. PHILIPPE JACQUES KUPERMAN, VC 2003-HM-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 3.7 ft. from side lot line. Located at 1302 Aldbury Way on approx. 10,739 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 161. (Moved from 1/27/04 due to inclement weather.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philippe Jacques Kuperman, 1302 Aldbury Way, Reston, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, specifically an enclosed deck, 5.0 feet with eave 3.7 feet from the side lot line. A minimum side yard of 8.0 feet is required; however eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.0 feet and 1.3 feet, respectively, were requested. Bill Sherman stated that proposed Development Condition 1 should be revised to indicate a plat with a revision date of January 23, 2004.

Mr. Kuperman presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kuperman said he had requested the homeowners association's permission for the addition, and permission was granted pending approval of the variance by the County.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-HM-172 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIPPE JACQUES KUPERMAN, VC 2003-HM-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 3.7 ft. from side lot line. Located at 1302 Aldbury Way on approx. 10,739 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 161. (Moved from 1/27/04 due to inclement weather.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; 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 prescribed standards for the granting of a variance.
3. The subject lot is a corner lot.
4. The proposed addition is to the rear where there is not a great deal of space as a result of the positioning of the dwelling 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;

~ ~ ~ February 24, 2004, PHILIPPE JACQUES KUPERMAN, VC 2003-HM-172, continued from Page 409

- F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an enclosed deck, as shown on the plat prepared by L. S. Whitson, dated November 3, 2003, revised January 23, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. PAULA L. HARRINGTON, SP 2003-BR-050 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 6410 Charnwood St. on approx. 12,122 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 548.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

~ ~ ~ February 24, 2004, PAULA L. HARRINGTON, SP 2003-BR-050, continued from Page 410

Appeals (BZA) was complete and accurate. Paula Harrington, 6410 Charnwood Street, Springfield, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the limitation on the keeping of animals to permit the keeping of six adult dogs. A residential lot of 20,000 square feet or more is required to keep six dogs. The keeping of two dogs would be permitted by right on the applicant's property.

Ms. Harrington presented the variance request as outlined in the statement of justification submitted with the application. She stated that the dogs were very small, with a combined weight of 72 pounds. She said she had installed a fence when she moved in a year prior so the dogs could enjoy the backyard and had left them outside when the weather was warm when she had gone to work. Ms. Harrington said that until she had reviewed the letters of complaint about barking, she had been aware the dogs barked, but did not know they barked so much that it offended the neighbors. She said she currently kept the dogs inside during the day, and the only time they were in the backyard was when she was with them. Ms. Harrington stated that she had gotten the dogs audio bark collars, which reduced the barking, and they were no longer a nuisance when they were outside. She said she had spoken to two of the three parties who had written complaint letters, Mr. and Mrs. Holt and Leona Smith, apologized for the barking, told them of her plan, and they were satisfied.

Ms. Harrington responded to questions by Board members. She indicated she did not breed the dogs; they were all neutered or spayed; the oldest dog was twelve years old, which she had for six years; she had gotten the dogs from a breeder; the breed of hairless dog did not aggravate her asthma; and, she had read the proposed development conditions, agreed with them, understood the dogs could only be outside for 30 minutes unattended, and would comply.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2003-BR-050 for the reasons stated in the Resolution.

Additionally, Mr. Hammack said they were small dogs and seemed to bark a lot, and if the applicant kept them inside and did not let them run loose in the yard, that should satisfy the objections made by the neighbors. He noted that under the Ordinance, the applicant's lot of 12,122 square feet was close to the 12,500 square feet required to have four dogs as a matter of right. Mr. Hammack stated that under the development conditions, if any of the dogs died or were given away, they could not be replaced, and ultimately the applicant would be required to satisfy the Ordinance with no more than two dogs.

Mr. Beard seconded the motion.

Ms. Gibb noted that there were many letters in opposition. She said that even the noise from dogs barking inside could be carried outside, and with groups of dogs, when one started barking, the rest would bark, so the more you had, the more that happened.

Mr. Pammel stated that six little dogs, because they bark more, was too many.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAULA L. HARRINGTON, SP 2003-BR-050 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 6410 Charnwood St. on approx. 12,122 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 548. 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

~ ~ ~ February 24, 2004, PAULA L. HARRINGTON, SP 2003-BR-050, continued from Page 411

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-917 and the additional standards for this use as contained in Sect(s). 2-512, 8-903, of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6410 Charnwood Street (12,122 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing six (6) dogs. If any of these specific animals die or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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. Beard seconded the motion, which carried by a vote of 4-2. Mr. Pammel and Ms. Gibb voted against the motion. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. CARLOS CABALLERO, SP 2003-LE-051 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 20.8 ft., roofed deck to remain 12.9 ft. with eave 11.9 ft., and stairs to remain 11.9 ft. from front lot line and dwelling to remain 11.7 ft. with eave 10.7 ft. from side lot line. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)) 1.

9:00 A.M. CARLOS CABALLERO, VC 2003-LE-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yard,

~ ~ ~ February 24, 2004, CARLOS CABALLERO, SP 2003-LE-051 and VC 2003-LE-187, continued from Page 412

accessory structures 0.0 ft. from rear lot line, and minimum rear yard coverage greater than 30 percent. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((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. Carlos Caballero, 6435 Franconia Road, Springfield, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to the minimum yard requirements based on errors in building location to permit the dwelling to remain 20.8 feet, roofed deck to remain 12.9 feet with eave 11.9 feet, and stairs to remain 11.9 feet from the front lot line, and dwelling to remain 11.7 feet with eave 10.7 feet from the side lot line. A minimum front yard of 35 feet and minimum side yard of 15 feet are required; however, eaves are permitted to extend 3.0 feet and stairs are permitted to extend 5.0 feet into the minimum front and side yards; therefore, reductions of 14.2 feet, 22.1 feet, 20.1 feet, 18.1 feet, 3.3 feet, and 1.3 feet, respectively, were requested. The applicant also requested a variance to allow fences of 10 feet in height integral to the use of a tennis court to remain in the side and rear yard; accessory structures, consisting of two light poles of approximately 21.7 feet in height to remain 0.0 feet from the rear lot line; and rear yard coverage of approximately 100 percent. The Zoning Ordinance permits fences of 7.0 feet in height, requires accessory structures to be located a distance equal to their height from the rear lot line and to meet the minimum side yard requirements, and permits maximum rear yard coverage of 30 percent. There were four light poles on site, but only two required variances.

Mr. Caballero presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He said that it had recently been brought to his attention that there were problems with the front and side setbacks, but the structures had existed before he bought the property. He explained that after he purchased the property in 1988, he had come to the County for guidance regarding how to develop his property and was given a list of contractors, from which he picked. He said one of the contractors took his money and only did half of the construction, the tennis court contractor delivered the court and accessories and disappeared from the market, and the only contractor who delivered completely was the pool contractor. Mr. Caballero said that during the process he lost money, family, and a baby. He stated that children from Lee High School used the facilities for team play. He said the court had been completed since 1996, and there had been no problems or complaints. The court had not been used for the prior year and a half because it needed to be resurfaced, and in 2003 he received a complaint from the County. He said that after there had been hundreds of inspections done in his home, he realized he did not have a permit for the tennis court, the lights, or the fence. Mr. Caballero said he had done everything in good faith, was faced with obstacles which should have been corrected in 1993, 1996, 1997, 1998, or 1999 when inspections had been done, and he had trusted the contractor. He stated that he could not afford to dismantle the court and the lights. He said the clay court did not affect the neighborhood, the grade, or the drain, and the lights and the fence were almost invisible and did not affect the neighbors at night. Mr. Caballero said his property improved the value of the neighborhood where houses that had been selling for \$300,000 were currently selling for almost \$550,000. He said he had two letters from adjacent neighbors that had no problem with his property, and the inspector had not told him who complained in 2003, but he had received no complaints directly. Mr. Caballero said that when he bought the house, it looked like a landfill and was full of trash, and in 1990 he had improved the house, gotten hundreds of inspections, and no one had said anything until 2003.

Mr. Pammel asked what the circumstances were with respect to the front porch that allowed the applicant to encroach upon the front yard requirements and whether a contractor had done it. Mr. Caballero replied that the porches on both sides already existed when he bought the house, but were ruined, and he fixed them by putting in new boards and painting. Mr. Pammel said the encroachment must have occurred when the right-of-way was acquired for Franconia Road.

Mr. Pammel noted that with respect to the court, Mid-Atlantic Court Construction did not comply with the requirements. He said he had read the applicant's contract and did not see anywhere that it said Mid-Atlantic was responsible for getting the permit. Mr. Caballero said he relied on the contractor and that the contractor would be in charge of all the necessary things to build the court.

~ ~ ~ February 24, 2004, CARLOS CABALLERO, SP 2003-LE-051 and VC 2003-LE-187, continued from Page 413

Ms. Gibb noted that on the invoice there was a fee of \$300 listed for a permit.

Mr. Hart said it appeared the paved area in the front yard was more than 25 percent, and he asked whether that was grandfathered or part of something else? Ms. Langdon said staff understood that it predated the change in the Ordinance, so it was allowed to stay.

Mr. Hart asked whether the entire area of the tennis court was a clay surface. Mr. Caballero stated that the whole area was clay. He said it was too much land to maintain. Mr. Hart asked whether there was any grass on the lot. Mr. Caballero said there was grass around the pool and on the side of the house. Mr. Hart asked whether the left side of the driveway was paved, Mr. Caballero responded affirmatively.

Mr. Hart asked staff whether there was any other accommodation required for stormwater management when almost the whole lot was paved. Ms. Langdon stated that when construction occurs, there is a certain grade that is supposed to fall away from the house so water drains away from the house, but staff was not aware of any other requirements. Mr. Caballero said there was a storm drain behind the tennis court between his property and the subdivision to collect water.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to direct staff and the County Attorney's Office to find out whether Mid-Atlantic was still in business, identify the owner, and request they appear on March 16, 2004, before the Board to give an explanation of why the necessary permits were not obtained and why sales tax had not been charged on the merchandise provided. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Hart moved to approve SP 2003-LE-051 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOS CABALLERO, SP 2003-LE-051 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 20.8 ft., roofed deck to remain 12.9 ft. with eave 11.9 ft., and stairs to remain 11.9 ft. from front lot line and dwelling to remain 11.7 ft. with eave 10.7 ft. from side lot line. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The owner presented testimony showing compliance with the required standards for a special permit.
3. The applicant purchased the house with these conditions existing. The right-of-way or the road was widened at some point, and this is an older structure, and we don't really know exactly what happened other than the applicant did not do it.
4. It is not creating any negative impact on anybody with those existing conditions.

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:

~ ~ ~ February 24, 2004, CARLOS CABALLERO, SP 2003-LE-051 and VC 2003-LE-187, continued from Page 414

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the dwelling, open porch, stairs and addition as shown on the plat prepared by Bryant L. Robinson, dated August 29, 2003, submitted with this application and is not transferable to other land.

This approval,\* contingent upon the above-mentioned 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 March 3, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to defer decision on VC 2003-LE-187 to March 16, 2004, at 9:00 a.m., to allow time for the contractor to be contacted and requested to appear before the Board. Mr. Pammel seconded the motion.

Ms. Gibb said that meant the applicant would have to come back. She noted that on the first page of the contract, it said "permit inc," which she assumed meant permit included, and the permit was also reflected on the invoice. She asked whether the applicant's appeal which had been deferred to March 30, 2004, would still go forward. Ms. Langdon said the appeal was based on the land use application, and it would go forward if the variance was denied, but the appeal could be moved again. She informed the Board that the applicant would be out of the country on March 16th, returning on March 20th. Since the tennis court was not being used in the winter, Mr. Hart said either date would be fine. She said the next available date would be March 23rd.

Mr. Beard said he did not think the situation was going to change, and the applicant would be put through

~ ~ ~ February 24, 2004, CARLOS CABALLERO, SP 2003-LE-051 and VC 2003-LE-187, continued from Page 415

more turmoil. He suggested the Board go ahead with the variance application rather than deferring decision.

Ms. Gibb said whatever the Board learned would make no difference because the applicant bought the house like it was, there had been no complaints for years, and the tennis court was loaned to the high school. Investigating the matter with the builder was fine, but she said it was not necessary to put the applicant through any more misery for three weeks.

Mr. Hart said the variance involved the tennis court and the fence, which the applicant had built after purchasing the property.

Mr. Hart amended the motion to defer decision on VC 2003-LE-187 to March 23, 2004 at 9:00 a.m., and schedule the representative from Mid-Atlantic to appear on that date as well. Mr. Pammel seconded the motion, which carried by a vote of 4-2. Ms. Gibb and Mr. Beard voted against the motion. Mr. Ribble was not present for the vote.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. FRANK R. STONE, SP 2003-MA-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 accessory structure to remain 3.5 ft. with eave 1.2 ft. from side lot line. Located at 3911 Oak Hill Dr. on approx. 17,061 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 (19) 87. (Concurrent with VC 2003-MA-171). (Moved from 1/27/04 due to inclement weather.)

9:00 A.M. FRANK R. STONE, VC 2003-MA-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. with eave 8.5 ft. from side lot line. Located at 3911 Oak Hill Dr. on approx. 17,061 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 (19) 87. (Concurrent with SP 2003-MA-042). (Moved from 1/27/04 due to inclement weather.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank R. Stone, 3911 Oak Hill Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on an error in building location to permit an accessory structure, specifically a one-story brick and shingle building 13.5 feet in height, to remain 3.5 feet with eave 1.2 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 8.5 feet and 7.8 feet, respectively, were requested. The applicant also requested a variance to permit construction of a garage addition to be located 9.5 feet with eave 8.5 feet from the northern side lot line. Variances of 2.5 feet and 0.5 feet, respectively, were requested.

Mr. Stone presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He stated that at the time he purchased the property in 1989, the accessory structure had been there, and he was assured that there had been a permit by the realtor, and Kathleen Mills, the previous owner. He said that Ms. Mills, who taught bible classes in the building to avoid the children tracking mud into her house, still maintained that she had a permit to build the structure in 1974. Mr. Stone said that because the structure was indicated on the plat filed with the County and passed through the title search, he assumed there had been a permit. He said the structure had been there for 30 years, and none of the neighbors had complained. The issue with the structure came to his attention when he applied for the variance to enclose the carport into a garage. He explained that the external portion of a chimney extended 2.5 feet into the carport, which made it difficult to open the doors, and the additional 2.5 feet requested to build a garage would allow for clearance.

Mr. Pammel asked what utilities existed in the accessory structure. The applicant replied that it had

~ ~ ~ February 24, 2004, FRANK R. STONE, SP 2003-MA-042 and VC 2003-MA-171, continued from Page 416

electricity, but no water, heating, cooling, or sewage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2003-MA-042 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK R. STONE, SP 2003-MA-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 accessory structure to remain 3.5 ft. with eave 1.2 ft. from side lot line. Located at 3911 Oak Hill Dr. on approx. 17,061 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 (19) 87. (Concurrent with VC 2003-MA-171). (Moved from 1/27/04 due to inclement weather.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant testified that the required standards A through G have been met.
3. The structure has been there 30 years, so one could assume that it's not a detrimental use to the adjacent property owners or that it impairs the intent of the Ordinance or the other standards.

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

~ ~ ~ February 24, 2004, FRANK R. STONE, SP 2003-MA-042 and VC 2003-MA-171, continued from Page 417

vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory building, as shown on the plat prepared by Bryant L. Robinson, dated October 6, 2003, 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 March 3, 2004. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 2003-MA-171 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK R. STONE, VC 2003-MA-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. with eave 8.5 ft. from side lot line. Located at 3911 Oak Hill Dr. on approx. 17,061 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 (19)) 87. (Concurrent with SP 2003-MA-042). (Moved from 1/27/04 due to inclement weather.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant is making a very modest request of a variance of only 2.5 feet on the side and .5 feet for the eave.
3. As the application only consists of enclosing a carport, there would be minimum impact on the adjacent property with this 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;

~ ~ ~ February 24, 2004, FRANK R. STONE, SP 2003-MA-042 and VC 2003-MA-171, continued from Page 418

- C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for an addition, as shown on the plat prepared by Bryant L. Robinson, dated October 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4.

~ ~ ~ February 24, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047, continued from Page 419

Chairman DiGiulian noted that SP 2003-SP-047 had been administratively moved to March 30, 2004, at 9:00 a.m.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:30 A.M. CARLOS AND MALENA CABALLERO, A 2003-LE-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have installed a tennis court which covers more than 30% of the minimum required rear yard and includes a fence and a series of pole mounted light fixtures in excess of seven feet in height all in violation of the Zoning Ordinance provisions for accessory uses and structures. Located at 6435 Franconia Rd. on approx. 18,826 sq. ft. of land zoned R-2. Lee District. Tax Map 81-3 ((12)) 1. (Admin. moved from 12/16/03 at appl. req. to 2/24/04) (Deferred to 3/30/04 on 12/16/03)

Chairman DiGiulian noted that A 2003-LE-047 had been deferred to March 30, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ February 24, 2004, Scheduled case of:

9:30 A.M. LAKE BRADDOCK COMMUNITY ASSOCIATION, A 2003-BR-052 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is occupying the property without site plan approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 9408 Odyssey Ct. on approx. 2,748 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 78-2 ((20)) 53.

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the case.

Diane Johnson-Quinn, Zoning Administration Division, presented staff's position as set forth in the staff report. She stated that the appeal was of a determination that the appellant was occupying the subject property without site plan approval and without a valid Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. She explained that coordination had occurred between the Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) staff and it was determined that no further site plan approval was required. Ms. Johnson-Quinn stated that the remaining zoning violation was the lack of a Non-RUP for the occupancy of the property as an office use, which was required under Section 18-701 of the Zoning Ordinance.

Ms. Johnson-Quinn advised the Board that the zoning files contained a copy of a 1987 Team Inspection Report, which listed a number of possible building code violations, and contained no records of any actions taken to remedy the violations. She said a subsequent team inspection had recently occurred and notice had been given to the appellant of the violations. She explained that a Non-RUP was required to establish a use and that all of the building code and fire code violations must be cleared prior to the issuance of a Non-RUP.

In response to Mr. Pammel's questions regarding whether the standards for a Non-RUP for commercial use were substantially different and more significant than for a Residential Use Permit (RUP), Ms. Johnson-Quinn explained that the difference was in the building code provisions and not the zoning code provisions and that the issuance of a Non-RUP would be based upon compliance with the building code requirements.

Responding to Mr. Beard's questions regarding which codes were prevalent and whether BOCA and other requirements would apply, Ms. Johnson-Quinn replied that the inspection team used the current building code requirements.

Mr. Hart and Ms. Johnson-Quinn discussed use of the lower level of the townhouse for storage and as a workshop, with Ms. Johnson-Quinn confirming that the workshop would be accessory to the office use and indicating that photographs showed Christmas decorations, a lawnmower, and hand tools being stored.

~ ~ ~ February 24, 2004, LAKE BRADDOCK COMMUNITY ASSOCIATION, A 2003-BR-052, continued from Page 420

In response to Mr. Hart's question regarding the Fire Marshall's authority independent of the BZA in the matter, David Thomas, Fire Prevention Division, explained that the Fire Marshall could take action only on the portions of the report that were set forth as violations of the International Fire Code and had no jurisdiction over items under the building code.

Kenneth E. Chadwick, the appellant's agent, presented the arguments forming the basis for the appeal. He gave some history regarding the development of Lake Braddock by Yeonas and Company in 1977 and stated that the Association had owned and occupied a building at 5430 Calstock Court from 1977 through 1979 for association office purposes reflected in final development plan amendment C-77. He explained that in 1979 the appellant acquired the subject Odyssey Court property, and in accordance with final development plan amendment C-77-2, the arrangement with the County was that the Association, once they received the Odyssey Court property, would no longer use the Calstock property. Mr. Chadwick stated that C-77-2 was approved as an amendment to the Zoning Ordinance and changed the portion of the land then owned by Yeonas from PDH-3 commercial to PDH-3 residential. He said the Association had agreed to support the application and agreed to give up the office on Calstock in exchange for the office on Odyssey Court and a RUP for the Odyssey Court property was issued by the Division of Design Review on August 4, 1981.

Mr. Chadwick stated that the property should not be subject to a Non-RUP. He explained that the concern was that a Non-RUP would require the enforcement of the current code with more requirements than what was in effect in 1979 when the Association initially acquired the property. He noted a statement contained in Appendix 2 of the approved application for the final development plan describing the use of the townhouse by the community association to manage its affairs regarding such matters as common grounds and facilities management, billing and collection of homeowner assessments, budget management and expenditure control, assistance to community committees and responses to homeowner queries, which he contended was an accessory use to the residential nature of the property. Mr. Chadwick stated that the RUP that was issued for the property was legitimate, took into account the residential nature of the community and the residential use of the office, and should continue to be appropriate in light of the circumstances and the history of the property.

In response to questioning by Mr. Hart, Mr. Chadwick stated that no one was living in the structure. He said there was no dispute that the Association had not gotten a Non-RUP because the Association would have never been in a position to get one, that it would have been done by the developer of property and then been transferred to the Association, but neither the developer nor the Association had gotten a Non-RUP. Mr. Chadwick said the Association had a RUP and was relying on it, that their position was that it was part of the residential nature of the community, and the use of the office was an accessory use under the current zoning code. He clarified that the building was used primarily as an office, the downstairs was used for storage, the Association had a maintenance facility off the site, and the subject property was not used for maintenance of equipment.

In response to questioning by Ms. Gibb and Mr. Beard, Ms. Johnson-Quinn said there were other situations in multi-family complexes where there was an office or a community type of facility, which had been required to obtain Non-RUPs. She stated that it had been determined that the workshop was accessory to the office use.

A discussion ensued between Mr. Hammack, Mr. Pammel, Mr. Chadwick, and Thomas Washburn, 5231 Lighthorn Road, Burke, Virginia, regarding when the Association physically moved their office from the Calstock property to the Odyssey property and whether the RUP was issued prior to the subject property being occupied. It was determined that the agreement to move was dated in 1979 and the RUP was dated in 1981. Mr. Chadwick said the office was occupied in 1981. Mr. Washburn said he deduced that the occupancy occurred before the RUP was approved.

In response to questioning by Mr. Hammack and Mr. Pammel regarding why a RUP was issued with the history that the property would be used as an office, the issuance of building permits for the cluster of units, and who the builder was, Ms. Johnson-Quinn replied that while it was shown on the FDP as an office for the Association, it was not shown on the site plan or building permits. She said that because there was nothing noted on the site plan and a RUP was issued, she presumed that nothing was ever noted that it was something other than residential. She explained that the building permits were issued individually and she

~ ~ ~ February 24, 2004, LAKE BRADDOCK COMMUNITY ASSOCIATION, A 2003-BR-052, continued from Page 421

had found a permit for one of the townhouses in the row, but had not found a permit for the subject property. She said that Yeonas was the builder, which Mr. Chadwick confirmed.

Chairman DiGiulian called for speakers.

Ron Luxemburg (phonetic), no address given, came forward to speak in support of the application. He said he was a 10-year resident of Lake Braddock and a past president of the board of directors. He stated that the office had been in the current location since he had lived in the development. He explained that the income of the Association was fixed by its bylaws and the fees charged could only be raised to compensate for inflation and were based on the fact that the Association had the free office given to it by the developer. Mr. Luxemburg said that the problem, which appeared to be a paperwork mix-up, occurred in 1981, long before the majority of the residents lived there, and had it been handled in 1981, the costs associated with the remedy would have fallen on the developer, but now would fall upon those currently in the Association. He stated that the office had been in the current location for 20 years without a problem, that the unit was built to be an office, with no oven, no bathtub, no bathrooms, and was never occupied. He said that since the County gave it a Residential Use Permit, there was an impression that they felt that the permit was adequate for the type of use, which was similar to a home in that there was only four or five people in it at a time and there was no great fire risk. Mr. Luxemburg said that if the situation could not be worked out, it would be a hardship on the Association and all the residents who lived there.

Mr. Washburn came forward to speak in support of the application. He said that if the Board did not reverse the determination, it would cause a severe hardship on the people who were currently living there.

Robert Goetz, 5103 Dahlgreen Place, Burke, Virginia, came forward to speak in support of the application. He stated that the office was used for the support of the Association of the residents that lived in Lake Braddock and was not open to the general public. He said the massive amount of work that would be required to gain a Non-RUP would impose a hardship on the residents and the requirements were unreasonable for the type of application.

In response to questioning by Mr. Hart regarding administrative relief or waivers of building code violations with an application for a Non-RUP, Patrick Nnaji, Office of Building Codes Services, explained that there was a provision in the code for code modifications and that if the appellant wanted to apply for code modifications on any of the cited items, it would be addressed by the Board of Building Code Appeals, which had not been done. Mr. Nnaji stated that the code could not be waived and that the appellant had made no attempt to comply with the provisions of the code; however, he said that if they provided an equivalent level of safety for any of the issues raised in the team inspection, they could request a code modification. He gave examples of possible code modifications, such as using a portable fire extinguisher instead of an automatic fire suppression system.

In response to questioning by Mr. Hammack regarding the County's follow-up on the 1987 team inspection, Mr. Nnaji explained that the initial team inspection was not done as an investigation of a problem, but rather was requested by Ronald Holsotple, the executive director of the Lake Braddock Community Association, related to a change of use and that the 1987 report was done not as a citation, but as advice of what was needed to meet the code.

Mr. Chadwick stated, in his rebuttal, that there was never a change of use and that it was always intended to be an office. He added that there had been discussions with the County and Sharon Bulova and that the Association was under the impression that the RUP was in existence, that the Association was in good standing, and that changes did not need to be made. He stated that the code violations were separate and distinct from the RUP and zoning issues.

In response to questioning by Mr. Hammack, Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that in the final development plan approval when the office was approved, it was approved in a PDH district, which allowed residential and allowed offices as a secondary use, and because it was an office use as a secondary use, it would have always required a Non-RUP, would not be an accessory to the residential use, and that it was incumbent on the developer to also show the office use on the site plan.

~ ~ ~ February 24, 2004, LAKE BRADDOCK COMMUNITY ASSOCIATION, A 2003-BR-052, continued from Page 422

Ms. Stehman said it has been run as an office, and that in dealing with 1300 units, it was like a small business. She explained that the unit included a conference room on one level, several desks, and storage of material in the basement. She said that the Association requested a team inspection in 1987, and had they cleared the code violations, they would have been in a position to apply for a Non-RUP, which was not expediently pursued, and a subsequent team inspection had been done. Ms. Stehman reported that there had been a number of meetings with staff of the community association, County staff, and Supervisor Bulova's office in which the issues had been discussed, which put everyone on notice that a Non-RUP was required and had not been issued, and the Association had not taken action.

Mr. Chadwick pointed out that in relation to the first final development plan that was issued for the Calstock property, the Board of Supervisors indicated they were talking about a community use rather than an office. He said that the memorandum regarding the approval recommended to the Board of Supervisors that the final development plan C-77 be amended from residential use to residential or community, which was an accessory use under the zoning.

Ms. Stehman said she believed the second final development plan approval was for an office.

Mr. Hammack commented that the Association was a non-stock, non-profit association that did not serve the general public and had a certain limited function. He said the record seemed clear that the property was to be developed as a residential property and vested in some sort of a community use and that the County was retroactively wanting them to meet office BOCA requirements even though they were not open to the public and were open only to the owners of units within Lake Braddock Association and served them at their pleasure.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said the Board had been given a complicated package of information with mistakes made over the course of years, but he could not get past the absence of the Non-RUP. He said that the Board had no basis to conclude that any of the sort of land use type approvals or failures to take more direct action by the County over the years somehow obviated the need for the Non-RUP, and although the impact on the Association was unfortunate, hopefully there would be some opportunity for relief with the Board of Building Code Appeals if some of the things were too great of an expense. He said he didn't think issuance of the RUP alone dealt with the office use standing independently, and he somewhat disagreed with Mr. Hammack's observations in that the Board did not have information as to whether the office was open to the public or vendors or anyone else or that the Ordinance would make a distinction between community association offices and other offices for the purpose of whether some kind of Non-RUP was required. Mr. Hart stated that based on the Ordinance provisions that the Board had and the information in the staff report, the bottom line was that the Association did not get a Non-RUP, and the Board had not been given anything to rebut that, so the determination should be upheld.

Mr. Beard said he thought of the Board as the last bastion of practicality when one gets caught up in all the various bureaucracies and what happened and what did not happen. He commented that with a community center, association staff changes over time and there was no one to take responsibility. Mr. Beard stated that based on the limited community use and for the good of the community, he could not support the motion.

Mr. Pammel seconded the motion, which passed by a vote of 5-1. Mr. Beard voted against the motion. Mr. Ribble was not present for the vote.

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~ ~ ~ February 24, 2004, After Agenda Item:

Request for Additional Time  
Victor S. Mahal, VC 99-Y-192

Mr. Pammel moved to approve 12 months of 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 was September 15, 2004.

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~ ~ ~ February 24, 2004, After Agenda Item:

Request for Waiver of 12-Month Waiting Period to Resubmit an Application  
John R. Motz, VC 2003-HM-126

Mr. Pammel said the application had been heard three or four months prior, and the waiver of the limitation on resubmitting an application had not been done at the time. He said he did not think it was currently appropriate. Mr. Pammel moved to deny the request for the waiver of the 12-month waiting period to resubmit an application. 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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~ ~ ~ February 24, 2004, After Agenda Item:

Approval of February 17, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Mr. Pammel noted that there had been recent television coverage regarding "McMansions" being a minimal distance apart and what had happened with respect to fires starting in one and rapidly expanding to others. He commented that he thought it would be appropriate for the Fire Marshal to begin an analysis on the issue.

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Mr. Hart asked about the scheduling of A 2003-MV-049, William P. and Mary O. Oehrlein, based on information the Board had received regarding the Planning Commission date. Maggie Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that it was scheduled for March 2, 2004. She noted that the Board had received a memorandum in its package as an after agenda information item that summarized the Planning Commission request to the Board of Zoning Appeals (BZA) to either defer the hearing or defer the decision. Following the BZA's action, she said the Planning Commission intended to hold an administrative review hearing on April 27, 2004.

Mr. Hart asked whether the appellants were aware of the happenings and if they wanted to go forward on March 2, 2004. Ms. Stehman said that the appellants were aware, and to the best of her knowledge, they did want to go forward.

Chairman DiGiulian requested that Ms. Stehman ask the appellants specifically if they would agree to a deferral. She said that when it had been previously discussed with the appellants, they had said they did not like that it was becoming a political issue, and she thought the attorney for the appellants would be present, but he was not. She said she would get a definite answer.

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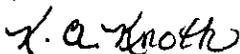
Ms. Gibb said she was confused about when she had a conflict of interest. She requested that Susan Langdon, Chief, Special Permit and Variance Branch, contact the County Attorney and request it be looked into and something in writing be given to the Board regarding the two statutes on the issue and any recommendations on recusal or announcing conflicts.

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As there was no other business to come before the Board, the meeting was adjourned at 12:33 p.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: June 3, 2008



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 2, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. MARY-CAROL WOLTER, TRUSTEE, SP 2004-DR-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.11 ft. from side lot line. Located at 1207 Raymond Ave. on approx. 16,981 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 83. (Concurrent with VC 2004-DR-010).

9:00 A.M. MARY-CAROL WOLTER, TRUSTEE, VC 2004-DR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. with eave 7.0 ft. from side lot line. Located at 1207 Raymond Ave. on approx. 16,981 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 83. (Concurrent with SP 2004-DR-002).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary-Carol Wolter, 1207 Raymond Avenue, McLean, Virginia, replied that it was.

Kristen Shields, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit a shed to remain 2.11 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 9.89 feet was requested. The applicant also requested a variance to permit construction of an addition, specifically a garage, 9.3 feet with an eave 7.0 feet from the side lot line. The permitted extension for an eave is 3.0 feet; therefore, variances of 2.7 feet for the addition and 2.0 feet for the eave were requested.

Mary-Carol Wolter presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. She said that her home was destroyed by lightning. In the process of rebuilding and upgrading, she filed for a variance to construct a garage and at that time was informed that her shed was too close to the lot line. She explained that the shed was there when she bought the property and that it was small, was located in the far corner of the yard, was very well screened by vegetation, and was used to store gardening tools. Conceivably, she submitted, it could be moved, but would be costly, and because it was old, might not withstand relocation. Ms. Wolter said her neighbors had never complained about the shed, and, in fact, one neighbor shared his similar experience of having a shed too close to the property line and applying for a special permit. Ms. Wolter said she wanted to keep the shed as it was very useful for storage of her outside tools. She explained that the justification for the variance was that her home was built in 1959 on a wedge-shaped lot with the house fronting on a hill rising from the street. The only place to put a garage was in the location of the present carport. She said she had two small children, and their comfort and safety were her concern. She pointed out that a garage provided shelter from the elements in inclement weather and afforded a semblance of safety when entering or exiting the car. Ms. Wolter said it would increase property values and that she had the neighbors' approval. She requested the 8-day waiting period be waived so she could immediately commence with construction because of insurance company pressures.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2004-DR-002 for the reasons stated in the Resolution.

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~ ~ ~ March 2, 2004, MARY-CAROL WOLTER, TRUSTEE, SP 2004-DR-002 and VC 2004-DR-010, continued from Page 425

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY-CAROL WOLTER, TRUSTEE, SP 2004-DR-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.11 ft. from side lot line. Located at 1207 Raymond Ave. on approx. 16,981 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 83. (Concurrent with VC 2004-DR-010). 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 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Section 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development condition:

~ ~ ~ March 2, 2004, MARY-CAROL WOLTER, TRUSTEE, SP 2004-DR-002 and VC 2004-DR-010, continued from Page 426

1. This special permit is approved for the location of the shed shown on the plat prepared by William E. Ramsey, P.C., dated October 7, 1999, as revised by Cynthia A. Berg, dated January 6, 2004, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. 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 2, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 2004-DR-010 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY-CAROL WOLTER, TRUSTEE, VC 2004-DR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. with eave 7.0 ft. from side lot line. Located at 1207 Raymond Ave. on approx. 16,981 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 83. (Concurrent with SP 2004-DR-002). 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 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There are converging lot lines in this case.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent 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.

~ ~ ~ March 2, 2004, MARY-CAROL WOLTER, TRUSTEE, SP 2004-DR-002 and VC 2004-DR-010,  
continued from Page 427

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage shown on the plat prepared by William E. Ramsey, P.C., dated October 7, 1999, as revised by Cynthia A. Berg, dated January 6, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. 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 2, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M.      MICHAEL L. AND MARY E. FAYAD, VC 2003-DR-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in a front yard. Located at 1033 Union Church Rd. on approx. 1.85 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((9)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah E. Hall, Esquire, Blankingship & Keith, PC, 4020 University Drive, Suite 300, Fairfax, Virginia, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval for a 6-foot high wrought iron fence to be located in the front yard. The Zoning Ordinance allows a maximum fence height of 4.0 feet; therefore, a variance of 2.0 feet was requested.

~ ~ ~ March 2, 2004, MICHAEL L. AND MARY E. FAYAD, VC 2003-DR-188, continued from Page 428

Ms. Hall presented the variance request as outlined in the statement of justification submitted with the application. She explained that the aluminum fence, which looked like wrought iron, would replace the existing rail fence, and its purpose was for security and to keep their German Shepherd dog from jumping the fence. Ms. Hall said the fence was compatible with the neighborhood, blending well within the vegetation, and that the neighbors supported the proposal. She pointed out that 2-acre properties could by right have a 7-foot high fence, but the applicants' property fell slightly short at 1.8492 acres.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-DR-188 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL L. AND MARY E. FAYAD, VC 2003-DR-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in a front yard. Located at 1033 Union Church Rd. on approx. 1.85 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((9)) 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 March 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance requested is nominal.
3. If the parcel were a full two acres, the applicants would not require a variance; a 7-foot fence is allowed by right.
4. The lot misses being two acres by 15 hundredths of an acre.
5. The simulated wrought iron fence blends in well with the character and harmony of the neighborhood and is not for the purpose of closing out the view.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict

~ ~ ~ March 2, 2004, MICHAEL L. AND MARY E. FAYAD, VC 2003-DR-188, continued from Page 429

- all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location and height of the fence, as shown on the plat prepared by Walter L. Phillips, Incorporated, dated October 22, 2003, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 2, 2004, Scheduled case of:

- 9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054).
- 9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Forrest Hatcher, 2747 Oldewood Drive, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants sought approval to permit construction of a 35-foot high net fence, provided by the Fairfax County Park Authority, to be located along the eastern property line in the front, side, and rear yards. The Zoning Ordinance permits a maximum fence height in a front yard of 4.0 feet and in the side and rear yards of 7.0 feet; therefore, variances of 31 feet and 28 feet were requested. Ms. Hedrick pointed out that Jefferson

~ ~ ~ March 2, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 430

District Park was to the east of the subject property. The applicants also requested a storage structure, shown as Shed 1 on the plat, which was approximately 316 square feet in size, to remain. Ms. Hedrick noted that the Zoning Ordinance permits storage structures in this Zoning District up to 200 square feet in gross floor area.

The applicants sought a special permit to allow a reduction to the minimum yard requirements based on an error in building location to allow a dwelling 2.5 feet with eave 1.5 feet from the side lot line; a second-story deck 1.5 feet from the side lot line; an accessory structure, depicted as Shed 1, to remain 0.0 feet from the side lot line; and an accessory structure, depicted as Shed 2, to remain 1.0 foot from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet with a permitted eave extension of 3.0 feet; therefore, modifications of 9.5 feet for the addition, 7.5 feet for the eave, 10.5 feet for the second-story deck, 12.0 feet for Shed 1, and 11.0 feet for Shed 2 were requested.

Mr. Hatcher presented the variance and special permit requests as outlined in the statement of justification submitted with the applications. At Mr. Hammack's request, Mr. Hatcher identified structures in the photographs that were distributed to the Board members. He said he inherited the house located on an irregularly shaped lot from his parents, and a plat was prepared in 1954. He said when he sought to obtain the net fencing to protect his property from golf balls, a revised plat was required, and at that time he learned that several of his buildings were in violation of Ordinance setbacks. Addressing Mr. Hart's question concerning a 25-foot easement evidenced on the plat, Mr. Hatcher said that evidently an easement was granted at some point in time because when the garage was built in 1966 it was located within the 25-foot right-of-way of Virginia Power's easement. Mr. Hatcher explained that Shed 1, the large storage unit, was built approximately in 1960 prior to Ordinance requirements on location and size, and it was partially on Park Authority land. He said he thought the lot's shape, being very narrow at the rear, was the reason for the error in where the garage and Shed 1 were placed. He said Sheds 2 and 3 were located a distance of 8.0 feet from the Park Authority's fence with the assumption that the setback was satisfactory. Mr. Hatcher said the netting was to stop golf balls that had damaged his home and vehicles since the golf course was built in 1973. He cited numerous incidents of property and vehicle destruction, as well as members of his family being struck. He pointed out that Virginia Power's safety regulations did not allow a fence higher than 35 feet on their easement. He said that after continual conversations with the Park Authority, they reoriented a tee and planted trees, but unfortunately those measures had not proved adequate. Mr. Hatcher said the fence had to be 55 feet high to be effective. In response to Mr. Hammack's question, he said the Park Authority had not granted an easement for Shed 1, but he had suggested that they turn over that portion of their property to him as he did not think they needed that tiny piece of land.

Mr. Hammack commented that he could not support the applicants' variance because the Park Authority was not a part of the proceeding and the applicants' shed was partly on its property. He said the Board could not grant a variance onto someone else's property. Mr. Hammack suggested that the application required more work and that the applicant get the Park Authority's documentation on its position regarding the issues. Ms. Hedrick advised that the Park Authority, as an abutting property owner, was notified and that Tim Scott from the Park Authority was present to answer questions. In response to Mr. Hammack's question, she said she had not specifically discussed with the Park Authority whether they had any objection to the applicants' shed on their property. Ms. Hedrick pointed out that the Park Authority had prepared the plat.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that staff was not responding to what was shown on the plat. She said that when something was located on a property line or over, staff typically advertised it as zero feet from the lot line.

Ms. Gibb commented that she recalled similar cases of encroachment into Park Authority property and that their representatives were present to request that it be removed. If they had a concern, she said she thought they would tell the Board.

Responding to Mr. Ribble's question, Mr. Hatcher said the fence was installed about 26 years ago when the Park Authority purchased the property in 1973.

Ms. Hedrick concurred with Mr. Hart's comment that the paperwork/recordation did not coincide as on the Hatchers' 1966 plat neither the structures that were built nor their locations matched.

~ ~ ~ March 2, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 431

Mr. Hart asked staff why the Park Authority's property was not part of the application if Shed 1 was partially on Park Authority land. Ms. Langdon explained that staff typically responded to an application as it was presented. With regard to this application, she said the options were to allow the shed to remain, if acceptable by the Park Authority; move it back onto the subject property; or have it removed completely.

In response to Mr. Hart's question on the sheds he wanted to keep, Mr. Hatcher said he hoped to keep Shed 1, and Shed 2, which was behind the house towards the rear of the yard. He said that the third shed, the corner shed farthest from the house, could be relocated with some difficulty, but if required to, he would move it. Mr. Hatcher said that if it were possible, he would like to keep all three sheds in their present locations. He pointed out that his situation was unique in that the sheds bordered the Virginia Power easement that was leased for 99 years and would never be developed.

Mr. Hart pointed out that the application addressed only Sheds 1 and 2, and those were the only ones that the Board could deal with. He asked Mr. Hatcher whether the roadway easement was for the golf course's use or to what purpose it served. Mr. Hatcher explained that it was a private right-of-way for an adjacent property owner's access that was recorded in 1954 on the original deed. He noted that that recordation was years before the golf course or Park Authority became involved. He commented that the property was completely wooded.

Addressing Mr. Hart's question concerning Shed 1, Mr. Scott said the Park Authority had not taken a position as to whether granting an easement was appropriate or if they would allow him to keep it. He pointed out that over the past few years Mr. Hatcher had periodically relocated Sheds 2 and 3, and the Park Authority was not sure of their permanent locations. Mr. Scott said that the Park Authority became aware of Shed 1's encroachment while preparing the plat and that it was not an issue they were actively pursuing.

Mr. Hatcher clarified that the existing net fence was 35 feet high, but in order to be effective, the new net must be 55 feet high.

Responding to Mr. Hart's question concerning the height of the fence advertised, Ms. Hedrick explained that the legal advertisement was correct because it was the minimum and the maximum requirements of 4.0 feet and 7.0 feet that were advertised, and it was presented on the base of 35 feet as noted on the plat and presented to staff. She pointed out that the Park Authority agreed to install a 35-foot high fence on the applicants' property.

In response to Chairman DiGiulian's question, Mr. Hatcher said that over the years he had been in ongoing discussions with different people from the Park Authority concerning the ineffectiveness of the existing netting. He said that he had recently spoken with them about what he thought was an oversight or typographical error when he noticed the paperwork listed only 35 feet and that he thought he made clear the necessity of the additional height to 55 feet. He said he could not allow the installation of a 35-foot net fence as it was ineffective, did not serve the purpose, and it devalued his property. Mr. Hatcher said it was his understanding that the Park Authority would design the net to be suitable to his needs and it was they who had requested the variance before they expended the time determining the net's design or the cost of the materials; that the Park Authority wanted to be sure that it could be installed.

Mr. Beard stated that the application, as currently presented, was not ready for the Board's decision. He suggested that the applicants dialogue with the Park Authority to address and resolve the issues and that the Park Authority determine its position on the encroachment of the sheds.

Mr. Ribble asked whether there was any other remedy for the applicants' dilemma besides a high net fence. Peter Furey, Park Authority, replied that he oversees the golf courses, and he believed the change to one tee, the planting of trees, and placing a 35-foot net fence closer to the applicants' property was the best possible solution. He pointed out that the course's original design had already undergone one redesign when purchased by the Park Authority. Formerly the International Golf & Country Club, the Park Authority had reversed the play of the course, which was a major modification, to remedy the applicants' problem as more balls go out onto the course by right-handed players.

Ms. Gibb said she was sympathetic to the applicants' plight and frustration over the years with having to deal with the problem. She said she would support a variance to allow a fence higher than 35 feet.

~ ~ ~ March 2, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 432

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that he was concerned over the easement for the sheds as well as the height of the fence. He stated that there were some issues that needed to be worked out.

Mr. Furey informed Mr. Hammack that the plat was legal and was prepared by an authorized person from the Park Authority as was allowed by Zoning Ordinance provisions under certain circumstances.

Discussion followed among Mr. Hammack, Ms. Gibb, and Mr. Hart concerning the 25-foot right-of-way running through the garage and sheds. Mr. Hart requested that documents be provided that would clarify the right-of-way and any VEPCO easement issues.

Mr. Hammack moved to defer SP 2003-PR-054 and VC 2003-PR-194 to May 4, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M.           MEREDITH OUELLETTE, VC 2003-LE-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.1 ft. with eave 12.1 ft. from side lot line. Located at 6575 Windham Ave. on approx. 22,198 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((3)) 50.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Meredith Ouellette, 6575 Windham Avenue, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition 13.1 feet with eave 12.1 feet from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 6.9 feet for the addition and 4.9 feet for the eave were requested.

Ms. Ouellette presented the variance request as outlined in the statement of justification submitted with the application. She said she wanted to construct an addition consisting of an attached two-car garage with a room above it for an in-law suite, a second story above the existing structure for more living space, and a kitchen to be added onto the rear of the garage. She pointed out that topographic considerations limited where an addition could be placed because of the lot's exceptional narrowness, the configuration of where her home was placed, the prevalence of mature landscaping, and an in-ground swimming pool. She said that her one-story home had no basement and afforded no storage area, and with her growing family, additional space was needed. Ms. Ouellette pointed out that several homes in the neighborhood had been completely reconstructed, and others were renovated to add garages, basements, and more living space.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-LE-191 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MEREDITH OUELLETTE, VC 2003-LE-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.1 ft. with eave 12.1 ft. from side lot line. Located at 6575 Windham Ave. on approx. 22,198 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((3)) 50. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ March 2, 2004, MEREDITH OUELLETTE, VC 2003-LE-191, continued from Page 433

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The lot is narrow, and with the way the house is placed, this is the logical place to have an addition.
4. The location of the swimming pool to the rear effectively precludes putting the rest of the addition directly behind the house.
5. There is no negative impact on the neighbors.
6. The one letter of opposition apparently does not pertain to this case.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated September 6, 2002, revised by Robert Sastro, December 4, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ March 2, 2004, MEREDITH OUELLETTE, VC 2003-LE-191, continued from Page 434

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. KYLE T. BURKE, VC 2003-MV-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 4.2 ft. with eave 2.7 ft. from side lot line. Located at 8421 Crossley Pl. on approx. 10,576 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (14) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kyle Thomas Burke, 8421 Crossley Place, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a carport 4.2 feet with eave 2.7 feet from the side lot line. A minimum side yard of 12 feet is required; however, a carport is permitted to extend 5.0 feet and eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 2.8 feet for the carport and 6.3 feet for the eave were requested.

Mr. Burke presented the variance request as outlined in the statement of justification submitted with the application. He said his house was built in 1961, and utilizing the overhead projector, he showed the configuration of his lot and house, pointed out the driveway, which ran along the side of the house, and requested to construct a carport over the driveway. He showed a neighbor's home, whose renovations were similar to what he proposed, and pointed out that many of the homes in his neighborhood had added carports and been renovated, which had increased property values. He informed the Board that he mailed additional notices besides the required ten. Mr. Burke said that with the variance, his property value would increase, his proposal was in character with the neighborhood, there was no adverse impact on his neighbors, and his vehicles would be protected from the elements.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-MV-193 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KYLE T. BURKE, VC 2003-MV-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 4.2 ft. with eave 2.7 ft. from side lot line. Located at 8421 Crossley Pl. on approx. 10,576 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (14) 20. Mr. Ribble moved that

~ ~ ~ March 2, 2004, KYLE T. BURKE, VC 2003-MV-193, continued from Page 435

the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the standards required for such a variance.
3. The lot is particularly narrow, and with how the house is placed, it presents an extraordinary situation.
4. The design is compatible with the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a carport, as shown on the plat prepared by George M. O'Quinn, dated October 17, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

--- March 2, 2004, KYLE T. BURKE, VC 2003-MV-193, continued from Page 436

be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this variance.

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--- March 2, 2004, Scheduled case of:

9:00 A.M.        DAVID M. BROWN & COLLYE L. MOORE, VC 2003-HM-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 35.3 ft. Located at 1833 Satinwood Ct. on approx. 23,550 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 38.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David M. Brown, 1833 Satinwood Court, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, specifically a carport enclosure, such that the side yards total 35.3 feet. The minimum total side yard requirement is 40 feet; therefore, a variance of 4.7 feet for the addition was requested.

Mr. Brown presented the variance request as outlined in the statement of justification submitted with the application. He said he would enclose the carport in accordance with the Fairfax County Code outlined in the Carport Enclosure Details guide and the 1995 CABO One and Two Family Dwelling Code, the existing footprint was utilized, and he would erect three walls that would extend from the existing foundation to the current roofline. Mr. Brown explained that the variance was necessary to enclose the garage because the existing foundation was less than code width to the lot line. He pointed out that most of the neighborhood properties had enclosed their garages, that a similar variance was approved in his neighborhood, and that his neighbors supported his proposal.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2003-HM-192 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID M. BROWN & COLLYE L. MOORE, VC 2003-HM-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 35.3 ft. Located at 1833 Satinwood Ct. on approx. 23,550 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 38. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

--- March 2, 2004, DAVID M. BROWN & COLLYE L. MOORE, VC 2003-HM-192, continued from Page 437

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' request is for a modest variance.
3. The proposal is simply to enclose an existing carport and does not extend the structure further into the side yard.
4. The total minimum side yard setback is 40 feet, and the applicants' request is only a 4.7-foot request, which is a very small percentage.
5. The lot is narrow and becomes narrower towards the street.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition, as shown on the plat prepared by Peter R. Morgan, dated October 30, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

~ ~ ~ March 2, 2004, DAVID M. BROWN & COLLYE L. MOORE, VC 2003-HM-192, continued from Page 438

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. GAYE P. LINDSEY, VC 2003-DR-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from side lot line. Located at 1722 Maxwell Ct. on approx. 11,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gaye P. Lindsey, 1722 Maxwell Court, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-and-a-half-story addition to be located 8.5 feet from the eastern side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet for development in the R-3 Zoning District; therefore, a variance of 3.5 feet was requested.

Ms. Lindsey presented the variance request as outlined in the statement of justification submitted with the application. She said the lot was pie-shaped, and the only place to build an addition was to extend the rear of the existing garage. She pointed out that the house's footprint would be increased by only 2.8 feet in width. Ms. Lindsey said that with the variance the width of the garage could be expanded so as to park two full-sized vehicles and would raise the garage height to the height of the house to add both a multi-purpose room to the top level and badly needed storage space on the lower level of the house. She said the kitchen would be expanded by 3.0 feet, which would allow opening the dishwasher and refrigerator at the same time.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-DR-189 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GAYE P. LINDSEY, VC 2003-DR-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from side lot line. Located at 1722 Maxwell Ct. on approx. 11,800 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 34. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot is an irregular shape.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by L. Carl Gardner, Jr., dated November 5, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

~ ~ ~ March 2, 2004, GAYE P. LINDSEY, VC 2003-DR-189, continued from Page 440

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. HAROLD PALACIOS, SP 2003-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure to remain 3.2 ft. from side and 7.3 ft. from rear lot lines. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with VC 2003-LE-158). (Admin. moved from 1/13/04 for notices.)

9:00 A.M. HAROLD PALACIOS, VC 2003-LE-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure 1.8 ft. with eave 0.8 ft. from side lot line. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with SP 2003-LE-038). (Admin. moved from 1/13/04 for notices.)

Chairman DiGiulian announced that SP 2003-LE-038 and VC 2003-LE-158 had been moved to April 13, 2004, at 9:00 a.m.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2-3-04 at appl. req.)

Chairman DiGiulian announced that SP 2003-SU-045 had been moved to March 9, 2004, at 9:00 a.m.

In response to Mr. Hart's inquiry, Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the case had been further moved to April 6, 2004, at 9:00 a.m.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-P-068 previously approved for a place of worship with nursery school to permit increase in land area (Lot 19), building additions and site modifications. Located at 3730, 3800 and 3804 Glenbrook Rd. on approx. 6.90 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((9)) 17A, 17B and (Moved from 9/16/03 and 11/18/03 per appl req) (Decision deferred from 12/2/03)

Mr. Hart indicated that he would recuse himself from the public hearing.

Responding to Mr. Ribble's clarification, Chairman DiGiulian announced that the Board would hear an opening statement by the applicant's representative, Lynne Strobel, and five minutes for each committee.

Ms. Strobel, Walsh, Colucci, et al., the applicant's agent, said the applicant had addressed each of the neighbors' concerns by making substantial revisions through the proposed revised development conditions. She called the Board's attention to a document titled "What Has Changed in the Olam Tikvah Application Since the BZA Hearing of December 2, 2003," noting that the concerns were categorized and remedies

~ ~ ~ March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 441

proposed. One citizen issue was the terrace and social hall use, and the applicant had identified that the problem was noise. Ms. Strobel explained that the issue of noise was addressed by limiting the use of the terrace to certain hours, and for those occasions when the social hall played amplified music, the terrace would not be used. She pointed out that the applicant wanted to be a good neighbor and not be intrusive. Other issues such as traffic were addressed by arranging for police presence 36 times a year and by posting a \$10,000 escrow to Fairfax County for future improvements to the Glenbrook Road area, the potential installation of a signal light on Glenbrook Road and Route 236, providing a sidewalk, and having ample parking on-site to eliminate on-street parking. Ms. Strobel said a number of modifications were made to their proposal and referred to an issue regarding transitional screening and barriers. She said it was addressed by providing a six-foot fence along Glenbrook Road and by a plat prepared by a civil engineer that showed required plantings that addressed compliance with existing conditions. She noted that the plat was approved by the Urban Forrester, and if acceptable by the Zoning Enforcement Division, the violation would be cured. Ms. Strobel added that inclement weather had prevented the applicant from commencing planting, but the funds were escrowed, and weather permitting, the plantings would be underway as quickly as possible to bring the property into compliance.

Ms. Strobel noted minor proposed changes to several of staff's conditions referring to the Revised Development Conditions dated February 24, 2004. Condition 10 regarding transitional screening, she requested that the second bulleted item include staff's original language "as shown on the SP Plat," because if full transitional screening were provided along the entire western property line, it would encroach into the environmental quality corridor area, an undisturbed area, which she said she believed was not staff's intention. Concerning the fourth bulleted item, Ms. Strobel said so as to assure that screening was provided in the appropriate place, they would provide screening adjacent to the terrace. Ms. Strobel said they had no comment on Condition 26 and requested the Board ignore it. Ms. Strobel pointed out Condition 35, saying they wanted to go back to staff's original condition regarding equipment associated with caterers because there was a concern about construction traffic that would generate noise and would probably operate for longer than one hour. She said she thought the intent was that on a permanent basis noise operating equipment be limited.

Miriam Smolen, 9306 Coronado Terrace, Fairfax, Virginia, said she was both a member of Olam Tikvah and the committee that met with the citizens. She said that from the beginning the synagogue was conscientious of the size of its facility and carefully had considered the building's construction to be in accordance with the geography and the neighborhood. She pointed out that the synagogue purchased four additional acres before proposing an addition and removed a proposed chapel because staff thought it inappropriate for the space. She stated that the facility was designed to address the congregation's needs with the sanctuary remaining the same in size and structure and a development condition specifying 310 seats except during the two seasonal high holidays. Ms. Smolen said the priorities for the addition were additional parking and better classrooms, as the latter was sorely inadequate with insufficient space and no doors or walls. They proffered a parking lot that added 65 percent more area to assure no on-street parking occurred and all stacking would be on-site. Although there was no final design as yet for the classrooms, Ms. Smolen said the concept was that there would be space for storing books and supplies, and there would be individual classrooms with doors and closets. She said they agreed to a development condition that specified the number of students and that there be only a one-weekday session of class per day. A larger, newly modeled kitchen would allow the preparation of kosher food, and on those few occasions, for the catering trucks to be able to use the kitchen instead of the exterior of the building. Ms. Smolen said a new social hall would seat 326 people and would allow the congregation to gather together and celebrate life cycle events. She pointed out that they did not expect an increase in membership because of their location and because they were not expanding the sanctuary. She noted that the renovations were designed to be the same height as the existing sanctuary so as to lessen the impact.

Mr. Pammel suggested that the neighborhood committee be allowed equal time, ten minutes, as that taken by the synagogue, to make their presentation. Chairman DiGiulian concurred.

Thomas Barham, 9009 Colesbury Place, Fairfax, Virginia, said he was speaking on behalf of the Mantua Neighbors Committee and that their position had not changed. They still supported the applicant's religious services, recognized and valued the religious functions provided its members, did not object to renovations to better serve its members, and would not oppose a reasonable expansion. He cited two key issues, the proposed addition's size and the terrace, and the fact that the applicant had steadfastly refused to even

~ ~ ~ March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 442

consider reducing the size of the addition or removing the terrace. Mr. Barham submitted that some progress was made with other issues as reflected in the February 24<sup>th</sup> development conditions, of which the neighbors were grateful, but they did not believe they adequately addressed the concerns. He pointed out that the Mantua Neighbors Committee submitted their comments that morning along with the February 24<sup>th</sup> conditions. He said that after the committee had three meetings with the applicant and four meetings with the community, the neighborhood was canvassed door-to-door to determine its opinion, and the abutting and surrounding property owners continued to oppose the synagogue's proposal as currently submitted. He called attention to a petition submitted to the clerk at the hearing with 255 signatures in opposition and presented a map indicating the properties of the petition's signatories. Mr. Barham addressed the five major points that the neighbors believed were necessary to support the application: 1) reduce the size of the proposed addition to 10,000 square feet; 2) remove the terrace; 3) limit the hours of operation of the social hall; 4) shade the windows and; 5) control of potential traffic congestion. He said both sides had spent many hours and significant funds to conclude these matters, and the Mantua Neighbors Committee had real concerns over long-term negative impacts on their neighborhood. He informed the Board that several committee members were intimidated by an Olam Tikvah member with the threat of lawsuits. Mr. Barham said they wanted to reach a reasonable accommodation, and they had informed the Board what was needed to support it. He requested that if the application was approved, it be conditioned with the committee's revisions to the development conditions, but as submitted, they requested the Board deny the application.

In response to Mr. Hammack's question regarding the proposed installation of a basement, Mr. Paul J. Bulger, 3804 Chantal Lane, Fairfax, Virginia, said the community was concerned with the facility's total number of square footage, not how the floor area ratio (FAR) was counted. He said they supported the County Urban Forester's recommendation that the building be contained in Lot 17B and would support an expansion up to 14,000 square feet if the expansion were contained in Lot 17B as the building's height would not be as imposing due to the lot's higher topography.

Responding to Mr. Gibb's question, Mr. Bulger said they were not restricting the synagogue's activities. They supported enhancing its capabilities, having agreed to a 50 to 75 percent expansion. He pointed out that the facility was within a residential neighborhood, which was a unique situation, that it was an institutional facility, and that the character of the residential neighborhood should be maintained.

Mr. Hammack's requested that staff indicate the differences between the development conditions dated March 2<sup>nd</sup> and those contained in the February 24<sup>th</sup> memorandum. Mavis Stanfield, Senior Staff Coordinator, stated that there were three minor changes: 1) Condition 10, fourth bullet, concerning the transitional screening along the northern property line to clarify that the plantings would not be in the conservation easement; 2) Condition 28, page 6, last sentence, which added "to work to resolve concerns;" and 3) Condition 41, page 8, which clarified the times the applicant would provide traffic control during the year.

For Mr. Hammack's clarification, Barbara Byron, Director, Zoning Evaluation Division, said that Development Condition 17 intended to say, "except the northernmost area where the existing house is to remain."

In response to questioning by Mr. Hammack, Ms. Strobel confirmed that Olam Tikvah agreed to a \$10,000 escrow contribution, that it would cover its windows to obscure light, and that it agreed to staff's proposed development conditions. She pointed out that her concern regarding the location of the transitional screening had been corrected. For the condition concerning the noise generated by construction equipment, she said she wanted the language originally proposed by staff. She clarified that the outlots were not included in the proposal because an existing walkway ran along the back, and the question of whether the County owned it or it was an easement could not be determined before the proposal's completion, but they would include the outlots within a conservation easement. Ms. Strobel clarified that the FAR remained the same at .104 because it was based only on the property included in the application and not the outlots.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 81-P-068-03 for the reasons stated in the Resolution.

Mr. Beard said he supported the motion to approve, but commented that the application was contentious. He pointed out that the issues of traffic and noise were addressed; that the temple had been in its residential location for a long time; that they were considered good neighbors; and that a decision had to be made one

--- March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 443

way or the other. He said for those and many more reasons, he supported the application.

Mr. Pammel commented that it was he who suggested the formation of the citizen and synagogue committees, and he complimented all its participants. He acknowledged that there were many issues to resolve and that the temple had addressed at least 90 percent of the committee's conditions. Mr. Pammel explained that the Board did not have the authority to grant some of the proposed conditions. He noted that the size of the facility was an issue, but the temple had clearly indicated that what was proposed was the absolute minimum to provide the necessary services to its congregation. Mr. Pammel said that the land area involved was well within the maximum allowable FAR and did not include the parcels that were added to the conservation easement. Mr. Pammel said he thought the application was reasonable.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-P-068 previously approved for a place of worship with nursery school to permit increase in land area (Lot 19), building additions and site modifications. Located at 3730, 3800 and 3804 Glenbrook Rd. on approx. 6.90 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((9)) 17A, 17B and 19. (Moved from 9/16/03 and 11/18/03 per appl req) (Decision deferred from 12/2/03) 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 2, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The existing use was allowed to be established within a neighborhood before zoning required special permit approval.
3. The Temple already exists, it is an important institution within the community, and serves the members in the surrounding area.
4. The proposed FAR will be .104, which is below the maximum FAR allowed, .15.
5. The application's problem is largely related to its topography as it is located on an elevation which makes it easily visible to the homes on Colesbury Place.
6. The applicant is not expanding its membership.
7. The proposed expansion is justified. The classroom space is inadequate and the kitchen small.
8. The traffic should not increase because the membership remains the same, and the additional parking will improve the existing situation.
9. Storm water management will be improved because of the improvements to be constructed.
10. Although some vegetation will be lost due to the construction, substantial plantings are proposed to provide adequate screening and buffering.
11. The proposed development conditions, as well as the applicants' self-limitations, will eliminate concerns over noise generated from the social hall and terrace use.
12. A good deal of protection will be afforded to the residents along Colesbury Place due to the recordation and establishment of the conservation easements on the outlots as well as the outlots allowing screening, water filtration, and storm water management.
13. The building will extend into Lot 17 approximately 10 feet, which is not excessive.
14. The application meets the Board of Zoning Appeals' criteria for Code requirements and the community standards for granting the application.
15. It is not within the BZA's purview to dictate church architecture or design, and the Board seldom becomes involved with restrictions or uses of the premise(s).
16. The Olam Tikvah Temple has more extensive and detailed development conditions than almost any

~ ~ ~ March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 444

other religious facility in Fairfax, and the Temple has strived to address community concerns and issues.

17. The application has a favorable staff recommendation.

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). 8-006 and 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3800 Glenbrook Road, and is not transferable to other land.
2. This Special Permit is granted for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Adtek Engineering, Inc., and dated September 30, 2003, as revised by VIKA Engineers, Inc., through February 9, 2004 sheets 1 of 5 through 5 of 5, (the "SP Plat"), 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 Amendment is subject to the provisions of Article 17, Site Plan. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit plat and these conditions. Should there be differences or conflicts between the SP Plat and these conditions, these conditions will take precedence. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity in the main area of worship (sanctuary) and contiguous spaces that open onto the sanctuary shall be limited to a total of 310 seats. No simultaneous worship services (not to include religious school meetings/classes) shall be held on the premises except on the religious holidays of Rosh Hashanah and Yom Kippur.
6. The nursery school shall be limited to a total maximum daily enrollment of 75 children, with no more than 40 children on-site at any one time.
7. The maximum hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:15 p.m., Monday through Friday.
8. There shall be no more than eight (8) employees associated with the nursery school on site at any one time.
9. All parking shall be provided on-site as depicted on the plat except as qualified by Condition 28. Eight (8) parking spaces shall be reserved for the nursery school. All stacking of cars for drop-off and pick-up shall be on-site.
10. Screening shall, in consultation with the Urban Forestry Division of DPWES, be provided as follows:
  - Existing vegetation located along the northern and eastern lot lines, as depicted on the plat, shall satisfy the transitional screening requirement.
  - Full Transitional Screening shall be provided along the western and southern lot lines.

- Screening, consisting of fourteen (14) large evergreen trees, shall be provided on the west side of the stormwater management pond beginning at the existing Norway Spruce and extending to the limits of clearing and grading south of the existing house on Lot 19, to the extent possible, as determined by the Urban Forestry Division of DPWES.
- Screening along the northern lot line, to the south of the limits of clearing and grading, shall consist of no fewer than fourteen (14) large evergreen trees and four (4) large deciduous trees, or as approved within the areas of clearing and grading as determined by the Urban Forester.
- Screening as approved in accordance with Condition 5 of SPA 81-P-068-2 shall be provided as depicted on the landscape plan, dated January 22, 2004, and prepared by VIKA Engineers, Inc., included as Attachment 1 of these conditions.

Notwithstanding that which is shown on the plat, the species, size and location of all screening shall be provided in consultation with the Urban Forestry Division of DPWES, however all evergreen trees, both medium and large, as depicted on the plat, shall have a minimum height of six (6) feet at the time of planting. The applicant shall work with the Urban Forestry Division to determine which plants that are removed with construction may be planted in another part of the site. To the extent practical, as determined by the Urban Forestry Division, transitional screening shall be installed prior to construction of the addition and parking area.

11. Foundation plantings and shade trees shall be maintained around the original synagogue building to the extent practicable, and shall be planted around the new addition to soften the visual impact of the structures. Evergreen trees shall be planted within the turnaround island to provide screening. The species, size and location shall be determined by the Urban Forestry Division of DPWES.
12. The barrier requirement shall be waived along the northern lot line. The barriers located on the western and southern lot lines shall be maintained and extended as shown on the SP Plat. A six feet high wood or masonry wall shall be constructed along the eastern lot line, immediately adjacent to the parking area, as shown on the SP Plat. Irrespective of that shown on the plat, no gate shall be provided on the southern or eastern lot lines. To the extent practical, said fence or wall shall be installed prior to construction of the parking area or as soon thereafter as deemed appropriate by DPWES. For the purpose of maintaining transitional screening, one access gate may be installed in the western barrier. To prevent pedestrian traffic, this gate shall remain locked when not in use for transitional screening maintenance.
13. A proposed wall or fence around the play area shall be constructed to provide noise abatement; the wall or fence shall be made of a solid material, with no gaps or breaks both along the surface and at the base, but may include two gates. The wall or fence shall be a minimum of four feet high and a maximum of eight (8) feet high.
14. Stormwater management and Best Management Practices (BMPs) shall be provided as shown on the SP Plat as approved by DPWES. The stormwater management pond shall be designed, to the extent feasible and as determined by DPWES, to provide an extended release of the final 6,000 to 8,000 cubic feet of storage over a 6 to 8 hour period. The lowest pond orifice diameter may be limited to be not less than a 3-inch diameter to achieve this goal.
15. The limits of clearing and grading shall be no greater than as shown on the SP Plat or as stated in these conditions and shall be strictly adhered to. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Installation of supplemental plantings and fencing outside the limits of clearing and grading shall be provided in the least disruptive manner possible as determined in consultation with the Urban Forestry Division.

~ ~ ~ March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 446

16. The Environmental Quality Corridor (EQC), as depicted on the plat, shall not be disturbed except as described herein to allow for removal of a barn and septic field. There shall be no clearing or grading of any vegetation in the EQC except for dead or dying vegetation, as determined by the Urban Forestry Division. There shall be no clearing for new structures located in EQC or for any other purpose. However, the barn and septic field located in the EQC shall be removed and the areas of those structures shall be revegetated as determined in consultation with the Urban Forestry Division, DPWES as discussed in Condition 17 below.
17. A tree preservation and restoration plan shall be submitted to the Urban Forestry Division for review and approval at the time of site plan review. This plan shall designate, at a minimum, the limits of clearing and grading as delineated on the special permit plat and all areas of the EQC, except the northernmost area where the existing house is to remain, outside the limits of clearing and grading shall be preserved and labeled as "perpetually undisturbed open space." The restoration plan shall be implemented to revegetate the area in the EQC where a barn and a septic field will be removed to a natural condition.

The restoration plan shall include the planting of saplings and evergreen seedlings, number, size and species to be determined by the Urban Forestry Division. The applicant shall maintain the restoration area as needed only to remove undesirable vegetation such as brambles and vines with the intention of maintaining the saplings until such time as natural succession takes over. There shall be no mowing of grass in the restoration area.

18. Prior to site plan approval, the EQC portion of Lot 19 and the adjacent lots Tax Map Numbers 58-4 ((14)) E1, F, G, H and J shall be placed within a perpetual easement as determined by DPWES, in a form approved by the County Attorney, recorded among the Fairfax County land records to the benefit of Fairfax County or the Northern Virginia Conservation Trust (NVCT). This easement shall be for the purpose of protecting natural resources and maintaining water quality and shall provide that the area shall remain as perpetually undisturbed conservation and open space. No structures, to include fences, except for the existing fence along the property line of Lot E1, which may remain or may be replaced by hand (no mechanical equipment), shall be permitted in this area. No clearing and grading and no removal of vegetation, except for dead, dying or diseased plants, shall be permitted in the easement area, except as necessary in conjunction with utility easements on outlot E1.
19. Any replacement or new lighting shall be provided in accordance with the provisions of Article 14 of the Zoning Ordinance. Security lighting on the building shall be shielded, directed toward the building and not directed outward from the property. Lights other than security lighting shall be turned off in the proposed social hall and parking lot when not in use.
20. Signs may be permitted in accordance with the provisions of Article 12 of the Zoning Ordinance.
21. Religious education classes shall be limited to a total of 225 students on-site at any one time. On weekdays there shall be a maximum of one (1) session per day. The religious school shall encourage the use of carpools for students.
22. With the exception of religious holidays, all meetings in the synagogue shall conclude by 12 midnight, Sunday through Thursday.
23. There shall be no amplified music or speakers allowed outside of the building. The use of the terrace shall be limited to no later than one hour after sunset, except for the religious holiday Sukkot, but in no event later than 10:00 p.m. When amplified music is played in the social hall, the terrace shall not be used. The applicant shall comply with all applicable Fairfax County Noise Ordinances.
24. Trash removal shall not occur earlier than 9:00 a.m., Monday through Saturday and not at all on Sunday.
25. Abutting property owners for Lots 58-4 ((9)) 26, 26A, 27A, 27B, 58-4 ((17)) 13-16, 19-21, 58-4 ((36)) 1, 58-4 ((14)) 20-24 shall be notified prior to submission of any and all grading plans, site plans and

- building plans. One copy of all plans and plan revisions (including insert sheets) submitted to Fairfax County shall be provided to one representative designated by the Mantua Citizens Association. This shall include an "As-Built" site plan, if required by Fairfax County. One additional copy of all such plans shall be available at the synagogue office.
26. The gate located adjacent to Lot 14 which provides pedestrian access to Denise Lane shall be removed and the barrier reestablished no later than 60 calendar days after the approval of this application.
  27. The Fairfax County Public Schools transportation offices for Mantua Elementary School, Frost Middle School and Woodson High School and the School Board members for Providence and Mason District shall be notified thirty (30) days prior to the beginning of construction. The purpose of the notification shall be to apprise these entities of possible traffic conflicts associated with construction vehicles.
  28. An off-site parking lot with shuttle bus service shall be utilized for the religious holidays of Rosh Hashanah and Yom Kippur. Congregants shall be notified of the shuttle bus service and encouraged to use the service.
  29. The social hall shall not be made available to outside groups or individuals for community events not affiliated with the Jewish religion. This shall not preclude activities such as blood drives, Girl Scout meetings and Boy Scout meetings.
  30. The applicant will continue to make its parking lot available to residents of Denise Lane, Glenbrook Court and Glenbrook Road for emergency situations that arise, such as funerals, provided the use does not conflict with the applicant's religious, educational or social schedule.
  31. The house on Lot 19 shall be used only as a residence and occupied only by an employee or member of the synagogue and his/her family. The existing swimming pool will be used only by the residents of the associated house and will not be used for social events associated with the synagogue.
  32. New mechanical equipment shall be located on the roof of the proposed addition and shall be fully shielded so as not to be visible from surrounding properties. All new exhaust ventilation, including kitchen exhaust, shall be through the roof and directed towards the interior of the application property.
  33. Compressors and other noise generating equipment associated with caterers and others during social events shall not operate for more than one hour at any time unless it is located adjacent to the east side of the building. No food preparation or cooking shall be permitted outdoors except for social events, such as cook-outs or picnics that take place outdoors. The service area on the west side of the existing building shall not be utilized after 10:00 p.m., daily. Caterers shall not arrive at the synagogue earlier than 8:00 a.m. and shall leave the premises no later than one hour after the conclusion of the event.
  34. Subject to the approval of the Virginia Department of Transportation (VDOT), a four-foot wide asphalt sidewalk or trail shall be provided on the west side of Glenbrook Road, beginning at Denise Lane and terminating at Glenbrook Court. The sidewalk or trail shall be located within the VDOT right-of-way and constructed by the applicant subject to receipt of any necessary easements. The trail may meander to preserve existing vegetation. Future maintenance of the trail shall be the responsibility of VDOT. If the asphalt trail is not approved in conjunction with the site plan for the improvements, the applicant shall escrow an amount equivalent to the cost of the trail, as determined by DPWES, for the purpose of future trail construction along Glenbrook Road. Such escrow shall be held by Fairfax County for ten years from bond release.
  35. The proposed addition shall generally conform to the architectural elevations depicted on the special permit plat.

~ ~ ~ March 2, 2004, TRUSTEES FOR THE CONGREGATION OLAM TIKVAH, SPA 81-P-068-3, continued from Page 448

36. Subject to the permission of the property owner of Lot 27B, landscaping, as shown on the plat, shall be planted on Lot 27B to provide a screen from the synagogue and associated traffic. Location and selection of the plantings shall be coordinated with the Urban Forestry Division and the owner of Lot 27B but shall be comparable to that shown on the plat. Said plantings shall occur prior to the commencement of construction, weather permitting. If weather does not permit such plantings at this time, the plantings shall be installed the first planting season following commencement of construction. If the property owner refuses to permit the installation of the trees/shrubs, there shall be no further obligations under this condition. Maintenance of the landscaping shall be the responsibility of the property owner.
37. There shall be only one point of vehicular and one point of pedestrian ingress and egress to and from the synagogue as will be shown on the site plan to be submitted.
38. The applicant shall retain a professional landscaping contractor to maintain, repair, replace and otherwise tend and maintain the screening in a healthy growth condition that will ensure that the screening remains in a healthy condition and is effective.
39. The applicant shall contract with the Fairfax County Police Department for assistance in traffic control and parking enforcement, to assure the safety of residents in the community and members of the Synagogue on high holy days and for events when such assistance may be necessary.
40. Exterior construction activity shall not start prior to 7:00 a.m. Monday through Friday. No exterior construction shall be allowed on Saturday or Sunday.
41. All construction parking shall be located on the applicant's property. Contractors associated with construction shall be notified of this condition prior to entering the site. Construction workers shall be instructed not to park or idle vehicles on public streets.
42. Parking for congregants shall be provided on site during construction.
43. Applicant shall provide an escrow for \$10,000 towards the installation of a traffic light by VDOT at the intersection of Glenbrook Road and Route 236, or for the installation of sidewalks or traffic safety improvements or trails (in addition to the possible sidewalk or trail noted in Condition 36 on Glenbrook Road, whichever measure occurs first. The escrow shall be held by Fairfax County for no more than ten years after bond release.
44. Window coverings to obscure light shall be provided for the windows along the western side of the building and on the north side of the social hall. Window coverings shall be drawn one hour after sunset.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced or 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. Beard and Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:00 A.M. KHURRAM JAMIL AND FAISAL JAMIL, A 2003-MV-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have established a storage yard on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 8416 Radford Ave. on approx. 18,000 sq. ft. of land zoned R-2, HC and CRD. Mt. Vernon District. Tax Map 101-3 ((3)) 2.

Chairman DiGiulian announced that A 2003-MV-054 had been withdrawn.

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~ ~ ~ March 2, 2004, Scheduled case of:

9:30 A.M. WILLIAM P. AND MARY O. OEHRLEIN, A 2003-MV-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that Talbert Rd. does not meet the definition of street as set forth in the Fairfax County Zoning Ordinance and, as such, lot width cannot be measured along Talbert Rd. for Lots 2 through 5 of the proposed Giles Glenn Subdivision. Located at 9000 Hooes Rd. on approx. 10.0 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 15. (Moved from 2/3/04 due to inclement weather)

John B. Connor, Esquire, 1033 North Fairfax Street, Suite 310, Alexandria, Virginia, agent for the appellants, requested a deferral of 30 days.

Mr. Pammel moved to defer A 2003-MV-049 to March 30, 2004, at 9:30 a.m. Mr. Hammack seconded the motion.

Mr. Hart suggested a deferral date of April 13, 2004, stating that it was after the Planning Commission's public hearing.

Mr. Connor said he had no objection to the April date.

Mr. Hart made a substitute motion to defer A 2003-MV-049 to April 13, 2004, at 9:30 a.m.

John W. Fedorshik, 9000 Ridgely Drive, Lorton, Virginia, came forward to speak. He said he had waited throughout the entire meeting for the opportunity to speak to the appeal and that he had taken leave from work in order to attend. He stated his dissatisfaction with the deferral.

Chairman DiGiulian explained to Mr. Fedorshik that the Board would normally grant an applicant one deferral and that the Board received deferral requests quite frequently.

Mr. Connor said he would notify the Board well in advance if additional time was required. He explained that the deferral was needed so the lot owners could discuss the lot configuration with William Shoup, Zoning Administrator, and the Department of Public Works and Environmental Services so as to ameliorate the issue.

Chairman DiGiulian called for a vote on the motion to defer A 2003-MV-049 to April 13, 2004, at 9:30 a.m. The motion carried by a vote of 7-0.

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~ ~ ~ March 2, 2004, After Agenda Item:

Request for Additional Time  
Estates at Recreation, Inc., SP 01-D-024

Mr. Pammel moved to approve six months of additional time. Mr. Hammack seconded the motion, which carried by a 7-0 vote. The new expiration date was July 18, 2004.

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~ ~ ~ March 2, 2004, After Agenda Item:

Request for Reconsideration  
From Y. T. Hung, Chesterbrook Taiwanese Presbyterian Church  
Regarding National Capital Presbytery, Inc., SPA 68-D-955-4

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ March 2, 2004, After Agenda Item:

Approval of February 24, 2004 Resolutions

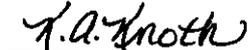
Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

Minutes by: Paula A. McFarland

Approved on: May 24, 2005



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
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 9, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. CHARLES & PATRICIA HARTMAN, VC 2003-SU-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.8 ft. from side lot line. Located at 5252 Braywood Dr. on approx. 7,974 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 44-3 ((5)) 730. (Moved from 1/27/04 due to inclement weather.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patricia S. Hartman, 5252 Braywood Drive, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a deck 4.8 feet from side lot line. A minimum side yard of 8.0 feet with total side yards of 20 feet is required; therefore, a variance of 3.2 feet was requested.

Ms. Hartman presented the variance request as outlined in the statement of justification submitted with the application. She said her single-family detached dwelling was acquired in good faith in 1989 as a newly constructed home, and a deck was added in 1990. She explained that she wanted to remove the existing deteriorated deck and construct a screened porch with an attached deck approximately 4.8 feet from the side lot line. Ms. Hartman said that prior to the acceptance of her application, she believed the property line to the rear was a rear property line, but later found that it was a side property line. She stated that the lot was characterized by having an odd angular shape with exceptional narrowness and shallowness at the rear and left sides, which placed unreasonable restrictions on the development and use of the property. She noted that a scale drawing from the deck company had been submitted that showed a beveled corner on the deck, which would increase the distance from the side property line. Ms. Hartman stated that there were 10-foot easements to the left and rear of the dwelling, which she had maintained for 14 years, and the proposed location of the deck afforded the most privacy for her and the adjoining neighbors. She said there were mature trees beyond the rear easement that further shielded the property, a narrow rain drainage area, and a community baseball field and basketball court. She stated that the porch and deck would not be visible from the front of the house, and no neighbors would be adversely impacted by the proposed placement. Ms. Hartman explained that if the deck was built on the larger right side of the property, it would be visible from the front of the house, would jut out toward the neighboring property, and would provide less privacy for herself and the neighbor. She stated that the existing deck was rarely used because there was often standing water present in the rain drainage area which hosted mosquitoes and posed a potential health hazard. She said the screened porch with the attached deck was modest in size and compatible with the existing surrounding homes and would allow her to fully enjoy the property. Ms. Hartman reported that her initial hearing had been cancelled due to weather conditions, and the additional six-week wait for her hearing had affected the builder's schedule. She requested a waiver of the 8-day waiting period.

Mr. Hammack noted that the beveled deck corner Ms. Hartman described was not reflected on the plat. Ms. Hartman presented the drawing to which she had referred.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked how far from the property line the beveled corner of the deck would be located. Ms. Hartman replied that without the bevel it was 4.8 feet. She said she was not sure of the exact distance, but it would be close to five feet.

Mr. Hammack asked whether a variance could be granted based on a plat which did not show the actual distance. Ms. Hedrick replied that it could be incorporated into the development conditions. She explained that the applicant had not revised the plat, but had proposed a new design for the deck.

Mr. Hammack moved to approve VC 2003-SU-169 for the reasons stated in the Resolution. //

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CHARLES & PATRICIA HARTMAN, VC 2003-SU-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.8 ft. from side lot line. Located at 5252 Braywood Dr. on approx. 7,974 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 44-3 ((5)) 730. (Moved from 1/27/04 due to inclement weather.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance for a variance to be granted.
3. The applicants satisfied the nine required standards.
4. The house is sited to the rear of the property.
5. The subject property is somewhat triangular and truncated in shape.
6. The proposed variance faces open space, so it would not detrimentally affect any 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 reasonable use of the land and/or buildings involved.

~ ~ ~ March 9, 2004, CHARLES & PATRICIA HARTMAN, VC 2003-SU-169, continued from Page 454

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Dominion Surveyors, Inc., dated September 22, 2003, revised through October 24, 2003, as further amended by the attached drawing dated January 27, 2004, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0-2. Ms. Gibb and Mr. Ribble abstained from the vote. 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 9, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. MARK SCHAAD, SPA 93-Y-025 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to amend SP 93-Y-025 to permit modifications to minimum yard requirements for certain R-C lots, to permit construction of additions 12.0 ft. and 17.0 ft. from side lot lines and permit reduction to the minimum yard requirements based on error in building location to permit an accessory structure to remain 3.0 ft. from side lot line. Located at 15113 Elk Run Rd. on approx. 20,835 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 427.

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 Schaad, 15113 Elk Run Road, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of a two-story addition to be located 12 feet from the southern side lot line and another two-story addition to be located 17 feet from the northern side lot line. The minimum required side yard is 20 feet; therefore, modifications of 8.0 feet and 3.0 feet, respectively, were requested. Both additions met the minimum yard requirements of the R-2 Cluster District which were applicable to the lot on July 25, 1982. In the R-2 Cluster District, a minimum side yard of 8.0 feet is required. The applicant also requested a reduction to the minimum yard requirements based on error in building location to permit an accessory storage structure to remain 3.0 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 17 feet was requested. Ms. Hedrick also noted that revised development conditions and a revised plat had been distributed to the Board members at the hearing.

Mr. Schaad presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that he was proposing to remove a deck, which had been the subject of a previous special permit approval, and construct a kitchen and dining room. Because it was a split level design and to make it aesthetically pleasing, he wanted to add unfinished space underneath to prevent it from being up on stilts. He stated that the proposed two-story structure on the right-hand side would be a garage and master bedroom suite that was identical to a recently approved special permit for his

~ ~ ~ March 9, 2004, MARK SCHAAD, SPA 93-Y-025, continued from Page 455

neighbor. Ms. Schaad said similar additions currently existed in the area, and his additions would be harmonious with the existing architecture of the neighborhood.

Mr. Schaad stated that the framed shed located in the corner of the property was constructed prior to his purchase of the property, and the error in building location was no fault of his. He said it was located in the same corner that all of the adjacent property owners had built their sheds and noted that there was a slight decline in the area so the shed appeared to recede from view when viewed from higher elevations. He explained that the shed was needed to house lawnmowers and gardening equipment, and the relocation of the shed to comply with the 20-foot setback would break up the harmony that had been constructed by all the property owners in the area, would create a large unusable space and a dangerous condition to which he did not want to subject his three children, and would place it in the direct line of sight of his neighbors.

Mr. Beard asked whether the structure located closely behind the applicant's shed was an adjacent property owner's shed. Mr. Schaad replied that it was a shed that abutted his shed and stated that there was also a public water sewer located on Lot 403 behind the shed, which the shed helped to screen.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 93-Y-025 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK SCHAAD, SPA 93-Y-025 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to amend SP 93-Y-025 to permit modifications to minimum yard requirements for certain R-C lots, to permit construction of additions 12.0 ft. and 17.0 ft. from side lot lines and permit reduction to the minimum yard requirements based on error in building location to permit an accessory structure to remain 3.0 ft. from side lot line. Located at 15113 Elk Run Rd. on approx. 20,835 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 427. 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 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant met the prescribed standards.
7. The application was consistent with the R-17 zoning under which the dwelling was constructed prior to the amendments to the Zoning Ordinance creating the current zoning, which is a 5-acre minimum lot size.
8. The shed, which is located 3 feet from the side lot line in the rear of the property, was placed there by a previous owner at no fault of the applicant.

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; Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, of the Zoning

~ ~ ~ March 9, 2004, MARK SCHAAD, SPA 93-Y-025, continued from Page 456

Ordinance. The Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of two (2) two-story additions and an accessory storage structure, as shown on the plat prepared by Larry N. Scartz, dated October 5, 1998, as revised through December 12, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 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. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. KENNETH AND DEANNA PETERMAN, SP 2003-SU-052 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of an addition 12.8 ft. with eave 12.1 ft. from side lot line. Located at 6216 Secret Hollow La. on approx. 13,501 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) (4) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Benedict, 922 Barker Hill Road, Herndon, Virginia, the applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to minimum yard requirements for certain R-C lots to permit construction of an addition 12.8 feet with an eave 12.1 feet from the side lot line. The minimum required side yard is 20 feet; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 7.2 feet and 4.9 feet, respectively, were requested. The addition met the minimum yard requirements of the R-2 Cluster District which were applicable to the lot on July 25, 1982. In the R-2 Cluster District, a minimum side yard of 8.0 feet is required.

Mr. Benedict presented the special permit request as outlined in the statement of justification submitted with the application. He stated that his firm had been contacted by the applicants in the spring of 2003 regarding the design and construction of a family room addition to the rear of their property. He said he had been told by the County zoning department that the setback was eight feet, for the total of 24 feet, which was the old Ordinance. Mr. Benedict explained that he proceeded with the design and applied for a building permit in November of 2003, which was not approved. Mr. Benedict stated that the proposed structure and eave would not be any closer to the property line than the existing structure, and the request was to build within the original Zoning Ordinance under which the house was zoned.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2003-SU-052 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH AND DEANNA PETERMAN, SP 2003-SU-052 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of an addition 12.8 ft. with eave 12.1 ft. from side lot line. Located at 6216 Secret Hollow La. on approx. 13,501 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) (4) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicants presented testimony showing compliance with the required standards for a special permit.

~ ~ ~ March 9, 2004, KENNETH AND DEANNA PETERMAN, SP 2003-SU-052, continued from Page 458

7. The lot was down-zoned, and the proposed addition would meet the Ordinance requirements under R-2 cluster, which is what this would have been but for the down-zoning.
8. The proposed addition is no closer to the side lot line than the existing house.
9. The proposed addition is consistent with six or seven other similar special permits granted in the vicinity.
10. There will be no significant negative impact on anyone.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the family room addition, as shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated October 1, 1990, as revised through April 8, 1991, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel and Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M            BRIAN K. & REIKO K. BRISCOMBE, VC 2004-MA-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.0 ft. with eave 4.0 ft. from one side lot line and 10.4 ft. from other side lot line. Located at 6703 McCrea Pl. on approx. 18,808 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Briscoombe, 6703 McCrea Place, Falls Church, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 5.0 feet with eave 4.0 feet from the western side lot line and a second-story addition 10.4 feet from the eastern side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 7.0 feet, 5.0 feet, and 1.6 feet, respectively, were requested.

Mr. Briscoombe presented the variance request as outlined in the statement of justification submitted with the application. He presented photographs reflecting the condition of his home at the time of his good faith purchase in June of 2001, and at subsequent times. He explained that to the left there was an attached

dining room of which the back corner was located 12 feet from the property line, but because the lot lines converged towards the front, the front corner was located 10.5 feet from the property line. Mr. Briscoombe said that on the opposite side there had been an enclosed carport three feet from the property line with a garage behind it. He explained that the carport had been destroyed in February of 2003, from a severe snowstorm, and he wished to rebuild a garage extension five feet from the property line at the nearest corner and eight feet from the property line toward the back, which would result in a structure two feet narrower than the original carport. He stated that the immediate side neighbor and the next neighbor down had written in strong support of the variance request. Mr. Briscoombe said the proposed second-story addition would be located over only the home portion and not over the garage. He stated that he had made great efforts to address the stated concerns of the BZA and neighbors at a prior hearing regarding maintenance issues of the garage structure due to its proximity to the property line. He said the modifications to the original design had involved costs and resulted in the narrower proposal that allowed maintenance without going onto the neighbor's property.

Mr. Briscoombe said the situation was very unusual and not generally shared by the neighborhood because most of the lots were wider, rectangular lots, which did not narrow towards the front, and although his nearly half-acre lot was twice the size of most other lots in the vicinity, it was narrower. He said the strict application of the Ordinance would produce undue hardship because it was dangerous for his two young children, one of which was disabled, and the family member carrying the children to get to the vehicles in icy, winter weather. He explained that there had been six vehicles damaged within the prior six months when parked on the cul-de-sac and a seventh car stripped of its tires and radio, and the garage would allow for protection of the vehicles. Mr. Briscoombe said the proposed additions would not be a detriment to adjacent properties, and most of the surrounding and adjacent property owners supported the request. He noted a support letter from the adjacent property owner on the garage side, Linda Wilburn, which stated that the carport structure had stood enclosed by the fence and the garage in its location for 25 years.

Reiko Briscoombe, 6703 McCrea Place, Falls Church, Virginia, came forward to speak. She stated that when they had purchased their home, they expected it to be their permanent home in an ideal environment to raise their children. They chose the house based on the location, her husband's commute, the neighbors, the children's school, the potential to build an addition, and the fact that the house had secure parking for the vehicles prior to the collapse from the storm. She explained that she had often slipped on icy snow or become drenched from rain when carrying her son, who had weekly medical appointments, to and from the car and currently had a baby daughter to carry also. Mrs. Briscoombe said the attached garage was needed to meet the physical needs of her family and to protect their vehicles from vandalism and damage. She said that when they started the variance process, she was pregnant, and currently her daughter was sleeping in the dining room while they awaited variance approval.

Chairman DiGiulian called for speakers.

Gilbert M. Glaubinger, 3915 Carolyn Avenue, Fairfax City, Virginia, the applicants' agent/architect, came forward to speak in support of the application. He said he had never seen an applicant make greater efforts or go through greater expense than the subject applicants to see a variance to its conclusion. He noted that the modifications to the height of the structure would cost the family money when it came time to construct the same square footage in another location, but the modifications had been made in response to concerns raised during the prior hearing regarding maintenance issues and the width of the proposed structure. He said the width modification would result in a greater financial cost than the height modification because the existing concrete slab would have to be destroyed, hauled away, and repaved in order to construct the narrower garage. He said that in addition to the higher construction costs, there were also increased costs of architectural fees and fees associated with submitting a second variance application.

Gail Vass and Wanda Banks, 3200 Dashiell Road, Falls Church, Virginia, came forward to speak in support of the application. They said they had lived at their property for 27 years, which bordered the subject property to the east, and the additions would not be a detriment to their property. Ms. Vass said they had seen the blueprints and discussed the applicants' plans for the home, and they had confirmed that they planned to make the improvements and stay at the property. She said they had a detached garage, which they hoped to attach in the future, between their house and the subject property and could not see the subject yard. She related that they also had difficulties accessing their vehicle and had overturned a wheelchair on the ice.

~ ~ ~ March 9, 2004, BRIAN K. & REIKO K. BRISCOMBE, VC 2004-MA-001, continued from Page 460

Jessica Barcia, 6707 McCrea Place, Falls Church, Virginia, came forward to speak in support of the application. She said she was also speaking on behalf of her mother and father, and they had seen the blueprints and had no objection.

Lisa Bremer, 6702 McCrea Place, Falls Church, Virginia, came forward to speak in support of the application. She said the applicants' property would fully and easily support the expansion and that it was within the best interest of the public to see that the needs of the permanently physically disabled child were accommodated. She said that due to the damage and theft that had occurred regarding the vehicles, it was understandable that they wanted to protect their investments, but more importantly to protect their child.

Chairman DiGiulian noted that the Board had received letters of opposition from Mr. Garcia and Ms. Motz.

Mr. Briscoombe, in his rebuttal, pointed out that Mr. Garcia and Ms. Motz resided together, so there was only one family that opposed the application. Regarding the issues raised of the lots being nearly identical; all conditions, situations, challenges being shared by all; and there being nothing exceptional about the subject property in comparison with the other properties, he said his lot was long and narrow with converging lot lines as opposed to the many rectangular lots in the area that had attached garages and two-story structures. Concerning Ms. Motz's point that the strict application of the Ordinance would not produce any hardship, Mr. Briscoombe said he had addressed that point by showing that there was a physical hardship to his family and vehicles. Mr. Briscoombe stated that Ms. Motz wanted to keep all the homes in the area the same, and he respected her taste in 1950s Cape Cod architectural, but the needs of his family and many other residents in the area had been to build a second story. Regarding Ms. Motz's comment that the additions would be a substantial detriment to adjacent properties, he said that the adjacent property owners could speak more authoritatively to that point, and he read from the support letter from Ms. Wilburn. He presented a photograph of the property directly behind his property and stated that the owner had received a variance in 1989 to increase the height and depth of the attached garage. Mr. Briscoombe said that the lot was a mirror image of his lot and was the same width.

Ms. Gibb asked whether the house would be siding or brick. Mr. Briscoombe replied that it would be siding. He added that Ms. Motz's reference to an article regarding an Arlington McMansion with seven bathrooms and a marble gymnasium was an unfair comparison.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2004-MA-001 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN K. & REIKO K. BRISCOMBE, VC 2004-MA-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.0 ft. with eave 4.0 ft. from one side lot line and 10.4 ft. from other side lot line. Located at 6703 McCrea Pl. on approx. 18,808 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 24. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants met the nine standards required for a variance.
3. The applicants cited the narrowness of the lot and the converging lot lines toward the front 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage and second story addition, as shown on the plat prepared by Gilbert M. Glaubinger, dated April 18, 2001, with revisions through January 21, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be in substantial conformance with the architectural elevations included in Appendix 1A.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried 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 17, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 9, 2004, continued from Page 462

Chairman DiGiulian called the following case out of order from the agenda.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 4. (Admin. moved from 10/28/03 and 12/9/03 at appl. req. to 2/3/04) (Moved from 2/3/04 due to inclement weather)

Mr. Ribble stated that he had received correspondence from the appellant's agent, who had a death in the family and requested a one-week deferral.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that given the circumstances, staff would support a one-week deferral.

Mr. Ribble moved to defer A 2003-MV-037 to March 16, 2004, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. SYLVIA & JAMES A. LOVELACE, VC 2003-LE-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 6.8 ft. with eave 5.5 ft. from one side lot line and 13.2 ft. with eave 12.0 ft. from other side lot line. Located at 3131 Clayborne Ave. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 23. (Admin. moved from 1/20/04 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. Sylvia Lovelace, 3131 Clayborne Avenue, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 6.8 feet with eave 5.5 feet from one side lot line and 13.2 feet from the other side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 8.2 feet, 6.5 feet, and 1.8 feet, respectively, were requested.

Ms. Gibb asked whether there were houses on Lots 22 and 25 and how far away they were located. Mr. Sherman replied that the dwelling on Lot 25 was approximately 4.7 feet from the shared lot line. He said the County records did not have the information for Lot 22, but he assumed there was a dwelling, and the plat on record did not actually show how far the dwelling was from the lot line.

Ms. Lovelace presented the variance request as outlined in the statement of justification submitted with the application. She stated that her lot was very narrow, and she explained that emergency personnel had difficulties when treating her husband with his heart attack. She said the house was narrow with little closet space, and she wanted to enlarge the house. Ms. Lovelace presented photographs of other homes on the street that had made improvements, and she noted that she and her husband had disabilities.

Ms. Gibb asked whether the applicants had drawings to show what the addition would look like. Ms. Lovelace replied that she did, and she presented a floor plan.

Ms. Gibb asked how far away the house on Lot 22 was from the chain-link fence on the property line. Ms. Lovelace did not have the measurement. She said the addition was going from the back side, and she had a

letter from the neighbor, who had no objection. She presented photographs of her house and the houses to the left and the right.

Ms. Gibb asked whether the trees near the property line would remain or be removed. Ms. Lovelace replied that the trees were on the neighbor's property.

Ms. Gibb asked whether the area to the rear of the house was flat, to which Ms. Lovelace indicated it was.

Ms. Gibb asked whether the applicants had anything that would show what the addition would look like on the outside that would show what a neighbor would see. Ms. Lovelace described that it would be similar to what was existing and would go out to the left side with windows along the side, but she said the architect had not drawn anything to show the outside.

Ms. Gibb asked whether the roof on the addition would be the same height as the current roof, to which Ms. Lovelace replied that it would.

Mr. Hammack asked whether the addition would be one story. Ms. Lovelace replied that it would be. She explained that many of the neighbors had added a top level, but because of her and her husband's disabilities, they wanted it to be one level with no stairs.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2003-LE-160 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SYLVIA & JAMES A. LOVELACE, VC 2003-LE-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 6.8 ft. with eave 5.5 ft. from one side lot line and 13.2 ft. with eave 12.0 ft. from other side lot line. Located at 3131 Clayborne Ave. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 23. (Admin. moved from 1/20/04 for notices.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The request is reasonable, and the applicants are not asking for anything excessive.
3. The impact on the neighbors will not be very great as there are trees on the side.
4. The proposed addition will not be seen when viewed from the street.
5. The applicants presented persuasive testimony that they have met the required standards for a variance.
6. The lot is very narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;

~ ~ ~ March 9, 2004, SYLVIA & JAMES A. LOVELACE, VC 2003-LE-160, continued from Page 464

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated August 27, 2003, revised through October 22, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 73-L-152 previously approved for church with child care center to permit increase in land area. Located at 7420 and 7434 Bath St. on

--- March 9, 2004, TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02, continued from Page 465

approx. 4.64 ac. of land zoned R-2 and R-3. Lee District. Tax Map 80-3 ((1)) 1D, 80-3 ((2)) (54) 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. Jeffrey S. Davis, 6815 Bluecurl Circle, Springfield, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 73-L-152, previously approved for a church and child care center, to increase land area consisting of a lot owned by the church and developed with a single-family dwelling. The use of the existing church site, consisting of Tax Map 80-3 ((2)) (54) 9 and 80-3 ((1)) 1D, would not change. The existing single-family dwelling on the proposed additional land area, Tax Map 80-3 ((2)) (54) 1, would be used as administrative and meeting space. No additional children for the child care center, seats for the church, or new construction was proposed. Mr. Sherman stated that staff had concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of the application subject to the proposed development conditions.

Mr. Davis presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church purchased the home the prior year with the hope that small group meetings could be held there.

Chairman DiGiulian asked whether the applicant had seen the letters of opposition the Board had received, to which Mr. Davis replied that he had not.

Chairman DiGiulian presented several opposition letters to Mr. Davis and asked him to address them.

While Mr. Davis reviewed the letters, Mr. Ribble asked staff what currently existed in the way of daycare. Mr. Sherman replied that there was a nursery school with approximately 60 children.

Mr. Davis stated that the opposition letters seemed to center around parking, noise, and use as a childcare center. He said the use as a childcare center did not apply to the permit application for the house because the church already had a childcare center that the Board had approved, and it was not being changed. He explained that the home they were trying to incorporate into the overall lot structure was on the south side of a large parking lot, and there would be no childcare center activities in the house. Mr. Davis reported that the church had an open house to try to educate the neighbors about what was being done, and a number came by. Regarding the issues of noise and parking, he said the church was not trying to increase or institute new programs into the house, but rather was trying to overflow small group meetings, bible studies, and religious education. He said that because there was no increase in activities, just a spreading out of the current ones, the noise and traffic should go down or at worst stay the same, and use of the house for some meetings would encourage people to use the parking at the south end near the house rather than the parking spaces near the main church building.

Mr. Beard asked for clarification of the location of the house in question. Mr. Davis indicated that it was on the corner of the property and was located immediately adjacent to the south parking lot on the southeast side. He said there was an easement that ran through to Brookfield Park that separated the parking lot from the house.

Mr. Beard asked whether there was a parsonage on the property. Mr. Davis replied that there was not. He said the house could be used as a parsonage because it was zoned residential, and they would like to maintain that option, should it be needed, but currently the principal use would be for small group meetings.

Chairman DiGiulian called for speakers.

Ina Sadler, 4504 Sleaford Road, Annandale, Virginia, came forward to speak in opposition to the application. She stated that she owned a rental property directly across from the front door of the church. She said she had a hard time keeping a tenant in the house due to the church parking, traffic, turning around in the driveway, noise, lights at night, and groups meeting at the church. She presented photographs depicting the

~ ~ ~ March 9, 2004, TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02, continued from Page 466

house with a ramp in the front, the rear of the house, the park property that she said the church was using as its own entrance and exit to their parking lot, the church parking lots, and cars parked on the street. She said that ramp was built before the use was approved and would have been better placed on the rear of the house to keep the front more in keeping with the neighborhood.

Mr. Beard asked whether Ms. Sadler had ever lived at the rental property. Ms. Sadler replied that she had not lived there, but had stayed there periods of time between tenants.

Mr. Beard asked when Ms. Sadler had bought the property, to which Ms. Sadler indicated 1985.

Mr. Davis, in his rebuttal, said that he believed the approval of the application would address some of Ms. Sadler's concerns because if some of the activities were moved to the house, people attending those activities would likely park near the house rather than directly in front of the church and Ms. Sadler's property. He said the church had made efforts to educate their members to not park on the homeowners' side of the street. He said the church wanted to be a good neighbor and would continue to address the neighbor's parking concerns, but he did not see how that had a lot to do with the house. Mr. Davis explained that the ramp was built as an Eagle Scout project to provide handicap access and was done according to code with the County's approval.

Mr. Beard asked for confirmation that the church already owned the property, which Mr. Davis confirmed, and he asked when it was purchased, to which Mr. Davis replied in April of 2003.

Mr. Beard asked what was anticipated would be done with the house if the special permit was not approved. Mr. Davis replied that it would have most likely been used as a mission activity, such as Homestretch, where families could live there for about a year, learn how to budget their money, and then move on, or families displaced from their homes due to damage caused by extreme weather conditions. A brief discussion ensued regarding another property the church owned which was used for similar residential purposes, but Mr. Davis said it was not convenient to use for the purposes of holding small meetings or administrative space for which the church wanted to use the subject property.

Ms. Gibb asked for clarification regarding where people would park that would be attending meetings in the house. Mr. Davis indicated that they would park in the largest parking lot immediately adjacent to the house and walk across the park property to get to the home.

Mr. Ribble asked whether the church intended to use the house as a homeless shelter. Mr. Davis replied that the church had no desire to put in a soup kitchen, homeless shelter, or anything else that might be seen as detrimental to the neighborhood. He said the church hoped to maintain the home in a way that anyone driving by would not realize it was not being used as a residence.

Ms. Gibb commented that the ramp indicated that either someone handicapped lived in the home or it would be accessible for something other than a residence. Mr. Davis stated that it looked like a residence that would have access for a handicapped person.

Mr. Hammack noted that the current approved special permit development conditions required all parking to be onsite and that Mr. Davis acknowledged that was not being followed. Mr. Hammack asked how the church proposed to address that. Mr. Davis replied that the church was having meetings with people in the local neighborhood, and it had been suggested that the church explore satellite parking and alternatives. He said the church was meeting with people to pursue those options. He added that increasing the size of the main building, moving the entire church, and shuttling people in by bus had all been considered.

Mr. Hammack stated that based on the 1992 approval, it sounded like the church had not been in compliance for a decade, and Mr. Davis asked for clarification of what Mr. Hammack meant by not in compliance.

Mr. Hammack said that Mr. Davis had acknowledged that parishioners were parking in the streets. Mr. Davis said that to the extent they were parking in the streets, they were parking in lawful parking areas, and when they had parked in unlawful parking areas, the church had been very aggressive in getting them out.

~ ~ ~ March 9, 2004, TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02, continued from Page 467

Mr. Hammack stated that the development conditions did not allow parking on the streets in lawful parking areas, and the church was not in compliance with the development conditions that were approved in 1992. Mr. Davis said he would go back and look at the issue. He stated that the elders were working with the neighborhood to address the concerns.

Mr. Hammack asked what the church was doing with the members of the congregation to address the concerns. Mr. Davis replied that a bus had been purchased and used to bring in some people. He said he believed the problem was only significant during the Sunday morning worship hours and was a problem common to most churches that were vibrant.

Mr. Ribble asked what the hours of operation were of the childcare center. Mr. Davis replied that it operated in the mornings between 9:00 o'clock and noon, Monday through Friday.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SPA 73-L-152-02 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Ribble suggested that the hours of operation for the childcare center in development conditions be changed to read "noon" instead of 12:00 p.m. Mr. Beard amended his motion to include the change, and Mr. Pammel indicated he accepted the amendment to the motion.

Mr. Hammack stated that the development conditions regarding the parking issues in the subject application were the same as in the previous approval, with which the agent had admitted they were not in compliance. Mr. Hammack said he would like to defer the decision to get more testimony on the parking situation because there was testimony that there was some impact on the neighborhood, and it would be appropriate to try to address the issue at the same time.

Mr. Pammel stated that he planned to make a motion regarding the parking issue after the vote on the special permit amendment took place.

Chairman DiGiulian called for the vote, and the motion carried.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 73-L-152 previously approved for church with child care center to permit increase in land area. Located at 7420 and 7434 Bath St. on approx. 4.64 ac. of land zoned R-3. Lee District. Tax Map 80-3 ((1)) 1D, 80-3 ((2)) (54) 1 and 9. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The current zoning is R-3.
3. The area of the lot is 4.64 acres.
4. Since this property immediately abuts the church, this would be an alleviating feature and would spread out some of the usage and perhaps help with the parking situation.

~ ~ ~ March 9, 2004, TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02, continued from Page 468

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7420 and 7437 Bath Street (4.64 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 William D. Peake/Suburban Development Engineering, dated June 21, 1991, revised July 22, 1991/March 5, 1990, revised December 3, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main worship area shall be 396.
6. The maximum daily enrollment for the child care facilities shall be 76.
7. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on Lots 1D and 9 (existing church parking lot), including parking for uses on Lot 1.
8. The maximum hours of operation for the child care center shall be from 9 am to noon, Monday through Friday.
9. All existing vegetation shall be preserved and shall be used to meet the Transitional Screening requirements.
10. The barrier requirements shall be waived.
11. The maximum hours for use of the structure on Lot 1 shall be from 8:00 am to 10 pm, daily.
12. The dwelling on Lot 1 shall only be used for administrative purposes and meeting space for small groups. No worship services shall be held in the dwelling.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the

~ ~ ~ March 9, 2004, TRUSTEES OF GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-02, continued from Page 469

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 5-1-1. Mr. Hammack voted against the motion. Mr. Hart abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved that the Board request staff to work with the applicant on addressing the issue of the parking problems, the overflow, and to report back to the Board at a September meeting with respect to the progress made. He said the basis for his motion was because he did not want the applicant to walk away with an approval, feeling that there was no need to work diligently to address the problem. He said the Board was constantly reminded of it in various church applications, and the Board consistently brought up the issue of conformance with the requirement that parking for the churches be onsite. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. SCOTT FORCE AND ANNE FORCE, VC 2003-MA-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. with eave 5.6 ft. from side lot line. Located at 6916 Fern Pl. on approx. 12,217 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 198.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Force, 6916 Fern Place, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition 6.6 feet with eave 5.6 feet from the eastern side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.4 feet and 3.4 feet, respectively, were requested.

Mr. Force presented the variance request as outlined in the statement of justification submitted with the application. He explained that his house, which was built in the mid-1950s, had a small kitchen that was not usable. He said that there was an existing bedroom and loft area upstairs, but due to the steeply sloped roof, they were not usable, and a bathroom could not be built upstairs. Mr. Force said the proposed addition would allow a larger kitchen, a family meeting area, an adult bedroom, and a bathroom upstairs.

Mr. Force stated that the property was purchased in 2000 in good faith. He explained that the existing screened porch had fallen into disrepair, and he planned to replace it with the addition. He said that his property was characterized by exceptional topographical conditions because his backyard was essentially a cliff that contained large granite boulders, and it was not economically feasible to build in the rear. Mr. Force said the condition was not recurring because most of his neighbors had relatively flat rear yards. He stated that the strict application of the Zoning Ordinance produced undue hardship because the house was not usable for a typical family unit due to the small size of the rooms. He explained that there were covenants in the district that prohibited building in the front, which would change the character of the neighborhood, and the houses were generally all set back the same amount. Mr. Force stated that the addition would not be a substantial detriment to any adjacent property because it was designed to be as invisible as possible from the neighboring properties and would be screened with the existing dense vegetation and a small hill. He said there would be no privacy issue because there would be no windows on the side.

Mr. Hart asked whether the applicants had elevations showing the exterior of the house. Mr. Force replied

~ ~ ~ March 9, 2004, SCOTT FORCE AND ANNE FORCE, VC 2003-MA-195, continued from Page 470

that he did, and he presented front and side views on the overhead viewer.

Mr. Hart asked where the red oak tree was located in relation to the east elevation, which Mr. Force pointed out.

Mr. Hart asked whether the red oak tree was the same tree about which the applicants had sent a letter to their neighbor regarding the removal of a portion of it. Mr. Force replied that it was. He said he had safety concerns about it growing over his house, and the tree needed to come down regardless of the construction.

Mr. Beard asked if the tree straddled the property line. Mr. Force replied that one inch of the trunk was located on his property, but 40 percent of the tree was directly over his house. He explained that the tree had a V located four feet from the ground, and it was currently tethered to hold it together. He indicated that he had notified his neighbor of his intent to cut back the portion that protruded over his property.

Mr. Hammack asked what prevented the building of the addition to the rear. Mr. Force showed a photograph of his rear yard and stated that it immediately dropped off in a cliff manner with huge boulders. He said he was an old Native American lookout spot that looked down onto a creek below.

Mr. Hammack asked why the improvements could not be built out in the direction of the existing wood planks. Mr. Force explained that the house was two stories of cinder block and brick in that area, and his architect had determined it was not within his financial means to build in that area.

Chairman DiGiulian called for speakers.

Antonio A. Chaves, 6914 Fern Place, Annandale, Virginia, came forward to speak in opposition to the application. He stated that the proposed construction would alter the relationship between his and the applicants' property, affect his privacy, permanently change his sightlines, have a detrimental effect on his property value, and affect a 58-foot tall red oak tree on the property line. He said he had spent hundreds of dollars on the tree during the previous year. Mr. Chaves reported that a certified, professional arborist had determined that the proximity of the proposed addition to the tree would have a serious negative impact on the health of the tree and could eventually lead to its death.

Mr. Beard asked Mr. Chaves where his property was located and how long he had lived there. Mr. Chaves replied that he had moved into his property located to the east of the subject property in June of 1999 and had lived there almost five years.

Mr. Force, in his rebuttal, stated that his variance request fell 100 percent in accordance with the law. He reported that Mr. Chaves' house was located 11.3 feet from the property line. He said no harm would befall Mr. Chaves and his ability to enjoy his property would not be hindered because of the existing dense vegetation, the hill, and the fact that there would be no windows on the addition on that side. He reported that he had discussed the red oak tree with Mr. Chaves for several years and that branches from the tree had dropped though the roof of his screened porch the previous year, which Mr. Chaves paid to clean up. Mr. Force said he did not file an insurance claim for the damage because he anticipated removing the porch, and he suggested they jointly pay to have the tree removed, which would allow another nearby oak with a one-foot diameter trunk to prosper that would not otherwise in the shadow of the other tree, which was tethered by tiny cables and was a danger. Mr. Force said he had had detailed construction plans available to his neighbors, and two had viewed them and seemed to have no objections, but Mr. Chaves had not accepted the offer to view the plans. He said he had requested the findings from Mr. Chaves' arborist in phone messages and a letter, and Mr. Chaves did not respond. He stated that the information Mr. Chaves cited in his letter regarding the Urban Forestry Division was irrelevant because less than 750 square feet of soil was being disturbed. Mr. Force said many of the trees on Mr. Chaves' property were unkempt, dropping things, dead, and tagged for removal, and it was a veiled attempt to make a border dispute over a single tree into a variance issue.

Ms. Gibb asked whether the applicant had photographs taken when the leaves were off the trees. He presented photographs that he said were taken in April of 2003 and the day prior to the hearing.

Mr. Beard said he commended the applicant for notifying his neighbor of his intent as opposed to just taking action because he had rights if the tree was over his property.

~ ~ ~ March 9, 2004, SCOTT FORCE AND ANNE FORCE, VC 2003-MA-195, continued from Page 471

Chairman DiGiulian closed the public hearing.

Mr. Beard asked the applicant how long he had lived at his property, to which Mr. Force replied that he had lived there since 2000.

Mr. Hammack moved to deny VC 2003-MA-195 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Hart stated that he would support the motion. He said he thought he could support some relief given the topography, and the tree did not factor into it, but the addition was too large in the proposed location.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT FORCE AND ANNE FORCE, VC 2003-MA-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. with eave 5.6 ft. from side lot line. Located at 6916 Fern Pl. on approx. 12,217 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 198. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have not satisfied the nine required standards for variance applications based on the bulk and proximity of the proposed addition to the property line.
3. The proposed addition would be a substantial detriment to the adjacent property owner.
4. The tree was not a controlling factor because it appears to be in an unsafe condition.
5. The applicant testified that all the houses are set back approximately the same distance from the street, and the proposed addition would project in the front.
6. It was not convincing that the applicant could not extend to the rear of the property without requiring 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.

~ ~ ~ March 9, 2004, SCOTT FORCE AND ANNE FORCE, VC 2003-MA-195, continued from Page 472

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion. Mr. Pammel moved to waive the 12-month waiting period for refileing an application. Mr. Hart seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit accessory structure to remain 2.8 ft. with eave 2.7 ft. from side lot line and 2.8 ft. with eave 1.8 ft. from rear lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with VC 2003-LE-165). (Admin. moved from 1/20/04 for notices.)

9:00 A.M. MANUEL DE JESUS RODRIGUEZ, VC 2003-LE-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. with eave 22.3 ft from front lot line and 8.3 ft. with eave 6.8 ft. from side lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with SP 2003-LE-041). (Admin. moved from 1/20/04 for notices.)

Chairman DiGiulian noted that SP 2003-LE-041 and VC 2003-LE-165 had been administratively moved to April 27, 2004, at 9:00 a.m., for notices.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M. JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 68-A-776 to permit addition 15.0 ft. with eave 13.4 ft. from side lot line. Located at 4107 Wakefield Dr. on approx. 22,211 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 175 (Concurrent with SP 2003-BR-053).

9:00 A.M. JOSEPH F. CRISP, SP 2003-BR-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 accessory structure to remain 1.7 ft. with eave 0.6 ft. from side lot line. Located at 4107 Wakefield Dr. on approx. 22,211 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 175 (Concurrent with VCA 68-A-776).

~ ~ ~ March 9, 2004, JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776, and JOSEPH F. CRISP, SP 2003-BR-053, continued from Page 473

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 Mannion, 8211 Caraway Street, Cabin John, Maryland, the applicants' agent, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an existing detached garage to remain 1.7 feet with an eave 0.6 feet from the southern side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 18.3 feet and 16.4 feet, respectively, were requested. Ms. Stanfield noted that at the time the garage was constructed in 1978, there was an approved building permit to allow the garage to be constructed two feet from the side lot line, which was permitted at the time.

The applicant requested a variance amendment to permit construction of a two-story addition to be located 15 feet with an eave 13.4 feet from the southern side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.0 feet and 3.6 feet, respectively, were requested.

Mr. Mannion presented the special permit and variance amendment requests as outlined in the statement of justification submitted with the applications. He stated that the applicants wanted to be allowed to maintain the brick garage that matched the house, which was a pre-existing condition that they inherited when they purchased the property, and no changes were proposed to it. He explained that the applicants had an unusually shaped trapezoid lot that tapered down toward the front, was located on the curve of the street, shaped differently than the neighboring properties, and sloped steeply up to the rear. Mr. Mannion said the house had been originally sited almost dead center in the lot and had an existing 10-foot wide carport on the right side that the applicants wanted to enclose into a garage so Mr. Crisp and his son, who both had physical disabilities, could be taken directly into the house. He stated that the proposed addition of a 10-foot master bedroom above was kept to an absolute minimum size. He said the existing roof would be extended to the side, and the height would be no higher than the existing roof. Mr. Mannion noted that there would be a separate addition onto the rear of the house that would provide a larger kitchen and eating area that did not require a variance. He said the house would be harmonious with the neighborhood, there had been discussions with the neighbors, and he was unaware of any opposition.

Chairman DiGiulian called for speakers.

Joseph Crisp, 4107 Wakefield Drive, Annandale, Virginia, came forward to speak in support of the application. He said he was a disabled general contractor, who had been in the trade all his life, and this would likely be his last project. He stated that he had neck, back, and ankle fusions and was 100 percent handicapped. Mr. Crisp explained that although he could walk, he could not pick up a coin from the floor or stand for extended time periods and had difficulties walking uphill. He said his stepson was a quadriplegic, and the addition would result in the easiest access for a wheelchair to get into the house. He presented photographs of the house, which was built in 1957, and said that the garage had existed when he moved in 13 years prior. Mr. Crisp said he was told by the County that there had been no permits, but he had found permits. He said the garage was built two feet from the property line, but the overhangs were too close to the property line. He stated that the property was long and narrow with a hill in the front and that building the addition in the back would require the removal of a tremendous amount of soil, and there would be no way to connect it.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2003-BR-053 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOSEPH F. CRISP, SP 2003-BR-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction

~ ~ ~ March 9, 2004, JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776, and JOSEPH F. CRISP, SP 2003-BR-053, continued from Page 474

to minimum yard requirements based on error in building location to permit accessory structure to remain 1.7 ft. with eave 0.6 ft. from side lot line. Located at 4107 Wakefield Dr. on approx. 22,211 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 175 (Concurrent with VCA 68-A-776). 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 9, 2004; 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 prescribed criteria for the granting of such a variance as set forth in Section 8-914 of the Zoning Ordinance.
3. This was a preexisting condition prior to the purchase of the property by the applicant.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a detached garage, as shown on the plat prepared by Brian W. Smith, dated June 17, 2003, as revised through September 17, 2003, 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

~ ~ ~ March 9, 2004, JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776, and JOSEPH F. CRISP, SP 2003-BR-053, continued from Page 475

with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VCA 68-A-776 for the reasons stated in the Resolution. Mr. Hammack seconded the motion and noted that the residence on Lot 73 was located 60 feet from the shared property line, and there would be no impact.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 68-A-776 to permit addition 15.0 ft. with eave 13.4 ft. from side lot line. Located at 4107 Wakefield Dr. on approx. 22,211 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 175 (Concurrent with SP 2003-BR-053). 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 9, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant met the prescribed criteria for a variance.
3. The topography is quite severe.
4. On the north side of the house, the house is already located 13.4 feet from the property line, a lesser distance from the property line than the requested 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.

~ ~ ~ March 9, 2004, JOSEPH F. CRISP AND LOIS ANN SMITH, VCA 68-A-776, and JOSEPH F. CRISP, SP 2003-BR-053, continued from Page 476

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for an addition, as shown on the plat prepared by Brian W. Smith, dated June 17, 2003, as revised through September 17, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:00 A.M.      SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04 and 3/2/04 at appl. req.)

Chairman DiGiulian noted that SP 2003-SU-045 had been administratively moved to April 6, 2004, at 9:00 a.m., at the applicant's request, and he inquired as to why the application had been moved three times at the applicant's request. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant was trying to address a number of issues that staff had with the application and was currently working with the Department of Public Works and Environmental Services to see if it could get a waiver of stormwater management. She advised the Board that the application may be moved again.

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~ ~ ~ March 9, 2004, Scheduled case of:

9:30 A.M. JUBAL AND KIRSTEN THOMPSON; ESTATE OF MARY BROWN, ELTON K. DONALDSON, A 2003-DR-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area or width requirements of the Zoning Ordinance when created, does not meet current minimum lot area or width requirements of the R-1 District, and is not buildable under Zoning Ordinance provisions. Located at 8304 & 8308 Randwood St. on approx. 29,838 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2)) 5 and 6. (Admin. moved from 12/2/03 at appl. req.) ~

Chairman DiGiulian noted that A 2003-DR-046 had been administratively moved to April 20, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ March 9, 2004, After Agenda Item:

Request for Additional Time  
Greenbriar Civic Association, Inc., Agape Christian Fellowship Church, and  
Pleasant Valley Preschool, SPA 78-P-192-2.

Mr. Pammel moved to approve 12 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date was February 13, 2005.

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~ ~ ~ March 9, 2004, After Agenda Item:

Request for Additional Time  
Trustees of Harvester Presbyterian Church, SPA 83-S-102

Mr. Pammel moved to approve 18 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date was September 3, 2005.

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~ ~ ~ March 9, 2004, After Agenda Item:

Request for Reconsideration  
From Mantua Neighbors Committee  
Regarding Trustees for the Congregation Olam Tikvah, SPA 81-P-068-03.

Mr. Hart indicated that he would recuse himself.

Mr. Hammack said that he understood the development conditions the Board had adopted were effectively the same as the March 2nd development conditions with certain changes made with the motion. Ms. Stanfield confirmed that his understanding was correct.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ March 9, 2004, After Agenda Item:

Approval of March 2, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 9, 2004, continued from Page 478

As there was no other business to come before the Board, the meeting was adjourned at 11:47 a.m.

Minutes by: Kathleen A. Knoth

Approved on: March 15, 2005

*K.A. Knoth*

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Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
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John F. Ribble III, Vice Chairman, for  
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 16, 2004. The following Board Members were present: Chairman John DiGiulian, John Ribble; Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M.      ANDREW SHERIDAN, VC 2003-BR-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 1 having a lot width of 76.24 ft. Located at 4716 Wakefield Chapel Rd. on approx. 2.61 ac. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 285. (Deferred for decision only from 12/16/03 and 2/17/04)

Ms. Gibb recused herself from the hearing.

William Baskin, the applicant's agent, requested a deferral for approximately one month to enable negotiations to be completed between the applicant, the Park Authority, and the Conservation Trust, which he said, once concluded, could render the application moot.

Mr. Ribble moved to defer decision on VC 2003-BR-147 to April 20, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing, and Mr. Hammack was not present for the vote.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M.      H. BRADFORD GLASSMAN, VC 2003-MV-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 4.8 ft. with eave 3.6 ft. from one side lot line and 7.6 ft. with eave 6.4 ft. from other side lot line and 9.5 ft. from front lot line, deck 4.8 ft. and 7.6 ft. from side lot lines, roofed deck 2.5 ft. with eave 1.3 ft. from front lot line and bay windows 7.0 ft. from front lot line and 3.4 ft. with eave 2.4 ft. from side lot line and fence greater than 7.0 ft. in height to remain in side and rear yards. Located at 6428 Potomac Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 31 and 32. (In association with SE 2003-MV-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. H. Bradford Glassman, 6428 Potomac Avenue, Alexandria, Virginia, replied that it was. He stated that there were two affidavits; one for the variance and the other for the special exception.

Cathy Belgin, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 4.8 feet with eave 3.6 feet from the southern side lot line, 7.6 feet with eave 6.4 feet from the northern side lot line, and 9.5 feet from the front lot line. A minimum side yard of 12 feet and a minimum front yard of 30 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 4.4 feet, 2.6 feet, 7.2 feet, 5.4 feet, and 20.5 feet, respectively, were requested.

The applicant requested a variance to permit the construction of a deck 4.8 feet from the southern side lot line. A variance of 7.2 feet was requested.

The applicant requested a variance to permit the construction of a roofed deck 2.5 feet with eave 1.3 feet from the front lot line. Eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 27.5 feet and 25.7 feet, respectively, were requested.

The applicant requested a variance to permit the construction of bay windows 7.0 feet from the front lot line and 3.4 feet with eave 2.4 feet from the southern side lot line. Bay windows are permitted to extend 3.0 feet into the minimum front and side yards; therefore, variances of 20 feet, 5.6 feet, and 6.6 feet, respectively,

~ ~ ~ March 16, 2004, H. BRADFORD GLASSMAN, VC 2003-MV-196, continued from Page 481

were requested.

The applicant requested a variance to permit a fence 7.9 feet in height to remain in the side and rear yards. The maximum fence height permitted in side and rear yards is 7.0 feet; therefore, a variance of 0.9 feet was requested.

Mr. Glassman presented the variance request as outlined in the statement of justification submitted with the application. He stated that the front of the house would go up near the property line. He said most of the houses on Potomac Avenue had the same arrangement due to the 30-foot right-of-way which served as a front yard setback. On the south side, he would preserve the existing line of the house, but go back further. He explained that most of the request related to where the deck was located. He said the bay window would jut out on that side. At staff's request, the north side would be compressed so as not to interfere with the neighbors to the north. The foundation wall would be at the 12-foot setback with only the eaves hanging over except for where there was an existing enclosed sunroom. He said it would be on one floor and not be a two-story addition. Mr. Glassman stated that both the bay windows would be removed on the front of the house on the east side.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-MV-196 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

H. BRADFORD GLASSMAN, VC 2003-MV-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 4.8 ft. with eave 3.6 ft. from one side lot line and 7.6 ft. with eave 6.4 ft. from other side lot line and 9.5 ft. from front lot line, deck 4.8 ft. from side lot line, roofed deck 2.5 ft. with eave 1.3 ft. from front lot line and bay windows 7.0 ft. from front lot line and 3.4 ft. with eave 2.4 ft. from side lot line and fence greater than 7.0 ft. in height to remain in side and rear yards. (The applicant withdrew the request for a deck 7.6 feet from the side lot line, and bay windows 7 feet from the front lot line.) Located at 6428 Potomac Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 31 and 32. (In association with SE 2003-MV-042) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This lot is an unusually narrow lot, and there was an existing dwelling on the property that was damaged by a hurricane.
3. The applicant seeks to replace that building with an expansion generally within the footprint of the previous 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;

~ ~ ~ March 16, 2004, H. BRADFORD GLASSMAN, VC 2003-MV-196, continued from Page 482

- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling, extensions, deck, and fences, as shown on the plat prepared by GeoEnv Engineers, dated December, 2003, with engineer's stamp dated 3/10/04, submitted with this application, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and approval of final inspections shall also be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. KUSTOM KASTLES, LLC, VC 2004-LE-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 24.71 ft. with stoop 22.02 ft. from front lot line. Located at 6515 Franconia Rd. on approx. 10,584 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 90-2 ((12)) 3 pt. (In association with RZ 2003-LE-053)

Ms. Gibb recused herself from the hearing.

~ ~ ~ March 16, 2004, KUSTOM KASTLES, LLC, VC 2004-LE-009, continued from Page 483

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Law Offices of Sack, Harris, and Martin, the applicant's agent, replied that it was.

Lindsay Shulenberger, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the existing dwelling to remain 24.71 feet and a stoop to remain 22.02 feet from the front lot line. A minimum front yard of 30 feet is required; however, stoops are permitted to extend 5.0 into the minimum front yard; therefore, variances of 5.29 feet and 2.98 feet, respectively, were requested.

Mr. Martin stated that the house was located substandard to the Zoning Ordinance front yard requirements. He said that due to the rezoning application and the desire to save the existing house and the trees, it met the standards of Article 18.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2004-LE-009 for the reasons stated in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KUSTOM KASTLES, LLC, VC 2004-LE-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 24.71 ft. with stoop 22.02 ft. from front lot line. Located at 6515 Franconia Rd. on approx. 10,584 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 90-2 ((12)) 3 pt. (In association with RZ 2003-LE-053) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The house was properly located.
3. The road has been widened, and now the front of the house is within the minimum front yard.
4. Approval of variance would not have any negative impact on anyone, including the three new houses.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

~ ~ ~ March 16, 2004, KUSTOM KASTLES, LLC, VC 2004-LE-009, continued from Page 484

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the existing dwelling and the front stoop shown on proposed Lot 1 on the plat prepared by Target Engineering, Inc., revised through February 13, 2003, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote, and Ms. Gibb recused herself from the hearing.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. DALE J. AND MARIE T. WELTER, VC 2004-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 4120 Nomis Dr. on approx. 11,006 sq. ft. of land zoned R-3. Braddock District. Tax Map 58-4 ((34)) 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. Dale Welter, 4120 Norris Drive, Fairfax, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition 18.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.8 feet was requested.

Mr. Welter presented the variance request as outlined in the statement of justification submitted with the application. He noted that the plat showed an access road which was essentially nonexistent. He stated that he had maintained the vegetation in the 12-foot area on his side of the chain-link fence as his backyard

for 20 years, and because of the configuration, it would appear to a casual observer that a variance was not needed because the yard appeared to go farther back. He requested the eight-day waiting period be waived if the application was approved.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2004-BR-004 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DALE J. AND MARIE T. WELTER, VC 2004-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 4120 Nomis Dr. on approx. 11,006 sq. ft. of land zoned R-3. Braddock District. Tax Map 58-4 ((34)) 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 March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant has met the 9 VC standards.
2. The applicants are the owners of the land.
3. The applicant cited the shallowness of the rear of the lot.
4. The way that the house is situated causes this variance to be requested.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will

~ ~ ~ March 16, 2004, DALE J. AND MARIE T. WELTER, VC 2004-BR-004, continued from Page 486

not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a one story addition, as shown on the plat prepared by Arencibia Architects, Inc., dated December 1, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0. Ms. Gibb 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 16, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. THEODORE T. BELAZIS & JANE C. LEWIS, VC 2004-DR-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. with eave 2.67 ft. from side lot line. Located at 6456 Dryden Dr. on approx. 17,551 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((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. Theodore T. Belazis, 6456 Dryden Drive, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition 3.0 feet with eave 2.67 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 9.0 feet and 6.33 feet, respectively, were requested.

Mr. Belazis presented the variance request as outlined in the statement of justification submitted with the application. He submitted the neighbors' signatures indicating support of the garage. He explained that the house was at the base of a steep hill, and the addition could not be built farther back. Mr. Belazis also noted that it would not interfere with the sewer easement.

Mr. Pammel stated that he could not support a variance three feet from a property line, but could support one five feet, which would give a width of 22 feet for the garage. Mr. Belazis said he preferred 24 feet to accommodate two vehicles and storage.

~ ~ ~ March 16, 2004, THEODORE T. BELAZIS & JANE C. LEWIS, VC 2004-DR-006, continued from Page 487

Mr. Hart asked if the chimney was enclosed in the new garage. Mr. Belazis said the door behind the chimney went into the house. Mr. Hart asked if he could shift the garage further to the rear. Mr. Belazis answered that it would intrude on the screened porch, which was behind the house, and would block sunlight from the house. Mr. Belazis stated that three trees would be removed.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve-in-part VC 2004-DR-006 for the reasons stated in the Resolution.

Chairman DiGiulian asked whether staff could condition the approval without a revised plat. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff could.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THEODORE T. BELAZIS & JANE C. LEWIS, VC 2004-DR-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. with eave 2.67 ft. from side lot line. **(THE BZA APPROVED THE ADDITION 5.0 FT. WITH EAVE 4.67 FT.)** Located at 6456 Dryden Dr. on approx. 17,551 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((15)) 8. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. An application for 3 feet from the side lot line cannot be supported, but 5 feet could.
3. Based on the applicants' testimony concerning the topography of the lot in back, the steep rise into the back, and the inability to locate the garage anywhere else because of the nature of the lot, the applicants are entitled to a variance, but of only 5 feet for the garage; therefore, it would be a 7-foot variance for the addition and 4.67 feet for the eave.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

~ ~ ~ March 16, 2004, THEODORE T. BELAZIS & JANE C. LEWIS, VC 2004-DR-006, continued from Page 488

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Schiller & Associates, dated November 7, 2003, as revised through January 2, 2004, submitted with this application and are not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the location of the garage addition as shown on the plat, the garage shall not be located closer than 5.0 feet with eave 4.67 feet from the side lot line.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. JUDITH A. ROTHLSBERGER, TRUSTEE, VC 2004-HM-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 20.0 ft. Located at 2325 Riviera Dr. on approx. 10,818 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((22)) 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. Judy Rothlisberger, 2325 Rivera Drive, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition, consisting of the enclosure of an existing

--- March 16, 2004, JUDITH A. ROTH LISBERGER, TRUSTEE, VC 2004-HM-002, continued from Page 489

carport, such that side yards totaled 20 feet. The Zoning Ordinance requires total minimum side yards of 24 feet in the R-2 District under the cluster provision; therefore, a variance of 4.0 feet was requested.

Ms. Rothlisberger presented the variance request as outlined in the statement of justification submitted with the application. She said she wanted to enclose the carport, which would not change the footprint or the roofline.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2004-HM-002 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JUDITH A. ROTH LISBERGER, TRUSTEE, VC 2004-HM-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 20.0 ft. Located at 2325 Riviera Dr. on approx. 10,818 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((22)) 52. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application has been properly filed.
3. Approval of this application would be consistent with other variances that have been granted in the proximity.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching

~ ~ ~ March 16, 2004, JUDITH A. ROTH LISBERGER, TRUSTEE, VC 2004-HM-002, continued from Page 490

confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, as shown on the plat prepared by George M. O'Quinn, dated July 18, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 3 lots with proposed lots 1, 2, and 3 having a lot width of 6.7 ft. Located at 10611 and 10609 Vale Rd. on approx. 6.04 ac. of land zoned R-E. Providence District. Tax Map 37-1 ((5)) A1 and 37-3 ((2)) 5A.

Chairman DiGiulian noted that VC 2004-PR-003 had been administratively moved to April 13, 2004, at 9:00 a.m.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 15.0 ft. with stoop 11.0 ft. from front lot line. Located at 4925 Twinbrook Rd. on approx. 5.16 AC. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with SPA 81-A-002-04).

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, SPA 81-A-002-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for church to

~ ~ ~ March 16, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 491

permit building addition and site modifications. Located at 4925 Twinbrook Rd. on approx. 5.16 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with VC 2004-BR-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. Robert Williams, the applicant's agent, replied that it was.

Kristen Shields, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a structure to remain 15 feet with a stoop 11 feet from the front lot line. The applicant also requested an amendment to S 81-S-002, previously approved for a church, to permit the construction of a 6,000-square-foot fellowship hall and additional site modifications, including construction of a stormwater management/best management practices facility.

Mr. Williams presented the variance and special permit requests as outlined in the statements of justification submitted with the applications. He explained that Pilgrim Community Church had taken over the site in December 2001 and had tried to improve it. They constructed a shed, which received a zoning violation, and made requisite changes per the County. He reported that the problems regarding vegetation cleanup which affected the transitional screening had been resolved to the County's satisfaction. The church determined that the existing building was not meeting their program needs, and they wanted to construct a new facility to meet those needs and also to resolve issues which had arisen in the past, such as noise. The new facility would be soundproofed and located more central to the site and away from the southern property line where many of the noise complaints arose. Noisy activities would be relocated as well. Mr. Williams said the infiltration facility would act as a best management practices and stormwater management facility. He said that although use of the existing pond appeared to be a viable option, some investigation would be necessary regarding the capacity. He said the development conditions adequately addressed the visual and noise aspects with the site.

Mr. Hammack asked about a reference to the construction of a new entrance and asked whether it had already been constructed or was proposed. Mr. Williams replied that an entrance feature had been constructed the prior year.

Mr. Hammack asked for more information regarding the noise being generated on the property. Mr. Williams stated that the activities were recreational activities, basketball, a playground, and a rock band. He said the church had constructed soundproofing within the existing structure to mitigate the noise. When asked by Mr. Hammack about the band playing outside, Mr. Williams said he was not aware of it. He said he believed the occurrence in May was a single incident, and he was unsure whether it had occurred again. Mr. Hammack said there was nothing in the development conditions that dealt with offsite noise. Mr. Williams replied that there was a condition regarding the new facility having to meet certain noise requirements. Mr. Hammack said that would not help in the activities not held inside. Mr. Williams said the church was attempting to move any noisy activities into the new facility. Mr. Hammack said he would like to see development conditions that expressly required the use of a band with amplification to be inside. Mr. Williams replied that the church would agree to such a condition.

Mr. Hart asked whether the applicant would have to come back to the BZA if a waiver wasn't granted by DPWES and the applicant decided to do something not shown on the plat, like onsite detention or tying into a pond. Susan Langdon, Chief, Special Permit and Variance Branch, said that the conditions allowed some leeway. She said transitional screening and landscaping would remain and they could not go into those areas because it would be contrary to other conditions, but whatever the applicant could do under Condition 16 that did not interfere with other things laid out by the conditions could be done. She said the plat showed a stormwater management area where expansion was possible as long as it did not interfere with screening or parking.

Mr. Pammel asked whether there was a report from the health department regarding the adequacy of the drainage field. Ms. Shields said the health department did a preliminary study and said it would be adequate because the number of seats was not being increased, but once the applicant came in with their site plan, the health department would do a final study and analysis on the existing septic field.

Mr. Hammack asked about a letter received regarding screening being cut down and loudspeakers being

~ ~ ~ March 16, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 492

used. Ms. Shields replied that Zoning Enforcement believed the issues had been handled adequately. She said the applicant had installed soundproofing in the existing church building. A shed was removed after a complaint about the shed construction. Regarding the transitional screening complaint, Ms. Shields said some trees had been removed, were later replanted, but subsequently died, and the subject application was conditioned to require replacement of any dead trees. Mr. Hammack asked if the issues referenced in the letter of the church holding a May celebration in an open field with a microphone and amplification, use of drums, and calls to the police had been addressed. Ms. Shields replied that she was aware that there was a band as part of the church celebration, but was unaware of the festival until she received the letter and had not yet researched it.

Mr. Hart asked whether the church was in agreement with the proposed development conditions, to which Mr. Williams indicated that it was. Mr. Hart asked if there were any renderings or materials that would show what the new building would look like. Based on the photographs of the existing building, he questioned whether, in staff's view, the existing building would fall short of what was aspired to in Development Condition 12. Mr. Williams responded that the new facility would be similar construction to the existing building, but that the manufacturer had exterior embellishments that could be added to the building, such as banding of brick or masonry and more decorative windows, and there were pictures on their website. Mr. Hart said the existing building did not look very residential and looked from some angles like something one would put tractors in. He said it was difficult to conclude that was compatible with the homes around it. Mr. Williams said the church would be screening heavily around the building. Mr. Hart said the landscaping helped on the existing building, but it could have had more residential compatibility.

Chairman DiGiulian called for speakers.

Harold Rodriguez, 18 Mosby Lane, Stafford, Virginia, came forward to speak in support of the application. Mr. Rodriguez stated that at the church's twice-a-year meeting, the church acknowledged the use of a microphone, but would refrain from doing so.

Carol McAlee, 5062 Queens Wood Drive, Burke, Virginia, came forward to speak in opposition to the application. Ms. McAlee said that in regard to the noise issue, it was not so much that the church had many outdoor activities. She said the May celebration was when the church first came to the property. She said trees had been replanted to replace the ones that had been pruned and died, and there was a sound absorption system in the church, which worked sometimes and it was better than it had been, but there were still noise ordinance problems at least twice a week with drums. She said she was concerned about the noise in the future, and it would take a year or two before the construction was completed, so the present noise problem would continue for that time, and her only recourse was to constantly call the police. In response to questioning from Mr. Hammack, Ms. McAlee stated that the entrance had been built a while ago, and she had no problem with it. She said her property bordered the southern point of the existing structure and was located approximately 20 yards from where the band performed. She said that even with her television or stereo on, she could still feel the drums. She said she thought the band was part of the youth group's church services and band practices. She noted that the staff report indicated the activities would be moved to the new building, and if the trees lived and the sound absorption system worked, that would help.

Raju Khemani, 9468 Harrowhill Lane, Burke, Virginia, came forward to speak. Mr. Khemani stated that he was the vice president of the Weston Hills Homeowners Association. He said the association generally supported the addition, but had concerns. He said he was perplexed that the church was planning to add a 6,000-square-foot structure and did not anticipate a dramatic increase in traffic. Mr. Khemani said the church was not adding any parking spaces. He said there was concern that the proposal, which included landscaping, would not be enough because alongside the driveway there was nothing stopping the young folks from coming over to the houses, which had occurred in the past. He said, in addition to the heavy landscaping, the association wanted to propose that a fence be constructed along the side of the driveway to avoid any future traffic.

Mr. Hart asked Mr. Khemani to point out on the overhead where he was proposing the fence be constructed, and Mr. Khemani complied. Mr. Hart asked whether the fence was an issue that staff had looked at. Ms. Langdon replied that staff had reviewed the issue. She explained that there was a condition that required a partial area to be fenced adjacent to the building, but staff supported a waiver further up because staff felt the vegetation would be sufficient. In response to questions by Mr. Hart regarding the difference between

~ ~ ~ March 16, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 493

the fencing staff was supporting and Mr. Khemani was proposing, Ms. Langdon indicated that what Mr. Khemani was suggesting would be approximately 200 more feet in length and would be located between the west edge of the parking and the street.

In response to Ms. Gibb's question regarding the purpose of the fence, Ms. Langdon responded that staff had suggested it in the parking area to help keep the headlights from going over to the properties, and it would also keep people from going from one area to the other.

Mr. Khemani added that the existing residential area was completely fenced in alongside the rest of the boundary. He said the board members of the association had not been approached by anyone regarding the use of the existing storm drainage facility.

Janice Feather, 9461 Harrowhill Drive, Burke, Virginia, came forward to speak. She stated that she was the secretary/treasurer of the Weston Hills Homeowners Association. She said there were currently lights affixed to the existing church structure that were mounted quite high and pointed toward the parking lot and the surrounding homes. She said the association's preference would be that the lighting be pole-mounted and pointed toward the parking and back to the church building. She said it was unclear to her from reading the application what the plan was for any additional lighting around the new building.

In rebuttal, Mr. Williams stated that there was a development condition stating that any proposed lighting would be limited to 12 feet in height, shielded, and directed downward to mitigate any spillover onto adjacent properties. He said the church would be willing to adapt the existing lighting to be consistent with the proposed. He said that if it were deemed necessary, the church would be willing to extend the fence. With regard to the stormwater management facility, Mr. Williams said that if the existing facility was to be utilized, the church would work with homeowners association to come to a mutual agreement.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he thought there were unresolved issues regarding noise, the fence, and stormwater management. He said the existing lighting would have to be corrected according to Development Condition 15. He said staff should look into the noise issue and put in development conditions in that regard. Mr. Hammack moved to defer decisions on VC 2004-BR-008 and SPA 81-A-002-04 to May 25, 2004, at 9:00 a.m. Mr. Beard seconded the motion and said he would like to see more from the aesthetic standpoint. Mr. Pammel indicated he would support the motion and requested that the representatives present in opposition and the trustees of the church along with its engineer meet, discuss the issues, come to a consensus, and report back to the Board when the application was scheduled for a decision. In regard to the compatibility of the proposed structure with the neighborhood, Mr. Pammel said the design features should be shared with the community and the Board. Mr. Ribble stated that he would support the motion, but the current lighting situation already in violation needed to be taken care of immediately as well as the noise issue.

The motion carried by a vote of 7-0.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. JOSE FLORES, SP 2003-LE-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 addition to remain 5.0 ft. with eave 4.0 ft. from side lot line. Located at 6607 Buckskin St. on approx. 8,400 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (1) 508.

Chairman Ribble noted that the notices for this case were not in order. Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicant had not completed the notices for the second time, and there was an existing violation on the property.

The applicant, Jose Flores, came forward to speak, but was advised by Chairman DiGiulian that the application could not be heard by the Board because he had not sent out the required notices. Mr. Flores

~ ~ ~ March 16, 2004, JOSE FLORES, SP 2003-LE-039, continued from Page 494

replied that he had sent the notices.

Ms. Langdon stated that staff had not received anything back from the applicant for the second round of the notices and had no information regarding what had been sent, if anything. She explained that some of the required previous notices had been sent and some had not. She said staff had attempted to contact the applicant, but had received no return calls.

Mr. Flores stated that he had sent the notices 15 days prior and had sent in a copy. Ms. Langdon noted that the applicant had some notices with him at the hearing, but it was the first time staff had seen them. Chairman DiGiulian asked whether the notices could be checked at the hearing. Ms. Langdon responded that they could not be checked at the hearing because they had to be checked against the tax records.

Chairman DiGiulian stated that the hearing would have to be again deferred. He stated that as far as he was concerned, it would be the last deferral.

Mr. Flores stated that he had sent the notices for the second time. It was explained to him that he needed to bring documentation in to staff showing the notices had been sent. Mr. Flores said he had sent them in certification mail and had put down Fairfax County.

Chairman DiGiulian asked whether there was someone in Ms. Langdon's office who could help the applicant with his notices. Ms. Langdon said that staff was available and very willing to help applicants. She stated that staff had attempted to contact the applicant numerous times and had not been able to get in touch with him.

Chairman DiGiulian asked the applicant whether he would contact staff, and Mr. Flores replied that he would.

Mr. Hammack moved to defer SP 2003-LE-039 to April 20, 2004, 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:00 A.M. INTEKHAB A. KHAN, VC 2003-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 5822 Atteentee Rd. on approx. 10,491 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (61) 11. (Deferred from 2/10/04 for decision only.)

Intekhab Khan, 5822 Atteentee Road, Springfield, Virginia, came forward to speak.

Chairman DiGiulian noted that the application had been deferred for decision only.

Mavis Stanfield, Senior Staff Coordinator, advised the Board that the application had been deferred to allow the members to evaluate the location of the fence, and Mr. Khan was to come back with a proposal to address some of the Board's concerns. She said Mr. Khan had submitted a letter the prior day and indicated that he would prefer not to move the fence back because of the fruit trees, but he had indicated to staff that he would be willing to do so if that was the only solution offered by the Board.

Photographs of the fence were distributed to the Board. Ms. Stanfield advised the Board that Leo Conrad, Zoning Enforcement Branch, who had conducted an onsite inspection, was present and could speak to the location of the fence with respect to the street if the Board desired.

Mr. Conrad stated that the fence on Flora Street was inside the sidewalk line and did not go all the way to the street. He said there was no visibility problem on the corner. Mr. Conrad distributed photographs of the property to the Board.

Mr. Pammel said he understood the applicant desired privacy for his wife and daughter. He recalled that the Board had a case on Vale Road in Vienna with a similar situation, and the Board had denied the variance request because it was not in character with the surrounding properties and there was a potential for a

~ ~ ~ March 16, 2004, INTEKHAB A. KHAN, VC 2003-LE-182, continued from Page 495

visibility problem. He said that although the zoning inspector had indicated that visibility was not an issue, the fence was seven feet in height, and even if it was reduced somewhat, it would still be an imposing height that was not consistent with the character of the surrounding area. He said he felt the fence had to be brought down in the front yard area to the maximum height permitted by the Code of four feet.

Mr. Pammel moved to deny VC 2003-LE-182 for the reasons stated in the Resolution. Mr. Hammack seconded the motion.

Ms. Gibb stated that she would support the motion, although she said she could have supported a fence higher than four feet, but not 7.8 feet. She said that because there was testimony from staff that there was not a sight distance issue, the Board was reduced to talking about aesthetics and whether it was compatible with neighboring properties. She noted that the applicant had given the Board photographs of other homes in the area with tall fences, but in looking at them, she said they did not seem as high or as imposing.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

INTEKHAB A. KHAN, VC 2003-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 5822 Atteentee Rd. on approx. 10,491 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (61) 11. (Deferred from 2/10/04 for decision only). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Applicant has not met the prescribed criteria for the granting of the variance.
3. The fence is not in harmony with the surrounding residential properties in the area.

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

~ ~ ~ March 16, 2004, INTEKHAB A. KHAN, VC 2003-LE-182, continued from Page 496

all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 7-0. Mr. Hart made a motion to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02 and 4/30/02) (Deferred for decision only from 6/4/02, 9/10/02, 2/4/03, 5/20/03, 10/7/03, and 12/16/03) (Admin moved from 5/6/03)

Chairman DiGiulian and Mr. Hart indicated they would recuse themselves from the public hearing.

Vice Chairman Ribble assumed the chair.

H. Kendrick Sanders, Esquire, the appellants' agent, came forward to speak. He noted that the matter had been continued and said the appellants did not agree with the staff report provided to the Board describing the current status. He said only one of the photographs included in the staff report was recent, and he presented the Board with other photographs of the site. He stated that the vehicles in the photographs were located on Mr. Cifuentes' side of the property line, not on the subject property, and appeared to be vehicles that were being used rather than inoperable. Mr. Sanders reported that the site had been cleaned up with the exception of two piles of concrete. He explained that a trespasser, Mr. Cifuentes, had come onto the subject property, encroached, squatted, and began using the property and had torn down trees, which had not been discovered until after he had moved across onto the subject property, at which time the appellants and Mr. Cifuentes were cited by the County for maintaining a junkyard. Mr. Sanders said the appellants had been pushing Mr. Cifuentes to clean up the site and had met with him on the site many times, and over time the site had been slowly cleaned.

Mr. Sanders reported that the appellants had the water quality tested, and the reports on the steam in the floodplain were clean, and the floodplain had been cleared out. He said the property would likely be developed, was zoned R-1, master planned I-5, and was located in an industrial area. He stated that Mr. Cifuentes had been under court order to comply and clean up the appellants' site as well as his own and had failed to meet deadlines in court. Ms. Sanders said he understood that as a result of a court order, a pending grading plan had been submitted by Mr. Cifuentes which included the subject site, although previous grading

~ ~ ~ March 16, 2004, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 497

plans he had submitted had been rejected for not meeting requirements. Mr. Sanders reported that the junk cars and debris which had initially covered the property had been removed over time, leaving a cleared piece of land which was not doing damage to the environment. He said the grading plan would require the removal of the remainder of the trash and some sort of remediation or stabilization. Mr. Sanders stated that progress had been made with plans filed, and Mr. Cifuentes was under daily fines and court orders, and a further deferral of the matter was appropriate.

In response to Ms. Gibb's question regarding whether a grading plan was necessary in order to remove the cement, Mr. Sanders said he did not know, but assumed that if it was graded to remove it, it would be necessary.

Mr. Pammel asked why a truck and a front-end loader could not be brought in to pick up the concrete pieces and remove them. Mr. Sanders replied that tons had been removed in that manner, but the culpable party was before the courts and before the Board and should be made to do it.

In response to Mr. Pammel's question regarding who would take care of the concrete if Mr. Cifuentes went bankrupt in light of all the fines being imposed upon him, Mr. Sanders said it would be removed by some developer or the appellants. He said he would ask Mr. Dowdy if he would spend a few thousand dollars to get rid of the concrete, but he did not think the County was saying that was the answer, that there should be a plan to remove it and put in stabilization of some kind, which was what Mr. Cifuentes was under order to do.

Mr. Beard asked whether Mr. Cifuentes had been conforming to the court order dated August 1, 2003. Joe Bakos, Zoning Enforcement Division, replied that Mr. Cifuentes had marginally been in compliance, but had not met specific deadline dates. He reported that plans had been submitted for review and approval, but they were found to be inadequate and were returned to the engineering offices that had prepared them.

Mr. Sanders said one of the recent issues had been that a fence between the properties that had been padlocked by Mr. Cifuentes, and the only access to the subject property was through Mr. Cifuentes' property. Mr. Sanders said he did not know why that was done, but it may have been to keep Mr. Cifuentes' tenants from adding to the debris on the subject property.

Jayne Collins, Zoning Administration Division, presented staff's position. She stated that the BZA had conducted the public hearing for the appeal on January 22, 2002, and deferred decision to allow time for the responsible parties to clear the property of the remaining debris, which would resolve the issue on appeal. The continuation of another public hearing for an adjacent Cinderbed Road property owned by Mr. Cifuentes had also occurred on January 22, during which Mr. Cifuentes admitted that he had encroached on Lot 6B and took full responsibility for the cleanup of all the lots. On June 20, 2002, Mr. Cifuentes and the County had entered a consent decree which included the specific timeline for certain phases of the cleanup of both Mr. Cifuentes' property and the appellants' property, and he was required to submit and obtain the approval of a rough grading plan, remove all items comprising the junkyard, implement erosion and sediment control and stabilization measures, and install all plantings required by the Department of Public Works and Environmental Services (DPWES); however, the consent decree deadline was not met, and the County filed a rule to show cause. On January 10, 2003, Mr. Cifuentes had been found in contempt of court and fined \$100 a day. Ms. Collins stated that despite the consent decree and based on periodic inspection, large pieces of concrete and other junk and debris continued to be present on the property. She said it was apparent that little progress had been made in clearing the property of the violations, and the appellants were responsible for their property in accordance with Paragraph 3 of Section 18.901. She said it was staff's understanding that the appellants had notified Mr. Cifuentes in writing that the remaining junk and debris must be removed from the property, and a document that allowed Mr. Cifuentes entry onto the subject property to clean it up was executed.

Ms. Collins reported that staff had been informed the day prior to the hearing that Mr. Cifuentes had submitted a rough grading plan to DPWES, but it had not been approved, and there was no guarantee it would be approved nor that Mr. Cifuentes would implement the plan. She stated that staff had supported deferrals since the January 2002 public hearing to allow time for the cleanup of the property, but given the time that had elapsed, could not support any further deferrals and requested the BZA take action to uphold the Zoning Administrator. Ms. Collins added that the photographs showing cars had been from the original

~ ~ ~ March 16, 2004, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 498

staff report prepared years prior, but the update the Board had received included recent photographs showing the pieces of concrete and remaining junk on the property. She stated that the property was still in violation, and the appellants were the property owners and, therefore, responsible for clearing the property of the violations.

In response to Ms. Gibb's questions regarding what needed to be done besides removing the cement, Ms. Collins said they had to remove all the junk and install any plantings that DPWES required and stabilize the site with erosion and sediment control measures. Mr. Bakos said it would likely be filter fabric fence located near the streamline as well as hay and mulch spread over the denuded areas with grass seed. He said the plantings would be subject to the Chesapeake Bay regulations, and the court order required a grading plan.

Ms. Gibb requested more information about access to the subject property. Mr. Bakos stated that access was through Mr. Cifuentes' entrance, and the gate had been closed to prevent the last remaining tenants on the site from entering the property and dragging more junk vehicles onto Lots 15 and 15A. Mr. Bakos said that when he was last at the property in February, there were two tenants remaining who were to be gone by the end of the month, but he had not verified whether that had subsequently occurred. He reported that the gate had been open when he drove onto the property, but after he had completed his inspection, he discovered that gate had been closed and padlocked behind him. He said that Mr. Cifuentes had indicated he would open the gate for anyone if they contacted him in advance to schedule.

Vice Chairman Ribble asked whether there had been difficulties contacting Mr. Cifuentes, to which Mr. Bakos replies that he could be elusive.

Vice Chairman Ribble commented that everything on Cinderbed Road was supposed to have been on a fast track to clean up. He asked whether the grading plan could also be put on the fast track to get it approved. Mr. Bakos replied that he could ask his colleagues in DPWES, but it was outside of the Zoning Enforcement Branch's authority.

Mr. Sanders stated that the only issue before the Board was the original violation of the operation of a junkyard, and Ms. Gibb's questions regarding what would happen next was a separate issue which was not before the Board. He said that four years prior there had been piles of junk cars, batteries, and huge mounds of junk on the property, which had been since been cleaned up, so when saying no progress had been made, the issue was getting the junk off the property, not anything else that may have to be done on the property. Mr. Sanders stated, though, that Mr. Cifuentes was under a court order to do remediation under violations beyond the Zoning Ordinance.

Ms. Gibb said that if the issue was whether there was a violation on the date the Board first heard the appeal, the answer would be yes, there was. She said the Board defers cases to give the appellants a chance to clean it all up, and then the Board can say there was a violation, and it is now all gone, but if the last bit is not removed and the Board goes back to the issue of was there a violation on the day of the hearing, then everyone agrees there was.

Ms. Sanders said the appellants' good faith position was that a criminal trespasser committed this, had been caught, and found culpable under court orders, so there was an overriding principle involved that he should be dealt with before an innocent landowner was dealt with.

In response to Mr. Hammack's question of how long a deferral the appellants were requesting, Mr. Sanders replied that plan review would probably take 60 days.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she was uncertain how long it would take for the rough grading plan to go through process, but it was unknown whether it would result in an approval or may be returned to the engineer and continue on the same kind of past cycle. She stated that there was a requirement in the consent decree that from the time the plan was approved, the site had to be cleaned up within 120 days. She said staff did not support a deferral given the number of previous deferrals, the lack of real progress, and the uncertainty of whether the current grading plan would be approved.

Ms. Gibb said it was unclear to her what the rough grading plan had to do with the cement removal. Mr.

~ ~ ~ March 16, 2004, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 499

Bakos responded that the code requirement was that disturbing more than 2,500 square feet required a grading plan. He said the concrete was poured as close as five feet to the embankment of the stream, and he thought a plan was necessary to preserve what was left of the environment.

Mr. Beard asked whether the appellants had full and free access to the property if they took on the cleaning and whatever other action was needed to resolve the issue. Mr. Sanders responded that the appellants had given Mr. Cifuentes the right to come onto the appellants' property in writing, but had not received anything in writing from Mr. Cifuentes giving the appellants the right to go through his property. He added that, as Mr. Bakos mentioned, Mr. Cifuentes had stated he would open the gate if contacted. Mr. Sanders said the appellants were technically at the mercy of Mr. Cifuentes because they had no easement. He said the subject property was landlocked, and to develop access was a problem due to the proximity of the floodplain down Cinderbed Road which would have to be built through in accordance with the Chesapeake Bay Act.

Mr. Hammack commented that if he understood staff, even the appellants could not remove the concrete without a grading plan. Ms. Collins stated that a rough grading plan was required if more than 2,500 square feet was disturbed.

Mr. Hammack said that staff was imposing requirements on the appellants to remove things they did not place there and then imposing additional requirements on how they were to be removed, but wants it done right away, which he said put the appellants in a dilemma. He said he would support another deferral for six months or at least 120 days.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to defer decision on A 2001-LE-023 to September 21, 2004, at 9:30 a.m., with an interim report to the Board from the appellants within three months to give the status. He indicated it was his thought that it should be the last deferral and the matter should be resolved. Mr. Hammack seconded the motion, which passed with a vote of 5-0. Chairman DiGiulian and Mr. Hart recused themselves from the hearing.

Ms. Gibb stated that she wanted to know from staff whether a grading plan was needed.

Mr. Hammack commented that he was interested in the legal issues raised by Mr. Sanders regarding whether an innocent landowner could be held in violation of a criminal statute for something done by a third party without their permission, and he invited anyone to submit any case law on the issue.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:30 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8))(2) 2A.

Vice Chairman Ribble noted that A 2003-SP-055 had been administratively moved to April 27, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ March 16, 2004, Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map

~ ~ ~ March 16, 2004, MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037, continued from Page 500

93-2 ((1)) 4. (Admin. moved from 10/28/03 and 12/9/03 at appl. req. to 2/3/04) (Moved from 2/3/04 due to inclement weather) (Deferred from 3/9/04 at appl. req.)

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, agent for the appellants, requested a six- to eight-month deferral to allow time for the filing of a special exception application. She said she realized staff was in opposition to a further deferral of the application.

Mr. Pammel commented that the lifts existed. He said that from what he had read in the staff report, permits had not been obtained, and the owner at the time had erected the outdoor lifts and expanded the operation of the station without going through the necessary permit process. Ms. Kelsey agreed that lifts were on the property. She said the appellant had replaced what he believed to be unsafe lifts that were there when he purchased the station the prior year. She stated that the appellant was aware that he was under a special exception, but he was not aware of the extent to which a special exception governed and was not aware that the County's position, if asked, would have been that the existing lifts had not been legally placed there. Ms. Kelsey said she did not know whether there had been building permits for the original lifts, but she had found none in the street files. She stated that the station had been in existence since 1951, with the special exception amendment being approved in 1988 to allow canopies, but the canopies did not show the lifts on the plat that staff believed to be the special exception plat. Ms. Kelsey said that the appellant was in the process of applying for a special exception, which staff had indicated they would support under certain conditions. She said the appellant had determined the cost of the addition staff required to cover the lifts, and the owner of the property had given the appellant verbal consent, but the appellant was endeavoring to obtain a written agreement.

Mr. Pammel asked whether staff had a problem with allowing the appellant to move through the special exception process to resolve the issue and if a deferral to do so would be acceptable to staff. Donna Pesto, Zoning Administration Division, replied that staff did not have a problem, but that ten months had passed since the notice of violation had been issued, and staff had expected that a special exception application would have been filed and pursued. She said that staff thought there had already been adequate time and had not seen much progress on the site. Ms. Pesto said no special exception application had been submitted, and the lifts could have been removed if the appellant had wanted to pursue the additions to the structure through the appropriate process.

Vice Chairman Ribble said someone had told him there were 40 to 60 lifts in the Mount Vernon area, and he asked whether there had been other complaints. Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that there had been no recent complaints, but there had been a complaint on Franconia Road a few years prior where the owner had gotten an approved special exception. She added that the Zoning Enforcement Branch acted on a complaint basis. Mr. Pammel stated that there were other lifts in the county, and he suggested that enforcement should take a proactive approach.

In response to Ms. Gibb's question regarding whether the appellant had already hired an engineer, Ms. Kelsey said she had contacted an engineering firm and expected to have a plat completed within the next month.

In response to Mr. Beard's questions regarding how the violation originated, Ms. Pesto said it was based on a complaint, and there had been no permit for the lifts. Ms. Kelsey stated that the complainant had been a disgruntled employee of the service station who lived in Manassas. She said she had spoken with three members of the New Alexandria Citizens Association, and none had objections to the lifts remaining or to the requested deferral. Ms. Kelsey said she had been told by Ms. Pesto that one complaint had been received, and Ms. Kelsey intended to contact the complainant to discuss the concerns, but had not yet done so.

Mr. Hart asked how quickly the appellant could get the special exception application filed. Ms. Kelsey said the plat and the consent were holding up the process. She said she could get the application filed in two months.

Mr. Beard commented that the appellant had recently purchased the business where the lifts had been located since the 1970s, and a reasonable deferral was in order. Mr. Beard moved to defer A 2003-MV-037 for six months. Ms. Gibb seconded the motion.

~ ~ ~ March 16, 2004, MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037, continued from Page 501

Mr. Pammel suggested a deferral of 60 days to allow for the filing of the special exception application in light of staff's concern that nothing had happened in 10 months, and if the application was successfully filed within the 60 days, the Board would have a basis to grant another deferral to allow the process to be completed.

Ms. Gibb said she thought it would take longer than two months for an engineer to complete the plat.

Vice Chairman Ribble called for the vote. The motion failed by a vote of 3-3. Mr. Hart, Mr. Pammel, and Mr. Hammack voted against the motion. Chairman DiGiulian was not present for the vote.

Mr. Pammel moved to defer A 2003-MV-037 to May 18, 2004, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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~ ~ ~ March 16, 2004, After Agenda Item:

Request for Additional Time  
Ajey Bargoti, SP 97-Y-014

Mr. Pammel moved to approve two years of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote. The new expiration date was January 30, 2006.

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~ ~ ~ March 16, 2004, After Agenda Item:

Request for Additional Time  
Dulles Indoor Sports Complex, LLC, SP 99-Y-043

Mr. Pammel moved to approve eight months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote. The new expiration date was September 26, 2004.

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~ ~ ~ March 16, 2004, After Agenda Item:

Approval of BZA Meeting Dates for the Last Six Months of 2004

Vice Chairman Ribble stated that the Board would defer this item for one week.

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Mr. Pammel moved that the Board endorse the reappointment of John Ribble. Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Vice Chairman Ribble abstained from the vote. Chairman DiGiulian was not present for the vote.

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~ ~ ~ March 16, 2004, After Agenda Item:

Request for Reconsideration  
Scott Force and Anne Force, VC 2003-MA-195

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicant was present to answer any questions of the Board.

Mr. Hart asked whether the Board had waived the 12-month waiting period for refiling an application. The

~ ~ ~ March 16, 2004, AFTER AGENDA ITEMS, continued from Page 502

Board determined that it had.

Ms. Langdon confirmed for Mr. Hammack that the two-story addition was proposed to be located 5.6 feet from the property line. Mr. Hammack said he stood by his previous motion. He said the two-story addition was too close to the property line, and the addition was long as well. Mr. Pammel indicated he was in agreement with Mr. Hammack. Ms. Gibb stated that the basis for her vote had been the length and breadth of the addition which did not fit in the neighborhood. Mr. Hart said the addition was too long, tall, and big. He said he thought it could be scaled down or reconfigured.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ March 16, 2004, After Agenda Item:

Approval of March 9, 2004 Resolutions

Mr. Pammel moved to approve resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: September 18, 2007



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 23, 2004. The following Board Members were present; Vice Chairman John F. Ribble, III; Nancy E. Gibb; Paul W. Hammack, Jr.; James R. Hart; and James D. Pammel. Chairman John DiGiulian and V. Max Beard were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:03 a.m. Vice Chairman Ribble reviewed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. MATTHEW FRANK CARROLL, VC 2003-DR-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. with eave 12.2 ft. from rear lot line and accessory structure 3.0 ft. with eave 2.5 ft. from side and rear lot lines. Located at 2144 Emilys Ln. on approx. 16,584 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-3 ((4)) 50. (Moved from 2/3/04 due to inclement weather.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Matthew Carroll, 2144 Emilys Lane, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a variance to permit construction of a two-story addition to be located 13.2 feet with an eave 12.2 feet from the rear lot line and an accessory structure, consisting of a detached garage, to be located 3.0 feet with eaves 2.5 from both the side and rear lot lines. A minimum rear yard of 25 feet and minimum side yard of 10 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, variances of 11.8 feet and 9.8 feet were requested for the addition, 7.0 feet and 4.5 feet were requested for the accessory structure for the side yard, and 14.0 feet and 11.5 feet were requested for the accessory structure for the rear yard.

Mr. Carroll presented his variance request as outlined in the statement of justification submitted with the application. He noted the parking problems he and his neighbors endured with living on a cul-de-sac. He said that with the garage's proposed location, it would not impact anyone.

Mr. Carroll responded to questions from Board members. At the suggestion of Mr. Pammel, he agreed to a five-foot setback. Responding to Mr. Hart's question, he said the garage would be built of vinyl wood and be compatible with the character of his house. In response to Ms. Gibb's question, Mr. Carroll affirmed that all the trees along the perimeter would remain and not be disturbed.

Vice Chairman Ribble called for speakers.

David A. Issac, 3033 Silent Valley Drive, Fairfax, Virginia, identified himself as the project designer for Mr. Carroll. So as to be compatible and match the house, he said he designed the three-car garage and the addition in a colonial style. He stated that he believed the garage was a necessity for the Carrolls as they currently had to park in the street. Mr. Issac stated that guests of the Carrolls would also be accommodated as they too would no longer have to park out on the cul-de-sac.

There being no further speakers, Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2003-DR-179 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTHEW FRANK CARROLL, VC 2003-DR-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. with eave 12.2 ft. from rear lot line and accessory structure 3.0 ft. with eave 2.5 ft. from side and rear lot lines. **(THE BZA APPROVED THE ACCESSORY STRUCTURE 5.0 FEET**

~ ~ ~ March 23, 2004, MATTHEW FRANK CARROLL, VC 2003-DR-179, continued from Page 505

**WITH EAVE 4.5 FEET FROM THE SIDE AND REAR LOT LINES.)** Located at 2144 Emilys Ln. on approx. 16,584 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-3 ((4)) 50. (Moved from 2/3/04 due to inclement weather.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; 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 prescribed standards for the granting of a variance.
3. The lot is very irregularly shaped.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and a detached garage, shown on the plat prepared by Bryant L. Robinson, dated June 19, 2003, as revised through October 15, 2003, submitted with this application and is not transferable to other land.

~ ~ ~ March 23, 2004, MATTHEW FRANK CARROLL, VC 2003-DR-179, continued from Page 506

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding what is shown on the plat, the accessory structure shall not be located closer than 5.0 feet with eave 4.5 feet from the side and rear lot lines.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Chairman DiGiulian and Mr. Beard were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. THUYET V. HO, SP 2003-LE-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.1 ft. from side lot line and shed to remain 5.0 ft. and 4.0 ft. from side lot lines and 3.0 ft. from rear lot line. Located at 7202 Dormont St. on approx. 9,589 sq. ft. of land zoned R-3 and R-4. Lee District. Tax Map 80-3 ((3)) (78) 19. (Moved from 1/27/04 due to inclement weather.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thuyet Ho, 7202 Dormont Street, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a special permit to allow a reduction to the minimum yard requirements based on an error in the building location to permit the enclosure of a carport to remain 7.1 feet from a side lot line, and to permit an 8.7-foot high shed to remain 5.0 feet and 4.0 feet from the side lot lines and 3.0 feet from the rear lot line. This lot was split-zoned R-3 and R-4, with the dwelling located entirely within the R-3 District and the shed entirely within the R-4 District. Modifications of 4.9 feet for the carport enclosure and 5.0 feet, 6.0 feet, and 5.7 feet for the shed, respectively, were requested.

Mr. Ho presented his special permit request as outlined in the statement of justification submitted with the application. He said that the approval of this special permit would allow his carport to remain. In response to Mr. Hammack's question, he said he contacted the County for instructions on constructing the shed and was informed that a permit was not necessary. In response to Mr. Hammack's and Mr. Hart's questions, he said there was no electrical connection to the shed, the shed's foundation was concrete, and with the help of a family friend, he built the shed in 1990.

In response to Ms. Gibb's question, Ms. Stanfield noted that the application was before the BZA because of a complaint filed through Code Enforcement with the Department of Public Works and Environmental Services. She added that there was no paper trail.

When Mr. Hammack pointed out that a building permit was not obtained when the carport was added, Ms. Stanfield said that staff would include a development condition stipulating that the applicant comply with all applicable ordinances.

~ ~ ~ March 23, 2004, THUYET V. HO, SP 2003-LE-043, continued from Page 507

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2003-LE-043 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THUYET V. HO, SP 2003-LE-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.1 ft. from side lot line and shed to remain 5.0 ft. and 4.0 ft. from side lot lines and 3.0 ft. from rear lot line. Located at 7202 Dormont St. on approx. 9,589 sq. ft. of land zoned R-3 and R-4. Lee District. Tax Map 80-3 ((3)) (78) 19. (Moved from 1/27/04 due to inclement weather.) 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 23, 2004; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following

~ ~ ~ March 23, 2004, THUYET V. HO, SP 2003-LE-043, continued from Page 508

development conditions:

1. This Special Permit is approved for the location of an enclosure of a carport and a shed, as shown on the plat prepared by Peter R. Moran, dated August 30, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. JOHN S. BRUNETTE AND XIMENA M. BRUNETTE, SP 2003-DR-044 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 16.15 ft. from side lot line. Located at 1059 Bellview Pl. on approx. 2.07 ac. of land zoned R-E. Dranesville District. Tax Map 20-3 ((23)) 2. (Moved from 1/27/04 due to inclement weather.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Esquire, Walsh, Colucci, et al., 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, Virginia, agent for the applicant, replied that it was.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in the building location to permit a dwelling to remain 16.15 feet from the side lot line. A minimum side yard of 20 is required; therefore, a reduction of 3.85 feet was requested. Mr. Sherman stated that a revised affidavit was distributed that morning.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She said it was due to a surveying error made prior to the house's construction that the house did not meet the minimum required setback. On the plat, she pointed out how the home could easily have been sited closer to the eastern property line to satisfy the minimum yard requirements. The placement of the house was an error and not the result of constructing a house so as to maximize its building footprint. She stated that the error was performed in good faith and that the applicants had obtained all the required permits. Ms. Strobel stated that in this case enforcing the Ordinance would result in undo hardship.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2003-DR-044 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN S. BRUNETTE AND XIMENA M. BRUNETTE, SP 2003-DR-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

~ ~ ~ March 23, 2004, JOHN S. BRUNETTE AND XIMENA M. BRUNETTE, SP 2003-DR-044, continued from Page 509

permit dwelling to remain 16.15 ft. from side lot line. Located at 1059 Bellview Pl. on approx. 2.07 ac. of land zoned R-E. Dranesville District. Tax Map 20-3 ((23)) 2. (Moved from 1/27/04 due to inclement weather.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has presented testimony indicating compliance with 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.
3. This case is exactly the kind of case the Ordinance was intended to address.
4. The home is substantial, and is located slightly encroaching into the minimum side yard as the result of a surveying error.
5. There is no way the house can be moved.
6. Based on the record available, there is no significant negative impact on anybody.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

~ ~ ~ March 23, 2004, JOHN S. BRUNETTE AND XIMENA M. BRUNETTE, SP 2003-DR-044, continued from Page 510

1. This special permit is approved for the location of the dwelling shown on the plat prepared by Robert C. Baker, dated February, 2003, revised September 30, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. PARVIZ JAFARBAY, SP 2004-SU-006 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 15553 Smithfield Pl. on approx. 25,943 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((2)) 18.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Parviz Jafarbay, 15553 Smithfield Place, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought to keep two domestic fowl, specifically Chinese Geese, as pets on a lot containing less than two acres. The subject property contained 25,942 square feet (0.59 acres), and the geese were kept in a fenced area in the rear yard of the house during the daytime and in a caged area under the deck at the rear of the house during the night.

Mr. Sherman responded to questions from Mr. Pammel and stated that a minimum of two acres was required to permit the keeping of geese. He said that up to 16 geese would be permitted on a two-acre lot. In response to Ms. Gibb's question, he said there was a zoning violation filed, but was unsure whether or not there had been a complaint.

Discussion followed between the Board members concerning domestic versus wild animals and fowl and specific language in the zoning inspector's citation. Susan Langdon, Chief, Special Permit and Variance Branch, clarified that the geese were domestic fowl, not Canada geese, and that the Ordinance prohibited fowl on lots with less than two acres without a special permit.

Mr. Jafarbay explained that he purchased the two geese after being advised that pets could help alleviate his wife's depression over the death of their son. He said that when she busied herself with caring for the geese, it took her mind off her grief. Mr. Jafarbay said that the geese were kept clean, were quiet, stayed in the back yard, and were not a problem to the neighbors. Mr. Jafarbay affirmed he had no problem with any of staff's conditions.

Vice Chairman Ribble called for speakers.

Allen Vejdani, 3537 Queen Anne Drive, Fairfax City, Virginia, came forward to speak in support of the application. He said someone reported the geese, which was against the community association's covenant, and the complaint was turned over to the County. He said both Jafarvays were struggling with their grief, each being on medication, and the geese apparently had a positive, soothing effect. He pointed out that Mr. Jafarbay spent a substantial amount to assure the geese were well maintained, had comfortable housing, and enjoyed a safe and pleasant existence. He said the Jafarvays were good neighbors, and he urged the Board to allow them to keep their geese.

~ ~ ~ March 23, 2004, PARVIZ JAFARBAY, SP 2004-SU-006, continued from Page 511

Ms. Gibb moved to approve the special permit application for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PARVIZ JAFARBAY, SP 2004-SU-006 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 15553 Smithfield Pl. on approx. 25,943 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((2)) 18. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There are two letters in support of the applicant.
3. The back yard is large, and the geese are rather small.
4. The Board has in the past approved the keeping of other fowl as well as six small dogs.
5. No one has come forward to complain, and whoever filed the anonymous complaint has not come forth.
6. There are no complaints regarding a noise nuisance or an unclean environment.
7. The area where the geese are kept looks clean and neat.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Parviz Jafarbay, and is not transferable without further action of this Board, and is for the location indicated on the application, 15553 Smithfield Place (25,943 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for two (2) Chinese Geese.
4. The yard areas where the geese are kept shall be cleaned regularly, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31,

~ ~ ~ March 23, 2004, PARVIZ JAFARBAY, SP 2004-SU-006, continued from Page 512

2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. CARLOS CABALLERO, VC 2003-LE-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yard, accessory structures 0.0 ft. from rear lot line, and minimum rear yard coverage greater than 30 percent. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)) 1. (Decision deferred from 2/24/04)

Vice Chairman Ribble announced that this case was deferred for decision as the Board had requested additional information. He called the applicant to the podium and asked that he identify himself for the record.

The applicant, Carlos Caballero, came forward and said he resided at 6435 Franconia Road, Springfield, Virginia.

Bill Sherman, Staff Coordinator, noted the case was deferred for decision from February 24, 2004; that it was heard concurrently with a special permit which had been approved February 24, 2004; and that the Board requested the company who built the tennis court be contacted and asked to appear to respond to why the necessary permits were not obtained. Mr. Sherman stated that staff was unable to contact the company, and there was no one present to speak to the permits issue.

Mr. Cabellero stated that a zoning inspector also tried to locate the tennis court construction company, but was unsuccessful.

Mr. Hart suggested that when trying to get information on people involved in the construction industry, a search function could be used on the Department of Professional and Occupational Regulations Website to search by the names of companies or the principals. If a company went out of business, people who make their livelihood in construction often form a new company under another name, so if someone were operating in Virginia, searching for the person's name should locate him.

Mr. Pammel said he was concerned for the citizens when unorthodox contractors did not follow proper procedure, nor obtain the permits, and then conveniently disappeared. He said that it was occurring more frequently.

Ms. Gibb concurred with Mr. Pammel on his concern for the citizens. She stated that she also was concerned that Mr. Caballero was being held up while the Board waited for information. She said if it were an issue of good faith, then she understood a deferral.

Mr. Hammack pointed out that if the variance was granted, there was no incentive for the contractor to come forward, and as long as the case remained open, a subpoena could be issued. He noted that as evidenced by Mr. Caballero's invoice, the contractor charged \$300 for permits. He also pointed out that the court's light standards were quite tall and that the 10-foot fence was higher than any fence the Board allowed.

Mr. Hart pointed out that the tennis court was already built, a violation was issued, and the applicant's use of his property remained the same until the Board made its decision. He said if the Board was to review the application as a new application requesting a variance to permit the construction, in his opinion, it would be very difficult to find that the required standards for a variance were met. He said that the fence was very high, the tennis court lighted, and because of the house, the driveway, and the pool, the court sat on a lot almost entirely covered with impervious surface. Mr. Hart said if the information was available, he definitely wanted to see it, and he wanted to know how the contractor had proceeded to completion without a permit or approvals. Mr. Hart submitted that the applicant's project was not being held up, but rather it was a matter of what the Board would decide, and considering the current facts, nothing would change whether the Board made its decision that day or in a month.

~ ~ ~ March 23, 2004, CARLOS CABALLERO, VC 2003-LE-187, continued from Page 513

Ms. Gibb stated that there was a certain amount of anxiety not knowing if one will be required to rip up one's improvements. She said the Board should not assume anything from a general complaint in which no one specifically was named to claim that the lights bothered them.

Vice Chairman Ribble commented that the construction of a tennis court should have recordation and be trackable.

Mr. Sherman noted that the court's lights were specifically mentioned in the violation because they were accessory structures that were too tall and were placed right on the property line. He said his understanding of the complaint was that it generated from a recently constructed neighborhood to the south that apparently had issues with the tennis court's activity.

Mr. Pammel commented that he found this case unusual, and it warranted the Board's careful review. He said he believed the issue related to the permit, that the issues must be addressed, that the Board's action may require a modification, and that Mr. Caballero would have to make modifications at his expense.

Mr. Caballero said that the fence was chain link, practically invisible, and that it existed since 1976. He said he already had expended a great deal of money, and he did not have the funds to modify things.

Mr. Hammack moved to defer the decision on VC 2003-LE-187 to April 27, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-1. Ms. Gibb voted against the motion. Chairman DiGiulian and Mr. Beard were absent from the meeting.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. MONYA A. S. SHANNON, VC 2004-MV-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.5 ft. with eave 24.0 ft. from front lot line of a corner lot. Located at 1900 Joliette Ct. on approx. 14,297 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 51.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Monya Shannon, 1900 Joliette Court, Alexandria, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story garage addition 24.5 feet with eave 24 feet from the front lot line of a corner lot. A minimum front yard of 30 is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 5.5 feet and 3.0 feet, respectively, were requested.

Ms. Shannon presented the variance request as outlined in the statement of justification submitted with the application. She said they were on a cul-de-sac, their corner lot had two front yards, and they hoped to expand the existing garage to accommodate sports and camping equipment.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2004-MV-014 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MONYA A. S. SHANNON, VC 2004-MV-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.5 ft. with eave 24.0 ft. from front lot line of a corner lot. Located at 1900 Joliette

~ ~ ~ March 23, 2004, MONYA A. S. SHANNON, VC 2004-MV-014, continued from Page 514

Ct. on approx. 14,297 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 51. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; 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 prescribed criteria for the granting of a variance as specified under Section 18-401 and 8-006 of the Zoning Ordinance.
3. This is a corner lot.
4. This is not an uncommon problem in Fairfax County with having two front yards.
5. The requested variance is very 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a one story garage addition, as shown on the plat

~ ~ ~ March 23, 2004, MONYA A. S. SHANNON, VC 2004-MV-014, continued from Page 515

prepared by Bryant L. Robinson, dated May 24, 2002, with revisions through December 11, 2003, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be in substantial conformance with the architectural elevations included in Appendix 1A.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. TELEGRAPH VILLAGE LIMITED PARTNERSHIP, VC 2004-LE-007 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit parking spaces to remain 9.7 ft. from front lot line. Located at 6940 S. Kings Hwy. on approx. 2.52 ac. of land zoned C-8. Lee District. Tax Map 92-1 ((1)) 15. (In association with RZ 2003-LE-039 and SE 2003-LE-024)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Inda Stagg, a land use planner with the firm of Walsh, Colucci, et al., 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, Virginia, the applicant's agent, replied that it was.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Lindsay Schullenberger, Staff Coordinator, made staff's presentation as contained in the staff report. Recently there was a rezoning of the site with no physical changes made, but the prepared plat revealed that the parking spaces located in the lot's southwest corner were too close to the front lot line; therefore, the applicant requested a variance to permit the parking spaces associated with the *Shops at Telegraph* to remain 9.7 feet from the front lot line. The Ordinance requires that off-street parking spaces be located 10 feet from a front lot line, therefore, a variance of 0.3 feet was requested for the parking spaces to remain.

Ms. Stagg presented the variance request as outlined in the statement of justification submitted with the application. The property was developed in 1986 in good faith, and the site plan indicated a 10-foot minimum setback from the right-of-way. It was, however, constructed 3.6 inches less than Ordinance standards, which was unknown to the applicant until this year when the rezoning and special exception plats were prepared. Ms. Stagg stated that the remedy required a variance; the situation was not shared with other properties in the vicinity; it would not change the character of the zoning district; and, there would be no detriment to surrounding properties.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2004-LE-007 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

TELEGRAPH VILLAGE LIMITED PARTNERSHIP, VC 2004-LE-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 9.7 ft. from front lot line. Located at 6940 S. Kings Hwy. on approx. 2.52 ac. of land zoned C-8. Lee District. Tax Map 92-1 ((1)) 15. (In association with RZ 2003-LE-039 and SE 2003-LE-024) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The issue is very slight, and the difference between 9.7 feet and 10 feet would not be perceived by anybody.
4. The condition has existed for some years and only came about due to a special permit/rezoning request on this property.
5. There is no significant negative impact on anybody.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ March 23, 2004, TELEGRAPH VILLAGE LIMITED PARTNERSHIP, VC 2004-LE-007, continued from Page 517

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the parking space shown on the GDP/SE/VC plat prepared by Bohler Engineering, dated August 11, 2003, as revised through December 9, 2004, and submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the application from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. PETER YOST, VC 2004-DR-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.0 ft. with eave 26.0 ft. from front lot line . Located at 2108 Grayson Pl. on approx. 10,474 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 88A. (Concurrent with SP 2004-DR-001).

9:00 A.M. PETER YOST, SP 2004-DR-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 accessory structure to remain 2.5 ft. with eave 1.9 ft. from rear lot line. Located at 2108 Grayson Pl. on approx. 10,474 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 88A. (Concurrent with VC 2004-DR-005).

Vice Chairman Ribble announced that the two cases would be heard concurrently. He called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Yost, 2108 Grayson Place, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a second-story addition to include a vestibule 27 feet with an eave 26 feet from the front lot line. A minimum front yard of 35 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 8.0 feet and 6.0, respectively, were requested.

The applicant also requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory storage structure, specifically a shed which measures 11.1 feet in height, to remain 2.5 feet with an eave 1.9 feet from the rear lot line. A minimum rear yard of 11.1 feet is required for the shed; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, reductions of 8.6 feet and 6.2 feet, respectively, were requested.

Mr. Yost presented the variance and special permit requests as outlined in the statements of justification submitted with the application. In 1978 the property was acquired in good faith, and its 1950's built single-family home has been their primary residence. The house sat 40 feet from the front lot line, and strict application of the front yard requirement would require minimizing room size and storage capabilities, prohibit necessary upgrading of the heating and ventilation systems, and disallow a front porch which would provide entry protection, security, and be aesthetically pleasing and architecturally compatible with the other updated

~ ~ ~ March 23, 2004, PETER YOST, VC 2004-DR-005 and SP 2004-DR-001, continued from Page 518

homes in the neighborhood. Mr. Yost said the granting of the variance would alleviate hardship on his family due to inadequate storage and resolve the heating and ventilation problems currently experienced. He said the character of the zoning district would not change, and the variance would not be detrimental to adjacent properties, but would enhance the property. He stated that his neighbors supported the proposal.

In justification of his shed, Mr. Yost pointed out that the error exceeded 10 percent of the measurement involved; the shed was built 18 years ago; the noncompliance was done in good faith; the reduction would not impair the purpose or intent of the Ordinance; the shed was not a detriment to the use and enjoyment of other properties in the vicinity; and, that to remove or remodel the shed would cause financial hardship and affect the landscaping and yard use.

In response to questioning by Ms. Gibb, the applicant said the note at the bottom of his statement of justification related to the arbor he had put on the deck, which had some small vines and hanging baskets on it. He said there was also another arbor in the back yard that was overgrown with vines. In reply to Ms. Gibb's question as to whether the arbor needed to be included in the application, Ms. Hedrick said the deck met the minimum setback requirements, so the arbor was not included in the application.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2004-DR-001 for the reasons stated in the resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER YOST, SP 2004-DR-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 accessory structure to remain 2.5 ft. with eave 1.9 ft. from rear lot line. Located at 2108 Grayson Pl. on approx. 10,474 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 88A. (Concurrent with VC 2004-DR-005). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Although the requested variance of 2 ½ feet is closer than what would ordinarily be approved, the structure has been there for 18 years.
3. It is well landscaped at least on the east and on the west there's at least a 6-foot fence next to it.
4. There appears that there is no adverse impact on any of the adjoining properties.
5. The applicant has presented a case for allowing it to continue in its present location.
6. There is nowhere else it could be moved.

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;

~ ~ ~ March 23, 2004, PETER YOST, VC 2004-DR-005 and SP 2004-DR-001, continued from Page 519

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development condition:

- 1. This special permit is approved for the location of the accessory storage structure (shed), as shown on the plat prepared by John P. DiGiulian, dated November 26, 2003, as revised by Kenneth A. Marceron through December 29, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 2004-DR-005 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER YOST, VC 2004-DR-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.0 ft. with eave 26.0 ft. from front lot line. Located at 2108 Grayson Pl. on approx. 10,474 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 88A. (Concurrent with SP 2004-DR-001). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 2004;

~ ~ ~ March 23, 2004, PETER YOST, VC 2004-DR-005 and SP 2004-DR-001, continued from Page 520

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.
3. The house was built in 1949.
4. The applicant is simply building a front porch and an addition that goes into the front yard.
5. The front yard is quite large; but there is nothing available in the back or the sides.
6. The applicant met the required nine 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and vestibule, as shown on the plat prepared by John P. DiGiulian, dated November 26, 2003, as revised by Kenneth A. Marceron through December 29, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

~ ~ ~ March 23, 2004, PETER YOST, VC 2004-DR-005 and SP 2004-DR-001, continued from Page 521

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:00 A.M. MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seating. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1((1)) 20A and 20B. (Admin. moved from 12/2/03, 1/6/04, and 2/17/04 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hamid Matin, Professional Design Group, Inc., 14301-B Sullyfield Circle, #202, Chantilly, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The original parcel described as Lot 20 was split during the realignment of Ox Road and is now identified as Lot 20A and Lot 20B. All the development proposed with this application was on Lot 20B. The improvements requested in special permit 95-S-071 for a place of worship were never constructed. The current request was for an amendment of the special permit to allow a change in permittee from New Jerusalem Church to Mok Yang Presbyterian Church, and to increase seating from 240 seats to 350 seats. Site modifications included an increase in parking spaces from 62 gravel spaces to 125 paved spaces, the provision of a septic drain field, underground stormwater detention, if determined necessary, and additional transitional screening. Ms. Stanfield noted that the applicant addressed staff's concerns about intensity by reducing the number of parking spaces requested, which was originally 175, and increasing the space between the parking area and Little Ox Road from 20 feet to 75 feet. Staff believed the current plat provided a development that was consistent with the surrounding low density residential development to the extent that it is practical. Staff also noted that a development condition required full transitional screening along Little Ox Road, notwithstanding what was shown on the special permit plat in the staff report. Staff recommended approval of SPA 95-S-071 with the adoption of the proposed development conditions.

In response to questions by Ms. Gibb, Ms. Stanfield said the parking originally proposed was gravel, and the applicant would have had to apply to the Department of Public Works and Environmental Services (DPWES) for a waiver to have a gravel parking lot. Ms. Stanfield explained that staff did not request that permeable parking spaces be provided because the applicant had more than 50 percent undisturbed open space and had reduced the number of parking spaces requested.

In response to Mr. Hart's question regarding whether underground stormwater management had been previously approved in the R-C District, Ms. Stanfield indicated that it had, but she did not know whether a waiver had been approved or it had been constructed.

Susan Langdon, Chief, Special Permit and Variance Branch, said more applications showing an underground facility were being received by staff, and although there was no requirement against it, staff preferred that they not provide an underground one. She said the applicant must sign a maintenance agreement because it involved more maintenance, which was part of staff's concern, to make sure it was maintained correctly and continued to operate. Ms. Langdon noted that almost every application now being

-- March 23, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 522

received seemed to have some sort of an underground component to it.

At Mr. Hammack's request, Ms. Stanfield commented on several issues contained in a March 22<sup>nd</sup> e-mail received from Brad and Peggy Golden. She said she and Peggy Golden had discussed in detail the issues related to the advertisement of the previous special permit. The master file could not be located, and staff was unable to confirm exactly where the notifications were mailed, but the resolution and minutes indicated that the notices were in order and, therefore, would have been mailed to property owners on both sides of Ox Road. Concerning the septic field, Ms. Stanfield said she understood that the Health Department had approved the field and that it met all requirements. The traffic issue was reviewed by the Department of Transportation who indicated there were no issues with the application with respect to transportation volumes. Ms. Stanfield noted that previously the subject road was Ox Road and that it carried a much higher traffic volume, and now the volume had been diverted onto the realigned road.

In response to questions by Mr. Hart, Ms. Stanfield indicated that the property was zoned R-C and there was no R-5 zoning in the vicinity.

Mr. Matin presented the special permit amendment request as outlined in the statement of justification submitted with the application. Addressing the issue of stormwater management, Mr. Matin noted that there were four ponds maintained by the Virginia Department of Transportation (VDOT) adjacent to the site. Because VDOT had no calculations or specific information on the ponds, the applicant was unable to get DPWES to waive the requirement because they could not prove there was adequate stormwater storage without costly engineering studies. Although the original application indicated there would be infiltration trenches, the applicant would instead build an underground stormwater management pond to connect to the storm sewer system along Ox Road. He stated that the site's current parking was gravel, that they proposed paved parking, and that they would consider other options with DPWES for other surfaces before final site plan approval. He noted that it would be a cost savings to the church if another surface were approved instead of paved parking. Mr. Matin stated that the existing building (house) would be removed, and its replacement would be in the same location with a slightly smaller footprint. He noted that there was no change to the limits of clearing and grading from the original application and that the church would operate one hour less than what was approved in the original application. Mr. Matin explained the applicant's Best Management Practices (BMP), stating that the addition of open space was more beneficial to the area and that the parcel was proposed for a conservation easement. He said the church agreed with all of staff's conditions.

In response to a question by Mr. Hart, Mr. Matin indicated that there was no vehicular access to one side of the site, Lot 20A, other than the frontage along Route 123. Ms. Stanfield said that she had asked Mr. Matin, on behalf of Ms. Golden, to look at the access issue, and DOT had indicated to Ms. Stanfield that it might be possible to get an entrance at that location, but Mr. Matin indicated it was not possible to build as there was no septic available on that side. Ms. Stanfield stated that several citizens adjacent to the parcel informed her they did not want development on that side. In response to a question by Mr. Hart, Ms. Stanfield indicated that there was no median break in the vicinity.

Vice Chairman Ribble called for speakers.

Anthony J. De Luca, 6805 Brimstone Lane, Fairfax Station, Virginia, President of and representing the 55 homeowners of the Ardmore Oaks Homeowners Association, came forward to speak. He said the homeowners strongly supported staff's recommendation for approval. He said they believed that placing Lot 20A in a conservation easement would ensure that water quality goals were achieved and impacts on the water quality of the Occoquan Reservoir were mitigated.

Concerning Development Condition 14, Mr. Hammack asked whether there was language that, if the Board approved an application, required that the recordation of a deed be approved by the County Attorney. Ms. Stanfield said that, as it was noted on the plat, Lot 20A would be open space in a conservation easement, and DPWES would address the terms of how the parcel would be conveyed at site plan review.

Ms. Langdon noted that there were occasions when development conditions were crafted that specifically required that land be put into a conservation easement so that the land would be preserved as perpetually

~ ~ ~ March 23, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 523

undisturbed open space. She noted that in this case, in order to meet BMP requirements, it was the applicant who proposed to put the parcel in a conservation easement. Ms. Langdon said at the time of site plan review it would be determined by DPWES how and to whom the parcel would be conveyed for BMP purposes.

Elizabeth Von Holle, 6603 O'Keefe Knoll Court, Fairfax Station, Virginia, came forward to speak in opposition to the application. She said she had a petition with 72 signatures from neighbors of the church who opposed the proposal. She read a prepared statement noting issues of safety for the children because Little Ox Road was a winding two-lane street with tight radius curves, several blind corners, and no sidewalk or curb. She said that the neighborhood children played and rode bikes in the area, and VDOT had recently posted a reduced speed limit of 25 miles per hour from 40 miles per hour. She said the road was not set up for the increased traffic, and she had requested that staff review the accident reports for that section of Little Ox Road. She said there was an ongoing problem with water runoff. She said the land was zoned R-5, not R-1, that the proposed facility was not part of the Master Plan for the property and that the development could cause serious damage to the Occoquan.

Mary Rosato, 6404 Jumet Court, Fairfax Station, Virginia, came forward to speak in opposition to the application. She cited increased traffic exacerbating an already dangerous situation on Little Ox Road, and an unsafe ingress and egress from Route 123. She suggested that the other parcel owned by Mok Yang on the south side of Route 123 was better suited for the church facility because it was larger and would affect virtually no neighborhoods. She said there already was a church on that side of the road, and there was already a commercial sized septic system. She pointed out that the traffic on that portion of Route 123 would not impact any of the contiguous neighborhoods and would not have a problem with on-street overflow parking. Ms. Rosato stated that more environmental studies should be conducted before a usage was approved that would significantly affect the ecological system of the Occoquan. She commented that as each special permit amendment was evaluated on its own merit, there appeared to be a lack of coordination and consideration of the cumulative effects of multiple projects within the same geographical area and referenced Antioch Baptist Church. She noted that her neighborhood was not notified about the proposal.

In response to Mr. Hart's question, Mr. Matin explained the drainage flow from the site.

Ms. Stanfield confirmed that the notifications were in order and that Little Ox Road was classified as an arterial road.

For the citizens' information, Mr. Hart explained an arterial road classification and the fact that certain non-residential uses in an R-C District must be oriented to an arterial roadway. He pointed out the Board of Supervisors, not the BZA, makes the determination of which roads were designated as arterial roads.

Peggy Golden, 6548 Little Ox Road, Fairfax Station, Virginia, came forward to speak in opposition to the application. She stated that the original special permit application was not filed properly, and she never saw a notification sign posted. She was informed by County staff that a photograph of the posting sign was contained in the file; however, the file could not be located nor any documentation of the posting. She said that although she resided only four driveways down from the site, she was not notified and was told by the application's architect that only property owners on one side of the road were notified. She stated that many of those who were notified lived along the opposite side of the street and would be unaffected by the development. She said the area was zoned for residential lots of five acres or more and that the County emphatically had stated that the land would never be changed from R-5 because the Occoquan Watershed Act governed it. Ms. Golden stated that the runoff from the church's parking lot would have to have an adverse effect on the Occoquan Watershed. She also noted that the subject property had changed ownership three times since the original SP was approved, that it was Mok Yang who applied for an amendment to the original special permit, and the anticipated trip generation for services of both Mok Yang and Antioch Baptist Church would effectively make it impossible for neighboring property owners to exit their driveways.

Mr. Hart explained to Ms. Golden that the subject property was not in an R-5 District, which would be townhouses or patio homes. He said the property was zoned R-C, residential lots divided out to five- to ten-acre lots, and churches were an allowable special permit use in an R-C District and that there was no

~ ~ ~ March 23, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 524

inconsistency between churches and the Occoquan down-zoning. He clarified that the BZA was deciding on whether the application met the criteria that had been set by the Board of Supervisors and that they were not changing the zoning or breaking the Occoquan down-zoning. Mr. Hart said the BZA could consider such factors as trip generation and the capacity of the arterial roadway to safely handle a higher volume of vehicular traffic.

Mr. Pammel further explained the difference between an R-1 and an R-C zoning designation noting that the R-C was created with its boundaries being a watershed. He said that was why Ms. Golden's area was within a different watershed than the Occoquan.

Vice Chairman Ribble called upon Mr. Matin for rebuttal.

Mr. Matin said that one of the development conditions mandated compliance with the general development plan, and it indicated that parcel 20B remain open space. He said the church intended to fully comply with the Occoquan Watershed District regulations, one of which was the provision of stormwater management and BMP facilities, which they had more than adequately addressed. He said Little Ox Road had been realigned, that there was a good deal of cut-through traffic which was not generated by the church, and that the church use would be relegated to Sundays only with the first phase to serve 150 people and, therefore, an additional 300 to 400 people entering and exiting the site on Sundays only with no traffic during peak hours or on weekdays. He explained that the site could not be accessed from Route 123 because the roadway would destroy the septic field. Concerning Ms. Golden's suggestion that the larger parcel be considered for the church, Mr. Matin said the topography and soils were evaluated, and it was determined the parcel was inadequate to accommodate the proposed use. He said that the site's water runoff would be collected in the stormwater management facility and diverted towards the south away from Ms. Golden's property. Mr. Matin stated that the applicant met with Ms. Golden and explained the proposal and that their notices were correct and in order.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack commented that he wanted to review the site, that he intended to judge the application on its own merit and wanted to see the road realignment. He noted that there was an increase of 110 seats over what was previously approved, and he wanted the opportunity to look at it.

Mr. Hammack then moved to defer decision on SPA 95-S-071 to April 6, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:30 A.M. VIRGINIA ENTERPRISE COMPANY, L.C., A 2003-MV-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has established a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at on the E. side of Richmond Hwy., approx. 200 ft. N. of Memorial St. on approx. 17,563 sq. ft. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 93-1 ((1)) 19. (Moved from 1/27/04 due to inclement weather.)

Vice Chairman Ribble called the case and announced that the notices were not in order.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concurred that the notices were not in order. She pointed out that the applicant requested to withdraw its appeal, that the remaining issues of the violation were cleared, and staff supported and would accept the withdrawal of the appeal.

Mr. Hart moved that the Board accept the withdrawal of Appeal A 2003-MV-041, Virginia Enterprise Company, L.C. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr.

~ ~ ~ March 23, 2004, VIRGINIA ENTERPRISE COMPANY, L.C., A 2003-MV-041, continued from Page 525

Beard were absent from the meeting.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:30 A.M. TITAN MOVING & STORAGE, LLC, MR. EDMUND C. BOWLER, A 2003-MV-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has established a storage yard on property in the C-6 District in violation of Zoning Ordinance provisions. Located at 1602 Belle View Blvd. on approx. 6.57 ac. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 2. (Admin. moved from 11/18/03 at appl. req.) (Deferred from 1/20/04 at appl. req.)

Vice Chairman Ribble noted that there was a withdrawal request made by the appellants' representative, Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff clarified with Ms. Kelsey what the nature of the Titan business was, and it was determined it was a business service and supply service establishment which was allowed in the C-6 District by right. Ms. Stehman said the appellants would be applying for a Non-Residential Use Permit and any other required approvals, and Ms. Kelsey had withdrawn the appeal.

Mr. Pammel moved to accept the withdrawal of A 2003-MV-040. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

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~ ~ ~ March 23, 2004, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, and 2/17/04 at appl. req)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, and 2/17/04 at appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03,

~ ~ ~ March 23, 2004, RONALD AND LETA DEANGELIS, A 2003-SP-002; ROBERT DEANGELIS, A 2003-SP-003; and GEORGE HINNANT, A 2003-SP-004, continued from Page 526

12/9/03, 1/27/04, and 2/17/04 at appl. req)

Vice Chairman Ribble noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to May 11, 2004, at 9:30 a.m., at the appellants' request.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff was working with the appellants to get a special exception (SE), and the SE application was moving forward. In response to Mr. Hammack's question of whether a one-month deferral was sufficient, Ms. Stehman explained that after all staff's issues have been addressed and the SE was accepted, staff would schedule the public hearings for the appeals six weeks out from the special exception public hearing.

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~ ~ ~ March 23, 2004, After Agenda Item:

#### Approval of BZA Scheduled Meeting Dates for the last six months of 2004

Discussion followed among Board members and Susan Langdon, Chief, Special Permit and Variance Branch, concerning public hearing dates scheduled right before and/or soon after a County holiday and what constituted an "as needed" hearing. Concerning the latter, Ms. Langdon stated that everything depended on how heavy the caseload was and the fact that it often is advantageous to an applicant to give them an out-of-turn hearing and move the case up before the August recess.

Mr. Pammel moved to approve the BZA scheduled meeting dates for the last six months of 2004. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Beard were absent from the meeting.

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~ ~ ~ March 23, 2004, (Tape 1), After Agenda Item:

#### Information Item 3

Memorandum from Kathleen Knoth, dated March 17, 2004 regarding  
Young K. Lee and Young A. Lee, A 2003-PR-042

There was discussion between Mr. Hart and staff regarding information the Board had previously requested. Mr. Hart indicated that the portion of the January 20, 2004 verbatim that the Board was interested in was not included, and Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that staff had understood the portion the Board requested was the discussion leading up to and including the motion and that staff would complete and provide the entire verbatim to the Board the following week. Mr. Hart asked if videotapes of the January 20, 2004 hearing were ordered for the Board, and Ms. Langdon explained that she understood from Chairman DiGiulian that the videotapes would not be necessary if staff provided the verbatim. Mr. Hart said the Board would like the videotapes, and Ms. Langdon responded that they would be ordered and provided to the Board.

There was discussion regarding whether cases had been previously brought before the Board by Tom Nelson and which department he represented. Ms. Langdon advised the Board that the ability to appeal to the BZA was not restricted to the Zoning Administrator and included other County entities, such as the Department of Public Works and Environmental Services (DPWES), whom Tom Nelson represented. Ms. Gibb said she understood that when Tom Nelson had previously come before the BZA on the issue of illegal lots, the motions made were to overturn the Zoning Administrator. Ms. Langdon explained that originally the Zoning Administrator had made those types of determinations, but that recently it had been determined that those types of decisions were to be made by DPWES, and that agency had since been doing the research and writing the letters.

There was discussion regarding a letter sent to William Baskin by the Clerk to the BZA regarding the action taken by the BZA in the subject case. Ms. Langdon explained that a letter was sent to correct the wording in

~ ~ ~ March 23, 2004, AFTER AGENDA ITEMS, continued from Page 527

a previous letter regarding who had made the original determination that was appealed to the BZA. The second letter read the determination of the Director of DPWES, as was reflected on the BZA's agenda and the staff report authored by Tom Nelson of DPWES.

Mr. Hart stated that it was a situation in which the appellants didn't involve DPWES and had written to the Zoning Administrator asking if the lots were buildable lots. He said that although the Zoning Administrator could get assistance from others, including DPWES, the Zoning Ordinance had no provisions for DPWES to make buildable lot determinations, which is the Zoning Administrator's authority.

Margaret Stehman, Zoning Administration Division, said the case came to the BZA originally because staff believed it was a request that involved the Subdivision Ordinance and not the Zoning Ordinance. She concurred that the staff report was done by DPWES, and because it was an appeal of the Subdivision Ordinance, it was a determination of the Director of DPWES, who is referenced in the Zoning Ordinance. She said the change in the letter from Zoning Administrator was the correction of an error.

Mr. Hart stated that at the pertinent time frame of the subject case, the Subdivision Ordinance had not been adopted and that the Board had not decided the case on the Subdivision Ordinance.

Ms. Langdon stated that there was no subterfuge involved in making the correction. She explained that it was pointed out to staff that the appeal was of a decision of the Director of DPWES, and the letter was corrected to reflect that.

Mr. Hammack said that Mr. Baskin had explained that he had written the Zoning Administrator. Mr. Hammack said that although the Board had been told their decisions could not be changed more than eight days later, staff had done so by revising a February 11<sup>th</sup> letter on March 4<sup>th</sup>, and he asked from when would the appeal period run.

Ms. Stehman stated that staff had not changed the BZA's determination and said that the motion did not state who had made the determination that was appealed to the BZA.

Ms. Langdon explained that staff has to look at who brings the case forward to the Board, and it was a determination of the Director of DPW. She said whether that was the right place for it to be or not, that was who made the decision, wrote the staff report, and represented it in front of the Board. She explained that staff writes a letter that goes out to the applicant that outlines what the decision was, and the decision was to overturn the decision or the letter from DPWES. She said staff was just correcting the letter that said Zoning Administrator instead of Director of DPWES and did not change the Board's decision.

Mr. Hammack stated that staff had no authority to change the Board's motions, and Ms. Langdon responded that staff did not change the Board's motion.

Ms. Gibb asked who pointed out the error. Ms. Langdon explained that DPWES was copied on the letter, and it was pointed out to staff by Mr. Nelson that the letter contained incorrect information in that it laid out that it was a decision of the Zoning Administrator when it should have said it was a decision of the Director of DPWES.

Mr. Hart said that if clarification was needed, Mr. Nelson should not have made that call, particularly without notice to Mr. Baskin, and if clarification was needed about the Board's motion, the Board should have been involved in the process.

Mr. Pammel suggested the County Attorney and staff meet with the Board the following week in executive session to discuss procedures and how they are related to the Code of Virginia to get down to the legal aspects of the issue. Mr. Ribble suggested delaying the executive session for two weeks to give the Board time to receive and review the videotapes.

Ms. Langdon commented that the motion made by Mr. Beard did not reference either the Zoning Administrator or the Director of DPWES. She read from the cover of the staff report, "This is an appeal of a determination by the Director of the Department of Public Works and Environmental Services that the property in question was not legally subdivided into three lots" and said that was the nature of the appeal.

~ ~ ~ March 23, 2004, AFTER AGENDA ITEMS, continued from Page 528

Mr. Hammack asked if the Board had jurisdiction over the Director of Public Works, and Ms. Langdon replied that he was one of the entities who someone can appeal his decision to the BZA.

It was decided by the Board that the issues would be taken up in two weeks.

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As there was no other business to come before the Board, the meeting was adjourned at 11:39 a.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: September 11, 2007

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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 30, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M.      DAVID MITCHELL & JENNIFER MITCHELL, VC 2003-DR-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 6565 Georgetown Pi. on approx. 1.25 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 21A . (Moved from 2/3/04 due to inclement weather)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick Via, the applicant's agent, no address given, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6.0-foot high wrought-iron fence in the front yard of a corner lot. The maximum fence height permitted in a front yard is 4.0 feet; therefore, a variance of 2.0 feet was requested.

Mr. Via presented the variance request as outlined in the statement of justification submitted with the application. He said the purpose of the fence was to minimize concerns with respect to safety and privacy. He pointed out that the property was located at the corner of Harvey Road and Georgetown Pike and that Langley High School was directly across the street. Mr. Via said the current fence was not tall enough for safety and privacy. He displayed photographs of the current and proposed fences and stated that the character of the neighborhood would not be affected. Mr. Via noted that a six-foot high chain-link fence was located on the Langley High School property. He said the applicants had not received any negative comments concerning the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-DR-176 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID MITCHELL & JENNIFER MITCHELL, VC 2003-DR-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 6565 Georgetown Pi. on approx. 1.25 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 21A . (Moved from 2/3/04 due to inclement weather). 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 30, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants satisfied the nine required standards for variance applications.
3. The applicants testified that an extraordinary situation applies to the present property.
4. The applicants testified that the character of the Zoning District would not be changed by the construction of the fence.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location and height of the fence, as shown on the plat prepared by Charles P. Johnson & Associates, Inc., dated April 28, 2003, 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 April 7, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. ROBERT GREENAWALT & MARY BRADY GREENAWALT, VC 2004-PR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.2 ft. with eave 12.3 ft. from rear lot line and accessory structure 8.0 ft. with eave 7.3 ft. from side lot line and 5.0 ft. with eave 4.3 ft. from rear lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 2905 Hideaway Rd. on approx. 24,871 sq. ft. of land zoned R-2 and HC. Providence District. Tax Map 48-4 ((14)) 5. (Concurrent with SP 2004-PR-003).

9:00 A.M. ROBERT GREENAWALT & MARY BRADY GREENAWALT, SP 2004-PR-003 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 13.2 ft. with eave 12.3 ft. from rear lot line. Located at 2905 Hideaway Rd. on approx. 24,871 sq. ft. of land zoned R-2 and HC. Providence District. Tax Map 48-4 ((14)) 5. (Concurrent with VC 2004-PR-011).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Greenawalt, 2905 Hideaway Road, Fairfax, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of a second-story addition 13.2 feet with eave 12.3 feet from the rear lot line; an accessory structure, specifically a detached garage, to be located 8.0 feet with eave 7.3 feet from the side lot line and 5.0 feet with eave 4.3 feet from the rear lot line; and a fence greater than 4.0 feet in height to remain in the front yard. A minimum rear yard of 25 feet and a minimum side yard of 15 feet are required, and the maximum fence height permitted in a front yard is 4.0 feet; however, eaves are permitted to extend 3.0 feet into the rear and side yards; therefore, variances of 11.8 feet, 9.7 feet, 15.7 feet, 13.4 feet, 7.0 feet, 4.7 feet, and 2.0 feet, respectively, were requested. The applicant also requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 13.2 feet with eave 12.3 feet from rear lot line. Reductions of 11.8 feet and 9.7 feet, respectively, were requested.

Mr. Hart questioned staff about the fence and asked whether the applicants' neighbors would be permitted to build fences. Mr. Hedrick stated that the applicants' front yard was their neighbors' rear yard, and they would be permitted to construct seven-foot high fences in the rear yards. She said that yard requirements were determined per lot, and because it was the applicants' front yard, they were limited by the four-foot maximum height permitted.

Mr. Pammel stated that the property was in violation of the setback requirements and asked how that had occurred. Ms. Hedrick replied that the property was constructed in 1925, and what was currently considered to be the side yard appeared to be considered the front yard at the time of construction because the front door was located there. She stated that subsequently there had been two additions constructed on the property, in 1973 and 1975, which changed the location of the main entrance of the property. Ms. Hedrick said the Zoning Administration Division, Department of Planning and Zoning, had made the determination regarding what was considered the applicants' current front and side yards.

Mr. Hammack asked if the eight-foot high fence on the rear lot line belonged to the applicants. Ms. Hedrick replied that it did. She said the applicants had agreed to remove all of the eight-foot high fencing and replace it with a six-foot high fence of the same materials around the entire property line. With or without constructing the six-foot high fence, Ms. Hedrick said the applicants were required to remove the eight-foot high fence in the rear yard, and that was the purpose of the proposed development condition regarding the reduction or removal of the eight-foot high fence.

Mr. Greenawalt presented the variance and special permit requests as outlined in the statement of justification submitted with the applications. He said he wanted to increase the attractiveness of the house and said the special permit had been submitted to correct a 30-year-old mistake with respect to the side and rear lot lines. He said that because of age and deterioration of the existing structure, they were requesting a new two-car garage. He said the improvements would enhance their property, and they would not be removing any vegetation or trees. Mr. Greenawalt said his neighbors had expressed no objection to the applications.

In response to a question by Mr. Hammack, Mr. Greenawalt said the white one-car garage shown on the

~ ~ ~ March 30, 2004, ROBERT GREENAWALT & MARY BRADY GREENAWALT, VC 2004-PR-011 and SP 2004-PR-003, continued from Page 533

photographs would be removed and replaced with a two-car garage. He said the new garage would be located farther away from the rear lot line than the existing one.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2004-PR-003 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT GREENAWALT & MARY BRADY GREENAWALT, SP 2004-PR-003 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 13.2 ft. with eave 12.3 ft. from rear lot line. Located at 2905 Hideaway Rd. on approx. 24,871 sq. ft. of land zoned R-2 and HC. Providence District. Tax Map 48-4 ((14)) 5. (Concurrent with VC 2004-PR-011). 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 30, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The application meets the standards as required by the Ordinance.
3. This was not an error that was a result of action by the applicants, but one that they found after they purchased the property approximately a year ago.
4. Effort was made to preserve a house that was built in the 1920s, and during a later period of time the surrounding property was sold.
5. This was at one time a much larger lot.
6. In the process of subdividing the property, the error occurred with the house being located at the rearmost portion of a pipestem lot, as shown on the plat dated September 6, 2003, prepared by Alexandria Surveys.
7. The applicants meet all the prescribed standards for the mistake section special permit.

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

~ ~ ~ March 30, 2004, ROBERT GREENAWALT & MARY BRADY GREENAWALT, VC 2004-PR-011 and SP 2004-PR-003, continued from Page 534

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the dwelling as shown on the plat prepared by Alexandria Surveys, International, LLC, dated September 6, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 7, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 2004-PR-011 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT GREENAWALT & MARY BRADY GREENAWALT, VC 2004-PR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.2 ft. with eave 12.3 ft. from rear lot line and accessory structure 8.0 ft. with eave 7.3 ft. from side lot line and 5.0 ft. with eave 4.3 ft. from rear lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 2905 Hideaway Rd. on approx. 24,871 sq. ft. of land zoned R-2 and HC. Providence District. Tax Map 48-4 ((14)) 5. (Concurrent with SP 2004-PR-003). 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 30, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants meet the prescribed standards for the granting of a variance.
3. This is an extraordinary situation in that the structure is located to the rearmost portion of a pipestem lot that was created some years ago with the subdivision of the property and the preservation of a 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the second story addition, accessory structure and fence, as shown on the plat prepared by Alexandria Surveys, International, LLC, dated September 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition and garage shall be architecturally compatible with the existing dwelling.
4. The 8.0 foot high fence on the rear lot line, as depicted on the plat, shall be reduced in height or removed so as to comply with Zoning Ordinance requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

~ ~ ~ March 30, 2004, ROBERT GREENAWALT & MARY BRADY GREENAWALT, VC 2004-PR-011 and SP 2004-PR-003, continued from Page 536

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 7, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. THEODORE R. HANLEY, VC 2003-MV-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard of a corner lot and deck to remain 7.8 ft. from rear lot line. Located at 2000 Old Stage Rd. on approx. 11,707 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-3 ((10)) (9) 1. (Moved from 2/3/04 due to inclement weather)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Theodore Hanley, 2000 Old Stage Road, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a fence 6.0 feet in height in a front yard of a corner lot and to allow a deck to remain 7.8 feet from the rear lot line. The maximum fence height permitted in a front yard is 4.0 feet, and a minimum rear yard of 12 feet is required; therefore, variances of 2.0 feet and 4.2 feet, respectively, were requested.

Mr. Hanley presented the variance request as outlined in the statement of justification submitted with the application. He said that when he purchased his home he did not know that the deck on his house had been built without a variance and wanted to rectify that. With respect to the fence, he said he was requesting the eight-foot high fence for safety and privacy reasons. Mr. Hanley said his specific concerns were that his property was an area for loading and unloading a school bus, which resulted in too much traffic generation, parents using his driveway to turn around, children throwing debris on his lawn, and children and adults walking through his yard. He reported that he had found children on his front porch and in his backyard, utility and privately owned vehicles parked on the dead-end street beside his house, and unsavory persons parked on the dead-end street on weekends. He said dog owners had allowed their pets to be off leashes, and they had entered his yard, which posed a threat to his children, whose toys had been stolen as well. Mr. Hanley said he planned to build a board-on-board scalloped fence with landscaping.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-MV-174 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THEODORE R. HANLEY, VC 2003-MV-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard of a corner lot and deck to remain 7.8 ft. from rear lot line. Located at 2000 Old Stage Rd. on approx. 11,707 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-3 ((10)) (9) 1. (Moved from 2/3/04 due to inclement weather). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 2004; 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 standards for both variances.
3. The applicant has an unusual situation in having a double front yard.
4. One of the yards is treated as a side yard, and it happens to abut a stub street that dead-ends with a school.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a fence of 6.0 feet in height and a deck, as shown on the plat prepared by Bryant L. Robinson, dated September 25, 2003, 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. Beard seconded the motion, which carried 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 7, 2004. This date shall be deemed to be the final approval date of this variance. //

~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. PANUWAT THANARUANG, SP 2004-LE-005 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 9.7 ft. with eave 8.6 ft. from side lot line. Located at 6217 Thomas Dr. on approx. 11,743 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (D) 233.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Panuwat Thanaruang, 6217 Thomas Drive, Springfield, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to the minimum yard requirements based on an error in building location to permit a garage addition to remain 9.7 feet with eave 8.6 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 2.3 feet and 0.4 feet, respectively, were requested.

Suphroek Rianrungrot, no address given, spoke on behalf of the applicant and presented the special permit request as outlined in the statement of justification submitted with the application. He said a special permit was being requested to allow a reduction to minimum yard requirements based on an error in building location to permit the addition and the eave to remain where they had been for two years. He said it was not an unsafe condition with respect to other properties.

Mr. Hammack asked whether the applicant had obtained a building permit, and Mr. Rianrungrot's response was yes. He said the applicant's friends were the constructors who built the garage approximately two years prior.

Mr. Hammack asked how large of a parking area existed before the garage was built. The applicant replied that two cars were parked.

Mr. Hammack asked who had poured the concrete pad, to which Mr. Rianrungrot replied that it was one of the constructors named Joe.

Mr. Hart asked whether there was plumbing or electricity in the garage. Mr. Rianrungrot replied that there was electricity, but no plumbing.

Mr. Hart asked whether there was a window between the house and the garage. Mr. Rianrungrot said there was no window, and the back door was separate from the garage and did not connect together.

Mr. Hart asked whether the garage was built on a slab or whether there was a foundation under the walls. Mr. Rianrungrot responded that the original walls were used to connect with the garage. He clarified for Mr. Hart that he was referring to the original walls of the carport.

Chairman DiGiulian asked whether there had been any inspections by the County. Ms. Langdon said a building permit had been applied for, but had not been approved, and contained a note stating that the addition was too close to the lot line and required a variance.

In answer to questions by Ms. Gibb, the applicant indicated he was the owner of the property when the garage was built two years prior.

Ms. Gibb asked how it was found out that the building was in violation. Ms. Langdon replied that there was no written violation in the file, so she was unsure how the County became aware of it.

Mr. Hart asked why the garage was built anyway when the building permit application which reflected the applicant's signature was denied. Mr. Rianrungrot indicated that the garage was built before the permit had been applied for. When asked by Mr. Hart whether that was consistent with her understanding, Ms. Langdon said she was unaware of the timing and only knew that a building permit had been applied for which had been denied because the addition would have been too close to the lot line and a variance was required.

Mr. Beard asked whether someone would go to zoning relatively early in the permit process. Ms. Langdon replied that the first thing to be done when building an addition would be to obtain a permit.

~ ~ ~ March 30, 2004, PANUWAT THANARUANG, SP 2004-LE-005, continued from Page 539

Mr. Beard asked whether the building permit application would go to zoning before engineering or structural, to which Ms. Langdon replied affirmatively.

Mr. Hammack asked whether a building permit had been obtained for the enclosed room in the back. Ms. Langdon replied that there was nothing in the file in addition to what she had already given to the Board.

Mr. Ribble asked if staff had checked the street file for permit information. Ms. Langdon said that the information given to the Board included everything that was in the street file.

Mr. Hart noted that there was a plat with a permit showing a deck that currently looked like a room, and he asked when the screened porch had been turned into a room. The applicant indicated that it had been enclosed before he purchased the property in 2000.

Mr. Hart asked whether turning the screened porch into a room would have required a permit. Ms. Langdon said she thought it would have required a building permit and perhaps electrical, plumbing, or mechanical depending on what was done.

Mr. Rianrungrot said the applicant had not been informed that his application had been rejected. In answer to Chairman DiGiulian's question, Ms. Langdon said the copy she had provided to the Board on which she had circled the note that said a variance was needed had never been approved or signed off on. Mr. Pammel said the Board had the original, which had been supplied by the applicant.

Mr. Rianrungrot said the applicant had gone to the County offices six or seven times to get permission and was told he needed to get special permission on the eighth floor.

In response to a question by Mr. Hart regarding the timing of the construction of the garage and the submittal of the building permit application, Mr. Rianrungrot said the applicant requested permission after the garage was built.

Mr. Hart asked why the applicant submitted the building permit application once the garage had already been built. Mr. Rianrungrot said the applicant had talked with his friends who told him he should get permission.

Mr. Hart asked whether the friends being referred to were the people from Hernandez Construction. Mr. Rianrungrot said that was right.

Mr. Hart asked why Hernandez Construction had built the garage without a permit. Mr. Rianrungrot replied that the applicant was told that the construction did not have a problem anymore, so he paid the money to do the construction. He said the applicant had no idea why Hernandez Construction did not get the permit.

Mr. Beard said it was obvious to him that the contractor had the homeowner act as a general contractor for purposes of pulling the permit so he could avoid various liabilities, and since the contractor information had been left blank, he concluded that was what had happened.

Mr. Rianrungrot said the construction of the building cost approximately \$8,000.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Gibb moved to approve SP 2004-LE-005 for the reasons stated in the Resolution. Mr. Ribble seconded the motion.

Mr. Hammack said he was concerned about the builder and wanted the builder to come before the Board to explain his actions. Mr. Hammack said he had no objection to the motion as long as the applicant obtained all the permits.

Mr. Ribble asked whether the applicant had a copy of the contract between the applicant and the contractor with him at the hearing. Mr. Rianrungrot said he did not.

Mr. Hammack stated that he had a hard time satisfying Standard B for approval of special permits.

~ ~ ~ March 30, 2004, PANUWAT THANARUANG, SP 2004-LE-005, continued from Page 540

Chairman DiGiulian asked the applicant whether he could have the contractor come before the Board to explain what had happened. Mr. Rianrungrot said the applicant did not think he would be able to contact the contractor.

Ms. Gibb asked whether a copy of the contract existed. Mr. Rianrungrot said the applicant had no document other than a business card.

Mr. Hammack asked who had purchased the building materials. Mr. Rianrungrot said the applicant had.

Chairman DiGiulian asked staff to make a copy of the contractor's business card.

Ms. Gibb said she would stand by her motion. She said the ultimate fact was that there was no adverse impact on the neighbors, and she was satisfied that based on the applicant having bought the materials and orally contracted with someone to do the labor in light of limited communication skills, there might have been a mix-up regarding what went on.

At Chairman DiGiulian's request, Ms. Langdon said staff would follow up on the inspections with the development condition and would contact the contractor.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PANUWAT THANARUANG, SP 2004-LE-005 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 9.7 ft. with eave 8.6 ft. from side lot line. Located at 6217 Thomas Dr. on approx. 11,743 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (D) 233. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required Standards A through G.
3. The building was built too close to the property line.
4. The building was built without a valid building permit; the permit was applied for but not issued.
5. The encroachment is not big.
6. The neighbors have not objected as to the location.
7. One letter that was received from a neighbor who is also a contractor questioned the quality of the building, footings and similar things.
8. The Development Conditions require the applicant obtain a building permit, which will involve inspections for electrical, footings, and all the things that concerned the author of the letter referenced above, and also a building application be made for the screened in porch to resolve this.
9. There is no adverse impact on the neighbors.
10. The applicant, having bought the materials and contracted through someone even orally to do the labor, communication skills such as they are, there might be a mix-up about what goes on.

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;

~ ~ ~ March 30, 2004, PANUWAT THANARUANG, SP 2004-LE-005, continued from Page 541

- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit is approved for the location of an addition, as shown on the plat prepared by Sam Whitson, dated January 14, 2004, submitted with this application and is not transferable to other land.
- 2. Within 30 days of the final approval date of this special permit, the applicant shall obtain all required building permits and approval of final inspections for the garage and enclosed screened porch.

This approval, contingent upon the above-mentioned 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 6-1. Mr. Hammack voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 7, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 97-V-006 previously approved for a church to permit the addition of a nursery school and site modifications. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mount Vernon District. Tax Map 102-1 ((11)) A and F. (Moved from 2/3/04 due to inclement weather)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vance Morrison, 3120 McGeorge Terrace, Alexandria, Virginia, the applicant's agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the

-- March 30, 2004, MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006, continued from Page 542

staff report. The applicant requested a special permit amendment to SP 97-V-006, previously approved for a church, to permit the addition of a nursery school with a total maximum daily enrollment not to exceed 99 and a 4,200-square-foot play area. No other physical changes were proposed. She reported that subsequent to the publication of the staff report, a number of letters had been received from surrounding neighbors regarding trash, landscaping, and on-site parking. She said the proposed development conditions had been revised to address the neighbors' concerns. Staff recommended approval of SPA 97-V-006 subject to the proposed development conditions.

Mr. Morrison presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church wanted to establish a preschool in the recently renovated Christian education building and the adjoining fellowship hall. He explained that the original special permit resolution had denied the childcare center, but stated that the church had the option to come back at a future time with a more concise plan. Mr. Morrison said the only physical change would be to establish a playground on existing unused level ground. He noted that the topography sloped down from Sherwood Hall Lane to the north and Cortland Road to the south, and vehicular access to the property was via two paved driveways, one ingress and one egress, on Sherwood Hall Lane. He said there were 102 paved parking spaces, entry to the preschool would be on the lower level via a short, handicapped-accessible walkway, and vehicle pickup and drop-off would be located within the church parking lot. He said the preschool for two-and-one-half to five-year-old children would have a maximum daily enrollment of 99. The proposed hours of operation would be Monday through Friday from 9:00 a.m. to 12:00 noon with drop-off available from 8:45 a.m. to 9:00 a.m. and pickup from 12:00 p.m. to 12:15 p.m. If the preschool was successful, Mr. Morrison said the church might consider expanding the hours into the mid-afternoon. He said the preschool would be housed in existing Sunday school classrooms, meeting rooms, and associated restroom facilities. He stated that no meals would be served in the morning, the playground would be fenced and screened with shrubs, no trees would be disturbed, and the impact on the neighborhood would be a positive one. He also said there would be a dumpster on the property, and street-side pickup would no longer be used. Mr. Morrison indicated that area demographics had changed dramatically over the years generating a need for preschool childcare.

In answer to Ms. Gibb's question concerning a Hispanic congregation that conducted its services at the property on Saturday, Ms. Langdon said they were not specifically a part of the development conditions, and the applicant would be responsible for ensuring that anyone using the site was in conformance with the development conditions.

Mr. Hammack asked how the church intended to enforce all ingress and egress from the daycare center on Sherwood Hall Lane. Mr. Morrison said the parents of the students would be informed of the conditions, and if they were not followed, the daycare staff would ensure that they were corrected.

In response to Mr. Beard's request, Mr. Morrison located the drop-off area on the site map and specified that the only vehicular entrance and exit to the preschool would be Sherwood Hall Lane.

Mr. Pammel referred to two buildings on Outlots A and F and stressed that staff had indicated on several occasions that outlots were not buildable. He asked Ms. Langdon whether the original permit had been issued in error. Ms. Langdon said she would have to research the property, but it was possible to have a buildable lot if they were all consolidated. Mr. Pammel said that if consolidation had not been done, the issue needed to be addressed as soon as possible. Ms. Gibb said that an outlot could be joined to a regular lot and built upon without a consolidation. Mr. Pammel asked Ms. Langdon to determine what the policy was and inform the Board.

Mr. Hart said that in looking at the plat, he could not determine the placement of the dumpster, and he asked where it would be located. Ms. Langdon said it would be placed in the area specified in the original permit. She said that there were no parking spaces at that location, and the trash truck would enter and leave through the drive-through. Ms. Langdon said Mr. Morrison had a letter from a neighbor stating that he did not object to the location of the dumpster, but he did have conditions regarding fence height and plantings. Mr. Morrison said that the church had currently been using street-side pickup with standard residential style containers on Wellington Road; however, they proposed to put the dumpster in a location that could be agreed upon with at least weekly pickup and to screen off the area with either a solid six-foot high wooden fence or a three-sided brick wall. He said they were also planning to plant Leland Cyprus trees that would completely envelop the three sides of the area and would reach to the top of the wall with smaller shrubs

~ ~ ~ March 30, 2004, MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006, continued from Page 543

underneath, if necessary. Mr. Morrison said the church had not understood that a dumpster had been a requirement and had used street-side pickup since the church had been occupied. He also said the church did not consider the location at the entrance to the church to be appropriate and continued with street-side pickup.

Chairman DiGiulian called for speakers.

The following persons came forward to speak: Christopher Granger, President, Sherwood Estates Citizens Association, 1910 Sherwood Hall Lane, Alexandria, Virginia; Edward VanBuren, 7733 Wellington Road, Alexandria, Virginia; Kenneth Baisden, representing James and Elaine Baisden, 7729 Wellington Road, Alexandria, Virginia; William Lloyd, 7731 Wellington Road, Alexandria, Virginia; and, Laura McNulty, 7802 Wellington Road, Alexandria, Virginia. Their main points included that they did not oppose the application, however, endorsed the revised development conditions, were agreeable to the erection of a wooden fence on three sides of the dumpster, the island shown on the map as a possible compromise location for the dumpster, the proposed enrollment of 99 children attending the preschool doubling if an afternoon session was implemented, the increased volume of traffic, the overfilling of trash cans left for prolonged time periods along Wellington Road and resulting problems, past lack of oversight and compliance on the part of the church regarding parking and trash, enforcement of all parking being on the church property with no parking on Wellington Road, the increased traffic congestion due to street-side parking, the potential problems which could occur from street-side drop-off parking near the elementary school bus stop located on the corner of Wellington and Cortland Roads and the danger to the elementary students waiting for the bus to arrive at 8:30 a.m.

In rebuttal, Mr. Morrison said a committee had been formed to work with the neighbors, and they intended to enforce parking within the lot.

In answer to Ms. Gibb's question concerning the dumpster, Mr. Morrison said they were awaiting approval of the application and would have it in place early in the fall. Ms. Gibb reiterated that was a condition of the original permit and should be implemented immediately. She noted that the development conditions stated that parking would be onsite and said the church needed a plan for enforcement in order to be in compliance with the special permit.

In response to a question by Mr. Hart, Mr. Morrison said the Hispanic congregation was separate from their congregation and understood the regulations concerning parking onsite. Mr. Hart suggested that the notices be written in both languages to ensure compliance.

Mr. Beard asked whether the church trustees had considered closing the walkway entrance from Wellington Road. Mr. Morrison replied that they had not.

In reply to questions from Mr. Hammack, Mr. Morrison said he had read the proposed development conditions, and the church was in agreement with and would comply with them. He said the church had no plans to exceed the maximum daily enrollment of 99 students.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SPA 97-V-006 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 97-V-006 previously approved for a church to permit the addition of a nursery school and site modifications. Located at 2001 Sherwood Hall Ln. on approx. 3.19 ac. of land zoned R-3. Mount Vernon District. Tax Map 102-1 ((11)) A and F. (Moved from 2/3/04 due to inclement weather). Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ March 30, 2004, MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006, continued from Page 544

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Due to the egress situation, the entrance, the exit of the parking lot, and the size of the parking lot, notwithstanding that on some particular times there has been spillover onto Wellington Road, this will work in harmony with the neighborhood.
3. There is no problem from the standpoint of the vehicles having to come deep into the property before they discharge their passengers or park to discharge their passengers.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Mount Vernon Presbyterian Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 2001 Sherwood Hall Lane 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 R.C. Fields, Jr., dated September 30, 2003, as revised through December 19, 2003, 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 amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved special permit plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity/number of worshipers shall be 350.
6. The nursery school shall be limited to a total maximum daily enrollment of 99 children.
7. There shall be no more than 15 employees associated with the nursery school on-site at any one time.
8. The maximum hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:30 p.m.
9. A solid wall or fence around the eastern, western and southern sides of the play area shall be constructed to provide noise abatement; the wall or fence shall be made of a solid material, consistent with other walls or fences in the surrounding area, with no gaps or breaks both along the surface and at the base. The wall or fence shall be a minimum of four (4) feet high and a maximum of eight (8) feet high. In the event that installation of the play area requires removal of any trees or shrubs, a like number of trees and/or shrubs shall be replanted on-site; the species, size and location of which to be determined in consultation with the Urban Forestry Division, DPWES.

10. Parking shall be provided as shown on the special permit plat. All parking associated with use of the subject property, such as worship services, and the proposed nursery school, shall be on-site. All pick-up and drop-off of children for the nursery school shall be in the church parking lot and shall not occur on abutting neighborhood streets.
11. Transitional screening requirements shall be modified along all lot lines, as depicted on the plat. Dead, dying and/or hazardous plant material shall be replaced with like kind and number as determined by the Urban Forestry Division, DPWES. All transitional screening and landscaping on-site shall be maintained in good condition.
12. The barrier requirement shall be waived along the northern, southern and eastern lot lines. The existing wood fence along the western lot line shall satisfy the barrier requirement and shall be maintained in good repair.
13. Interior parking lot landscaping shall be maintained as depicted on the plat.
14. Any replacement or new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
15. There shall be no outside amplification of music or any other sounds. Any noise shall comply with the Noise Ordinance of Fairfax County.
16. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
17. A trash dumpster shall be installed in the location shown on Attachment 1, adjacent to the western lot line. The dumpster shall be placed on a 10-foot by 10-foot concrete pad and enclosed on three sides by a 6-foot-high brick wall. The open side of the enclosure, which shall face east, shall have two swing gates of solid wood 6 feet high, which shall remain closed and latched except when filling or emptying the dumpster. In addition, the applicant shall comply with the following:
  - a. All refuse shall be placed inside the dumpster. No refuse shall be placed outside the dumpster in the vicinity of the dumpster, including yard debris. All refuse placed into the dumpster, except for flattened cardboard boxes and yard debris, shall be in closed plastic bags and placed in the dumpster.
  - b. The area shall be used and maintained in a clean and sanitary manner to minimize insects, vermin, and odor.
  - c. The enclosure shall be surrounded on the three closed (north, west, and south) sides by evergreens that shall be selected and emplaced to grow to at least 6 feet in height and eventually fully screen the enclosure on those three sides.
  - d. Refuse shall be picked up at least once weekly, and more often if the amount of refuse is deemed to exceed the dumpster's capacity.
  - e. If a non-metallic, rather than steel, dumpster is reasonably available, it shall be installed to mitigate noise and corrosion.
18. Prior to issuance of a Non-Residential Use Permit (Non-RUP) for the nursery school, the applicant shall obtain a shared parking agreement through DPWES to permit the shared use of the church parking lot for both the church use and the nursery school use. If a shared parking agreement is not approved, the number of seats in the sanctuary or the number of children in the nursery shall be reduced to meet the parking requirement.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

~ ~ ~ March 30, 2004, MT. VERNON PRESBYTERIAN CHURCH, SPA 97-V-006, continued from Page 546

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 7, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. CRAIG A. KIRBY, VC 2004-DR-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure or addition 6.8 ft. with eave 5.8 ft. from side lot line and 9.3 ft. with eave 8.3 ft. from another side lot line. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 031-4 ((16)) 42A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Kirby, 5952 Woodacre Court, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure or an addition, consisting of a detached or attached garage, to be located 6.8 feet with an eave 5.8 feet from the eastern side lot line and 9.3 feet with an eave 8.3 feet from the northern side lot line. The applicant proposed two alternatives for providing a garage on his property, one as an attached garage where the garage would be connected to the dwelling via a covered walkway and one as a detached garage. Two plats were provided for consideration and were contained in the staff report. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 8.2 feet, 6.2 feet, 5.7 feet, and 3.7 feet, respectively, were requested.

Mr. Hart noted that there were two plats associated with the application. He and Ms. Langdon discussed the proposed development conditions. Ms. Langdon said the applicant could build either one or the other if the Board did not make any stipulation as to which plat would be approved.

Mr. Kirby presented the variance request as outlined in the statement of justification submitted with the application. He said he had met with his architect and had come up with a new design that addressed the previous concerns of the Board regarding the original two-story design nearer to the side lot lines. He noted that his lot was exceptionally shaped. Mr. Kirby said the proposed garage would be one story in height, located farther away from the lot lines, provided safe, reasonable ingress and egress, and complied with the required standards set forth in the Zoning Ordinance. He said the garage would be in the same style and quality as the existing house, and the breezeway would provide a safer design for his children to exit the house without walking behind the vehicle. He said the attached garage was more aesthetically pleasing and would not interfere with access to the aging sewer line. Mr. Kirby stated that there would be no adverse impact on the neighbors. He noted that two bordering neighbors had written letters to the Board requesting that the breezeway design be approved. He said the 10 closest neighbors had signed a petition in support of the garage attached by the breezeway. Mr. Kirby stated that the garage was not visible from three sides due to screening from trees, shrubs, and other structures and could only be seen from directly in front of the house.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2004-DR-012 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CRAIG A. KIRBY, VC 2004-DR-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure or addition 6.8 ft. with eave 5.8 ft. from side lot line and 9.3 ft. with eave 8.3 ft. from another side lot line. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 031-4 ((16)) 42A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 2004; 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 showing compliance with the required standards for a variance.
3. The lot is oddly shaped with a house that is already taking up most of the width of the lot with converging lot lines toward the front.
4. It was difficult to locate a place for a detached garage, and this application is considerably improved from the previous application, in which the garage was in the back corner and taller, and this is an interesting solution to the geometric problem.
5. It makes no difference whether there is the breezeway or not.
6. There is sufficient space now between the proposed structure and the side and rear lot lines such that there would not be a significant impact.
7. Particularly with the existing conditions with the bamboo and other vegetation with a one-story structure, one wouldn't be able to see it.
8. The chosen location is the logical place to put a garage 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.

~ ~ ~ March 30, 2004, CRAIG A. KIRBY, VC 2004-DR-012, continued from Page 548

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for a detached garage or an addition, as shown on the plat prepared by Bryant L. Robinson, dated May 16, 2003, as revised through November 5, 2003 or February 23, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. If an addition is constructed, it shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 7, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Admin. moved from 2/24/04 at appl. req.)

Chairman DiGiulian noted that SP 2003-SP-047 had been administratively moved to April 20, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:30 A.M. CARLOS AND MALENA CABALLERO, A 2003-LE-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have installed a tennis court which covers more than 30% of the minimum required rear yard and includes a fence and a series of pole mounted light fixtures in excess of seven feet in height all in violation of the Zoning Ordinance provisions for accessory uses and structures. Located at 6435 Franconia Rd. on approx. 18,826 sq. ft. of land zoned R-2. Lee District. Tax Map 81-3 ((12)) 1. (Admin. moved from 12/16/03 at appl. req. to 2/24/04; however, deferred by BZA on 12/16/03 to 3/30/04)

Chairman DiGiulian noted that A 2003-LE-047 had been administratively moved to May 4, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure is located in the front yard and closer than a distance equal to the minimum required side yard to the side lot line of the property in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Admin. moved from 3/2/04 at appl req.)

Chairman DiGiulian noted that A 2003-LE-053 had been administratively moved to April 20, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ March 30, 2004, Scheduled case of:

9:30 A.M. CRAFTSMAN AUTO BODY, MIKE MCCARROLL, A 2003-W-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the proposed use is a motor vehicle storage and impoundment yard and is allowable only on property in the I-4, I-5, and I-6 Districts in accordance with Zoning Ordinance provisions. Tax Map number not applicable. Applies Countywide. (Admin. moved from 2/10/04 at appl. req.)

Chairman DiGiulian noted that A 2003-W-050 had been withdrawn.

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~ ~ ~ March 30, 2004, After Agenda Item:

Approval of March 23, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: September 25, 2007

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 6, 2004. The following Board Members were present: V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. Chairman John DiGiulian and John Ribble were absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:16 a.m. Vice Chairman Hammack discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M. DUANE R. ELLIS, VC 2003-SU-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 7.0 ft. in height in front yard, side and rear yards. Located at 10531 Wickens Rd. on approx. 3.79 ac. of land zoned R-E. Sully District. Tax Map 27-4 ((4)) 14. (Moved from 2/3/04 due to inclement weather.)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Duane Ellis, 10531 Wickens Road, Vienna, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a fence 7.5 feet in height in the front, side and rear yards. The maximum allowable fence height is 7.0 feet; therefore a variance of 0.5 ft was requested.

Mr. Hart noted that the lot was larger than two acres and asked if the applicant could have a 7-foot fence. Ms. Hedrick responded that by right it was permitted.

Mr. Ellis presented the variance request as outlined in the statement of justification submitted with the application. He stated that he owned the property since 1997 and detailed his experiences in dealing with the deer problem, which included taking a course on deer profit, the use of landscaping, bow hunting, and repellents to protect his property. He said the fence was his last attempt. Mr. Ellis explained that he had researched deer fencing and found the Benner organization, from which he obtained a 7.5-foot virtually invisible fence to surround his property. He indicated, in looking at the plat, that the deer fence had been pulled back from his property line so people could use the path. Mr. Ellis described the fence as being an open grid mesh fence and referred to pictures he submitted in the original affidavit. He stated that at a 15-foot height, under normal circumstances, the fence was virtually invisible.

In response to Ms. Gibb's question regarding entry, Mr. Ellis explained that entry through the fence was by a gate on the driveway and a gate on the side of the property.

Ms. Gibb asked if the entire periphery of the lot was wooded. Mr. Ellis stated that all boundaries of the lot were wooded, except to the left, and the lot was even wooded to the front of the property. He said there was a split-rail fence to the adjoining Muss property. Mr. Ellis explained that existing trees were used to support the mesh fence, and if the space between the trees was in excess of 20 feet, he would use a 2-inch reinforced steel post.

Mr. Hart asked if the 7.5-foot mesh fence could be trimmed to 7 feet. Mr. Ellis responded that he did not think it was practical to do that.

There were no speakers, and Vice Chairman Hammack closed the public hearing.

Mr. Pammel commented that he sympathized with Mr. Ellis's deer problem, and he moved to approve VC 2003-SU-175. The motion was seconded by Mr. Hart.

Ms. Gibb stated she could not support the motion without seeing the fence.

Mr. Pammel reiterated that there was no effective way aside from a fence to keep the deer out.

Vice Chairman Hammack pointed out that the fence was unusual in that if the fence were 0.5 foot lower, the applicant could have it by right. He suggested that the matter be referred to the County Board for a possible change in the regulation on fences. Although the fence the applicant selected was ingenious, in Vice Chairman Hammack's view, he did not think 7 feet of plastic was a good solution.

~ ~ ~ April 6, 2004, DUANE R. ELLIS, VC 2003-SU-175, continued from Page 551

Mr. Beard noted that the adjoining neighbor, Mr. Muss, was in support of the fence.

Mr. Hart expressed his support of the fence because the visual impact was slight and the variance of 0.5 foot on the fence dimension was slight compared to what was allowed by right.

Mr. Pammel said he would accept a one-week deferral for decision only. Mr. Hart seconded the motion.

Keith Stafford, 2305 Sawdust Road, Vienna, Virginia, asked to speak. Mr. Pammel moved to reopen the public hearing. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting. Vice Chairman Hammack reopened the public hearing.

Mr. Stafford came forward to speak in opposition to the application. He stated that his house was less than 45 feet from the subject property. He described the fence material as cargo netting that was not suitable for residential property, stating that it was "tall, big, and ugly." Mr. Stafford stated that the fence was not "invisible." He said he had contacted the fence manufacturer in order to view one up close, but was told that they were used for commercial properties and did not fit within a natural residential setting. Mr. Stafford said the fence decreased property values in the neighborhood. He stated that the variance did not satisfy the requirements set forth by Section 18-404. Mr. Stafford said he had photographs of the fence, but had not brought them to the hearing, and at Mr. Pammel's request, he said he would provide staff with the photographs.

Mr. Ellis, in his rebuttal, stated that the fence was residential grade. He explained that he considered the neighbors and did not construct a solid fence, but selected the mesh. He pointed out that he could put any type of fence he wanted by right, solid or otherwise, up to 7 feet.

Vice Chairman Hammack closed the public hearing.

Mr. Pammel moved to defer decision on VC 2003-SU-175 to April 13, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M. JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. with eave 21.2 ft. from front lot line and 14.9 ft. from side lot line and addition 9.4 ft. with eave 8.4 ft. from other side lot line. Located at 1533 Woodacre Dr. on approx. 15,017 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((14)) 8.

Vice Chairman Hammack called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, the applicants' agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of a two-story addition, consisting of a garage and enclosure of an existing porch with living space above, to be located 22.3 feet with eave 21.2 feet from front lot line and 14.9 feet from western side lot line; and a two-story addition, consisting of the enclosure of an existing carport and the addition of living space above, to be located 9.4 feet with eave 8.4 feet from the eastern side lot line. As noted on the plat, a second-story would be added to the entire existing house. A minimum front yard of 35 feet and minimum side yard of 15.0 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum front and side yards; therefore, variances of 12.7 feet, 10.8 feet, 5.6 feet, and 3.6 feet, respectively, were requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She stated that it met the nine standards necessary for approval of a variance. She said the applicants wanted to renovate their home as others had in the neighborhood. Ms. Greenlief explained that the enclosure of the carport would not come any closer than the existing carport to the side, the eave would be one foot farther away than the existing eave, with the carport at 9.4 feet, the eave at 8.4 feet, and the

~ ~ ~ April 6, 2004, JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015, continued from Page 552

existing eave being 7.4. She said the existing entrance to the carport was from the rear, and due to the carport access, the applicants shared a driveway with the neighbor, but wanted their own driveway.

Ms. Greenlief identified three obstacles that existed in the creation of a garage: the rear entry rather than the front, the oak tree, and the need for a side yard variance to accommodate a garage in that area. The applicant had requested a garage in the front of the dwelling to create an L shape. A driveway was needed across the front of the property to avoid the 42-foot oak tree. The garage would be 20 feet in width and located 21.2 feet from the front lot line.

Ms. Greenlief said there was a 52-foot wide power easement that ran across the back of the property. She said the topography was extreme, with a drop in elevation across the back of the property, making it a walkout on the west side, but just one story on the side where the existing carport was. The last part of the variance was a result of the survey. The existing dwelling at 14.9 feet instead of 15 feet from other side lot line was 1.2 inches too close. Because of this, placement of a second story needed a variance. Otherwise, the second story would not be part of the request.

Ms. Greenlief stated that strict application of the Ordinance would create undue hardship. It was reasonable for a home to be updated in this area, and because of the physical characteristics of the land and the existing home placement, that could not occur without a variance request. There was no other place on the property to put these improvements. This hardship was not generally shared by other properties in the area and was not so general as to make necessary a Zoning Ordinance amendment. Authorization of this variance would not be of substantial detriment to the adjacent properties. There were nine support letters from neighbors indicating no objection. Ms. Greenlief said that the Chesterbrook subdivision had many different styles of homes and home placements, and the proposed addition would fit into the character of the residential zoning district. Several variances had been granted in the neighborhood. The variance was in harmony with the intended spirit and purpose of the Ordinance and would not be contrary to the public interest. The applicants were confined by the existing conditions on the site with a large power easement in the rear, the forward placement of the house, some quality existing vegetation they wanted to save, and the topography. Ms. Greenlief asked for relief from the hardships and constraints by approval of the variance request.

James Rosser, the applicant, 1533 Woodacre Drive, McLean, Virginia, responded to Ms. Gibb's question regarding the driveway. Mr. Rosser stated that the existing asphalt driveway would remain for his neighbor and the side yard would be smaller. He said the backyard asphalt would be taken up for a patio, one of the large trees in the front would be removed that was near the existing carport, and the asphalt in the front would be pavers instead of asphalt, which would give more of a courtyard look. Ms. Gibb expressed concern over the vast impervious surfaces in the rear and front, that there would be no grass for drainage.

There were no speakers, and Vice Chairman Hammack closed the public hearing.

Mr. Hart noted that the lot had a number of extraordinary conditions; the VEPCO easement across most of to 20-by-22 ft, which the back of the lot which precluded any use of it; topographical issues in the front; and, mature trees that complicated the location of a driveway or the conversion of the existing carport into a garage. He said the location for the garage was an appropriate one to the extent that the placement of the garage in the front would save the 42-inch oak to the northeast of the property, and he noted that the size of the garage was reduced is a small two-car garage.

Mr. Hart moved to approve VC 2004-DR-015. Mr. Pammel seconded the motion.

Ms. Gibb said she would not support the motion due to the vast amount of impervious surfaces involved with a large two-car driveway and rear patio. Mr. Hammack said he shared Ms. Gibb's view regarding the surfacing, but wanted to resolve it through a development condition that would require the removal of some of the existing impervious surface and possibly a new plat to show what was to be removed and what it would be replaced with.

Mr. Hart asked Ms. Greenlief what timeframe was needed to address the development conditions dealing with the surface material for the new driveway, the removal of the existing pavement behind the carport and some delineation of the size of the patio and whether it would be an impervious material or not. Ms. Greenlief said one week.

~ ~ ~ April 6, 2004, JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015, continued from Page 553

Mr. Hart withdrew his original motion and moved to defer decision on VC 2004-DR-015 to April 13, 2004, at 9:00 a.m., to allow time for the three issues to be addressed. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

Ms. Gibb asked Ms. Greenlief to show the shared driveway being reduced or being narrowed at the next meeting.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M.        ANDREW & SHANNON KUHLMAN, VC 2004-SU-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. from front lot line and 5.0 ft. with eave 4.7 ft. from side lot line. Located at 4300 General Kearny Ct. on approx. 13,247 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 110. (Concurrent with SP 2004-SU-007).

9:00 A.M.        ANDREW & SHANNON KUHLMAN, SP 2004-SU-007 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 deck to remain 5.6 ft. from side lot line. Located at 4300 General Kearny Ct. on approx. 13,247 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 110. (Concurrent with VC 2004-SU-017).

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andrew Kuhlman, 4300 General Kearny Court, Chantilly, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit a deck to remain 5.6 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 14.4 feet was requested. The applicant also requested a variance to permit construction of a two-story addition 23.8 feet from the front lot line and 5.0 feet with eave 4.7 feet from a side lot line. A minimum front yard of 25 feet is required; therefore, variances of 1.2 feet, 15 feet, and 12.3 feet, respectively, were requested.

Mr. Kuhlman presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kuhlman said the deck was existing when he bought the property, and he built an addition to the deck to the side to allow access to the ground level. The existing deck did not have any steps, and this was what he was seeking the special permit approval on. He stated he needed the addition for more living space and said he wanted to build an addition and obtain a variance for 5 feet in the back corner from property line. He explained that the property was rezoned in the early '90s to have 20-foot setbacks instead of the previous 8-foot setbacks. Mr. Kuhlman stated that the variance would not impact the neighbors because the addition location would adjoin County land. He showed pictures and said the property would stay in harmony with the neighborhood because other houses were close together and located within 8 feet from property lines. He said additions were not unusual in his neighborhood, and his was not any larger than other neighbors' additions.

There were no speakers, and Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SP 2004-SU-007 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW & SHANNON KUHLMAN, SP 2004-SU-007 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 deck to remain

~ ~ ~ April 6, 2004, ANDREW & SHANNON KUHLMAN, VC 2004-SU-017 and SP 2004-SU-007, continued from Page 554

5.6 ft. from side lot line. Located at 4300 General Kearny Ct. on approx. 13,247 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 110. (Concurrent with VC 2004-SU-017). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony that they comply with standards A through G.
3. The applicants testified that this was a good faith error in that they purchased the property with the deck in its present location.
4. There was testimony that there is no impact on the neighboring property.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck as shown on the plat prepared by Bryant L. Robinson, dated September 30, 2003, revised through March 12, 2004, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from

~ ~ ~ April 6, 2004, ANDREW & SHANNON KUHLMAN, VC 2004-SU-017 and SP 2004-SU-007, continued from Page 555

compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 2004. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 2004-SU-017 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW & SHANNON KUHLMAN, VC 2004-SU-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. from front lot line and 5.0 ft. with eave 4.7 ft. from side lot line. Located at 4300 General Kearny Ct. on approx. 13,247 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 110. (Concurrent with SP 2004-SU-007)) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants gave convincing testimony that they have met the nine required standards for a variance.
3. As the applicants testified, the lot is unusually shaped and the buildings on it are located square in the middle with the proposed two-story addition being 5 feet from the property line at just one corner, and as you go down the addition, it gets further away so that at the other corner it's 14.1 feet from the side lot line.
4. As the applicants testified, this property was rezoned, and prior to the rezoning, there were 8-foot side yard requirements so that this is compatible with other homes in the neighborhood that are all close to one another.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

~ ~ ~ April 6, 2004, ANDREW & SHANNON KUHLMAN, VC 2004-SU-017 and SP 2004-SU-007, continued from Page 556

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated September 30, 2003, revised through March 12, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 6, 2004, Scheduled case of:

- 9:00 A.M.      FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, VC 2004-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of canopy 18.0 ft. from front lot line. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 66. (Concurrent with SP 2004-DR-004).
- 9:00 A.M.      FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit construction of a new church. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-3

~ ~ ~ April 6, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, VC 2004-DR-013 and SP 2004-DR-004, continued from Page 557

((1)) 66. (Concurrent with VC 2004-DR-013).

Vice Chairman Hammack noted that VC 2004-DR-013 and SP 2004-DR-004 had been administratively moved to May 18, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M. BRUCE C. AND VIRGINIA J. BADE, VC 2004-MV-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. with eave 7.2 ft. from side lot line and minimum rear yard coverage greater than 30 percent. Located at 8405 Morey La. on approx. 11,523 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (9) 15.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce Bade, 8405 Morey Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a one-story two-car garage 8.2 feet with eave 7.2 feet from the northeast side lot line and to permit rear yard coverage greater than 30 percent. Due to the location of the swimming pool in the rear yard, the rear had coverage of approximately 73.7 percent. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3 feet into the minimum side yard; and rear coverage is permitted up to 30 percent; therefore, variances of 3.8 feet for the garage, 1.8 feet for the eave, and 43.7 percent for the rear lot coverage were requested.

Mr. Bade presented the variance request as outlined in the statement of justification submitted with the application. He said he owned property since 1981, and the pool existed when they purchased it so he had no permit records on it. Mr. Bade stated that the plat was incorrect on the coverage. He calculated the pool and concrete surround to equal 836 square feet, but plat showed it at 1,300. Mr. Bade stated he needed a garage and entrance to the basement from the outside, and the addition would provide this. He said there was only one location to place the garage, and his neighbors did not object to the addition. Mr. Bade said that most of the houses in the neighborhood had garages, and the garage would be unobtrusive and in harmony with the neighborhood. He stated that his request was reasonable and his justification met the conditions of the Ordinance.

Mr. Hammack asked about the existing asphalt driveway shown on the plat. Mr. Bade said it would remain, and there would be two driveways in the front yard.

Mr. Hart asked what the coverage would be if both driveways were kept. Ms. Stanfield stated it would have less than 25 percent impervious surface.

Ms. Gibb asked if the driveway adjoined the neighbor's driveway. Mr. Bade stated that there was 6 feet between his and the neighbor's driveways with grass between them. He explained that he did not want to remove the driveway because of the expense and wanted to use it to park cars. He said he did not think the removal of the driveway would change the appearance by much.

Ms. Gibb asked about the shed being removed. Mr. Bade said he would remove the shed if the garage was approved.

Ms. Gibb asked why the 30 percent rear coverage rule was established. Susan Langdon, Chief, Special Permit and Variance Branch, responded that she thought the 30 percent rear coverage rule was established from the original Zoning Ordinance of 1941 that had to do with the amount of impervious surface and runoff from a site to another and that it was the minimum required for a rear yard. She stated that there were requirements on front yards for R-1 through R-4 Districts, with a maximum amount of impervious surface coverage of 25 percent for R-1 and R-2 and 30 percent for R-3 and R-4.

Mr. Beard asked whether the applicants would consider removal of the existing driveway. Mr. Bade replied

~ ~ ~ April 6, 2004, BRUCE C. AND VIRGINIA J. BADE, VC 2004-MV-016, continued from Page 558

that he would consider it along with the cost and also do a paver driveway so the old driveway could remain. He stated he had three cars, so the driveway would accommodate all of them.

Mr. Hart asked if the Board had ever approved two driveways. Ms. Langdon said usually the second one was removed.

There were no speakers, and Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to approve VC 2004-MV-016 for the reasons stated in the Resolution with the additional development condition that the shed would be removed from the rear yard.

Mr. Pammel pointed out that with two driveways the coverage exceeded the 30 percent maximum allowed and, therefore, could not be approved with the existing driveway remaining.

Mr. Beard made a second revision to the development conditions that the applicants remove the existing driveway. Ms. Gibb seconded the motion.

Mr. Hart stated that the garage was 42 feet long, but there was no other available location, and a tandem garage was the only option. He said two driveways would make it appear too commercial, and he would not support two driveways.

Ms. Langdon stated that the changes did not require new plats, and the development conditions would be revised to reflect the removal of the shed and the existing driveway.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE C. AND VIRGINIA J. BADE, VC 2004-MV-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. with eave 7.2 ft. from side lot line and minimum rear yard coverage greater than 30 percent. Located at 8405 Morey La. on approx. 11,523 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (9) 15. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The zoning of the property is R-3.
3. The area of the lot is 11,523 square feet.
4. The applicants have met the required standards for 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;

~ ~ ~ April 6, 2004, BRUCE C. AND VIRGINIA J. BADE, VC 2004-MV-016, continued from Page 559

- F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and rear yard coverage shown on the plat prepared by Kenneth W. White, December 17, 1981, as revised by Rebecca L.G. Bostick, dated December 15, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding what is shown on the plat, the existing shed and the existing driveway shall be removed.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx.

~ ~ ~ April 6, 2004, SANT NIRANKARI MISSION, SP 2003-SU-045, continued from Page 560

4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04 and 3/9/04 at appl. req.)

Vice Chairman Hammack noted that SP 2003-SU-045 had been administratively moved to April 27, 2004, at 9:00 a.m., at the applicant's request.

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The meeting recessed at 10:35 a.m. and reconvened at 10:42 a.m.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:00 A.M. MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seating. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((1)) 20A and 20B. (Admin. moved from 12/2/03, 1/6/04, and 2/17/04 at appl. req.) (Decision deferred from 3/23/04)

Mr. Hart stated that Little Ox Road was formerly Ox Road and was an arterial road at the time of the original special permit and had remained so to the current time.

Mavis Stanfield, Staff Coordinator, stated that the previous special permit approval was still active. Ms. Stanfield explained that the proposed building square footage was less than the amount approved in the original special permit, and trailers would be removed. She said the conservation easement was in place in the original special permit.

Mr. Hart asked if the billboard would be approved as part of the amendment. Ms. Stanfield said it would not. Susan Langdon, Chief, Special Permit and Variance Branch, stated that there was no signage other than the sign at the entrance of Little Ox Road.

Mr. Hart confirmed with Ms. Stanfield that the underwater storm water management was contingent on the waiver being denied and DPWES approval of the design and maintenance agreement.

Mr. Hart inquired as to approvals of underground structures for storm water management in the R-C District for non-residential uses. Ms. Stanfield said there had been other cases that were approved with underground structures.

Mr. Pammel moved to approve SPA 95-S-071 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Beard asked about the previous hearing's minutes. Ms. Langdon said they had not been completed. Mr. Beard said he would have to abstain from the vote since he was absent from the previous hearing and had not viewed the videotape.

Mr. Hart stated that he would support the motion and said he agreed with Mr. Pammel that the current application was a better package than the existing approval. Mr. Hart noted that the amendment eliminated the trailers, involved less square footage of buildings, there was greater attention paid to storm water management, and the parcel across Route 123 would remain undeveloped. He commented that one of the issues that came up after the previous public hearing was the circumstance that the two sides of Route 123 would become one parcel and were hydrologically disconnected, meaning that the undisturbed portion of the site to the west of the road was not picking up anything from the side of the site where the buildings and the parking lots were going.

Vice Chairman Hammack said he had viewed the site and agreed with Mr. Pammel's comments. Vice Chairman Hammack stated that the site was built out to the maximum capacity, but it was better than the previous proposal. He added that the Church would have to realize that they could not do any further

expansion with buildings and activities.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-071 previously approved for a church to permit change in permittee, site modifications and increase in seating. Located at 6608 Little Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((1)) 20A and 20B. (Admin. moved from 12/2/03, 1/6/04, and 2/17/04 at appl. req.) (Decision deferred from 3/23/04). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The application relates to parcel 20B which contains 2.97 acres.
3. Lot 20A on the westerly side of the realigned Route 123 will be left in its natural state, and a conservation easement will be placed on that parcel, which is approximately 3.5 acres.
4. The application is an amendment to a previously approved special permit that occurred in 1995, and at the time of the approval, the application met the prescribed special permit standards as approved by the Board of Supervisors and specifically it was located on an arterial highway at that time.
5. The fact that the approval occurred and it met the standards in effect means that this request is grandfathered as it met the standards at the time of approval, notwithstanding the fact today that the designation of Little Ox Road has been modified to a collector street.
6. This application is an improvement and a far superior application than the one previously approved by the Board.
7. There are no longer trailers involved, and the site structures will occupy slightly less square footage than the previous application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Mok Jang Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6608 Little Ox 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 Professional Design Group, Inc., and dated July 15, 2003, as revised through February 19, 2004, 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.

~ ~ ~ April 6, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 562

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of the Non-Residential Use Permit (Non-RUP) for SPA 95-S-071, the maximum number of seats in the main area of worship shall be limited to a total of 350 seats.
6. Parking shall be provided on-site, as depicted on the special permit plat. All proposed parking shall be provided with the Phase I development.
7. Transitional screening shall be provided as follows:
  - Existing vegetation located along all of the lot lines for Lot 20A and along the southern and western lot lines of Lot 20B shall satisfy the transitional screening requirements.
  - Existing vegetation shall be supplemented along the northern lot line of Lot 20B with a minimum of one row of large and two rows of small evergreen trees; size, species and location to be determined in consultation with the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES).
  - Notwithstanding that which is shown on the plat, full transitional screening 1 shall be provided along the eastern lot line, adjacent to Little Ox Road. However, the screening may be distributed throughout the 75.0 foot wide land area adjacent to the road.
  - Foundation plantings and ornamental trees and shrubs shall be provided around the church buildings for the purpose of softening the view of the structure from adjacent properties and Ox Road.
  - The size, location and species of transitional screening and the foundation plantings around the church buildings shall be determined in consultation with the Urban Forestry Division, DPWES.
8. The barrier requirement shall be waived along all of the lot lines of Lot 20A. The barrier requirement shall be waived along the western, southern and eastern lot lines of Lot 20B. A six-foot high wood fence shall be provided along the northern lot line of Lot 20B, adjacent to the proposed drainfields, as depicted on the plat.
9. All lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
10. The architecture of the proposed buildings shall be generally consistent with the elevations provided by the applicant, and included with these conditions as Attachment 1.
11. Pedestrian crosswalks and sidewalks shall be provided to the satisfaction of DPWES to afford safe access from the parking lot to the church building.
12. Stormwater management and Best Management Practices (BMPs) facilities shall be provided as determined by DPWES. In the event that the requirement for on-site stormwater detention is not waived by DPWES, the applicant shall be required to submit and have approved by DPWES a maintenance agreement for the underground stormwater management facilities prior to final approval of any site plans for the subject property.

Notwithstanding that which is shown on the plat, the parking area shall employ low intensity design mechanisms for stormwater management and Best Management Practices (BMPs), such as raingardens and infiltration strips if approved by DPWES. Further, if the applicant chooses to build the parking area with curb and gutter, an infiltration trench shall be constructed around the parking lot to collect the water and to connect it to the outfall facility located in the southwestern portion of the site. As an alternative, the applicant may construct the parking lot without curb and gutter. A

~ ~ ~ April 6, 2004, MOK YANG PRESBYTERIAN CHURCH TRS, SPA 95-S-071, continued from Page 563

raingarden shall be constructed in the rear of the property, behind the proposed buildings, to retain stormwater and to reduce the rate at which it discharges onto Ox Road. The raingarden shall be maintained per DPWES, consistent with Attachment 2 of these conditions.

13. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
14. Lot 20A shall be maintained and preserved as perpetually undisturbed open space as depicted on the plat. There shall be no clearing or grading of any vegetation on Lot 20A, except for dead or dying vegetation, as determined by the Urban Forestry Division. There shall be no structures or fences erected on Lot 20A.
15. The proposed septic drainfield for the site shall be subject to review and approval by the Fairfax County Health Department.
16. Notwithstanding that which is shown on the plat, Lots 20A and 20B shall be re-subdivided to create a single lot prior to issuance of a Non-Residential Use Permit (Non-RUP).

These conditions incorporate and supercede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. Establishment of Phase I shall establish the use as approved by this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Beard abstained from the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:30 A.M. ALDEVCO CORPORATION, A 2004-DR-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance . Appeal of determination that the appellant has installed a fence around the perimeter of a lot which does not have a principal structure in violation of Zoning Ordinance provisions. Located at 968 Towlston Rd. on approx. 1.89 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 3.

Fred Taylor, the appellant's agent stated that the fence that was the source of the violation had since been removed.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that Mr. Taylor's statement was correct. She noted that a letter stating the violation had been cleared written to the appellant by Ed Tobin, Zoning Enforcement Branch, Zoning Administration Division, who had inspected the property, had been submitted to the Board, along with an attached letter from Mr. Taylor requesting the withdrawal of the appeal.

Mr. Pammel moved to accept the withdrawal of A 2004-DR-001. Ms. Gibb seconded the motion.

Joseph Gibson, 966 Towlston Road, McLean, Virginia, who stated his property was adjacent to the vacant

~ ~ ~ April 6, 2004, ALDEVCO CORPORATION, A 2004-DR-001, continued from Page 564

lot, asked the Board to dismiss the appeal instead of accepting the withdrawal. He said he wanted the appeal dismissed with prejudice so that the fence would not come up again. Mr. Pammel remarked that to accept the withdrawal of the application with prejudice accomplished the same thing as a dismissal. Vice Chairman Hammack said he was not sure the Board could attach prejudice to the motion.

Ms. Gibb summarized that there was a violation and a notice of an appeal made in a timely manner and subsequently withdrawn, so if the Board did not accept it, there was nothing else the Board could do.

Ms. Stehman said the Board could have a public hearing, but it would not accomplish anything because the fence was erected and there was a violation that had now been cleared. She explained that if a second fence were erected, staff would consider that to be the same violation, and the appellant would not have the appeal rights that were granted for the first violation that had now been cleared. She said that by withdrawing the appeal, the issue had been resolved. Ms. Gibb added that it had been resolved because they could not file an appeal within 30 days of the violation.

Mr. Hart asked what staff's position was regarding fencing an empty lot. Ms. Stehman answered that under the provisions of the Ordinance, a vacant lot cannot be fenced. She added that there was a proposed amendment to the Ordinance on the priority two work program, but as of the current date there were no provisions that would allow the subject lot to be fenced. She explained that a fence was an accessory use, and to have an accessory use, there would have to be a principle use, and without a building or structure, open space by itself did not constitute a principle use, so the lot could not be fenced.

Vice Chairman Hammack called for the vote. The motion carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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~ ~ ~ April 6, 2004, Scheduled case of:

9:30 A.M.      MAREC CORPORATION, A 2004-DR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has installed a masonry fence in excess of seven feet in height in the side and rear yards of the lot and in excess of four feet in height in the front yard of the lot in violation of Zoning Ordinance provisions. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2.

Fred Taylor, the appellant's agent, requested a deferral of the appeal to allow time for the related variance application to move forward.

Vice Chairman Hammack called for speakers regarding the issue of deferral.

The following speakers came forward. Joseph Gibson, 966 Towlston Road, McLean, Virginia; and Joseph Stroud, 1050 Cedrus Lane, McLean, Virginia. Both speakers opposed a deferral and stated that they wanted the hearing to go forward and the issues addressed and resolved.

Ms. Gibb asked how the lamps were measured. Mike Adams, Zoning Administration Division, answered that it was measured from the lowest grade to the highest grade of the structure and the fence and the lamps were one structure since the lamps were attached permanently to the fence.

Mr. Hart stated that no matter what the Board of Zoning Appeals did on the appeal, if the application for the variance was accepted, there still would be a public hearing on whether the application should be approved, and typically in a situation that had a violation issued followed by an application by the owner to do something that would, if approved, moot the violation, the appeal public hearing was deferred until such time as the application had run its course. He noted that if the public hearing was deferred, it would not mean that anything was decided or over.

Vice Chairman Hammack commented that the appellant could seek a special permit.

Mr. Gibson asked whether the deferral could be conditioned upon the grievances he and Mr. Stroud had

~ ~ ~ April 6, 2004, MAREC CORPORATION, A 2004-DR-002, continued from Page 565

regarding the numerous 300-watt lamps located over 10 feet high. Mr. Pammel and Vice Chairman Hammack agreed that it could be a zoning violation to have light going beyond the boundaries. Ms. Stehman said staff would look into it.

Mr. Pammel moved to defer A 2004-DR-002 to September 21, 2004, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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~ ~ ~ April 6, 2004, After Agenda Item:

Approval of March 30, 2004 Resolutions

Mr. Beard moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:28 a.m.

Minutes by: Vanessa A. Bergh

Approved on: March 22, 2005

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 13, 2004. The following Board Members were present: Vice Chairman John W. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ April 13, 2004, Scheduled case of:

9:00 A.M. GREGG ALEXANDER, VC 2004-PR-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 35.2 ft. Located at 3109 Miller Heights Rd. on approx. 21,461 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((6)) 63. (Admin. moved from 5/11/04)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Argires Flevarakis, 109 Park Avenue, Suite B, Falls Church, Virginia, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition such that the side yards total 35.2 feet. A minimum total side yards of 40 feet is required; therefore, a variance of 4.8 feet was requested.

Mr. Flevarakis said the addition would be put on the back of the house and required only a minimal variance. He said the foreman was present to answer any technical questions.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2004-PR-028 for the reasons stated in the Resolution.

Ms. Gibb pointed out that the applicant's Statement of Justification was thorough and explained the placement of the house on the lot as well as noting that what appeared to be the front and rear yards were actually side yards. She said she supported the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGG ALEXANDER, VC 2004-PR-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 35.2 ft. Located at 3109 Miller Heights Rd. on approx. 21,461 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((6)) 63. (Admin. moved from 5/11/04.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 2004; 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 prescribed standards for the granting of a variance.
3. The applicant's justification noted that the positioning of the house on the lot created the need for the variance.
4. As a pipestem lot, it is an unusual 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch addition, as shown on the plat prepared by Bowman Consulting Group, Ltd., signed by Walter C. Sampsell, Jr., dated February 10, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 13, 2004, Scheduled case of:

9:00 A.M. DUANE R. ELLIS, VC 2003-SU-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 7.0 ft. in height in front yard, side and rear yards. Located at 10531 Wickens Rd. on approx. 3.79 ac. of land zoned R-E. Sully District. Tax Map 27-4 ((4)) 14. (Moved from 2/3/04 due to inclement weather.) (Decision deferred from 4/6/04.)

Vice Chairman Ribble announced that this case was for decision only. He called for a motion.

Mr. Pammel said he would reintroduce his motion of the prior week, which was to approve the variance as requested.

Mr. Hart seconded the motion.

Ms. Gibb said that she was sympathetic with the Ellis's over their deer problem, but she could not support the motion as she believed the fence was not aesthetic with the surroundings, was too high, and was visibly obtrusive for the adjacent property owner.

Mr. Hammack concurred with Ms. Gibb over the fence material, saying it was simply not compatible with the neighborhood, and he too would not support the motion.

Mr. Beard pointed out that the applicant was allowed by-right to construct a fence up to 7 feet high, and based on that, he would support the motion.

Mr. Pammel noted that if the variance was denied, that did not preclude the fence from being built. He pointed out that the fence would simply be shortened 6 inches, and he did not see any difference between a 7-foot versus a 7 ½ -foot fence.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DUANE R. ELLIS, VC 2003-SU-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 7.0 ft. in height in front yard, side and rear yards. Located at 10531 Wickens Rd. on approx. 3.79 ac. of land zoned R-E. Sully District. Tax Map 27-4 ((4)) 14. (Moved from 2/3/04 due to inclement weather.) (Decision deferred from 4/6/04.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

~ ~ ~ April 13, 2004, DUANE R. ELLIS, VC 2003-SU-175, continued from Page 569

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location and height of the fence, as shown on the plat prepared by Steven M. Schwartz, dated June 28, 2003, 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. Hart seconded the motion, which carried by a vote of 4-2. Ms. Gibb and Mr. Hammack voted against the motion. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 13, 2004, Scheduled case of:

9:00 A.M. JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. with eave 21.2 ft. from front lot line and 14.9 ft. from side lot line and addition 9.4 ft. with eave 8.4 ft. from other side lot line. Located at 1533 Woodacre Dr. on approx. 15,017 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((14)) 8. (Decision deferred from 4/6/04.)

Vice Chairman Ribble noted that a revised plat was submitted and called upon Mr. Hart for a motion.

Mr. Hart moved to approve VC 2004-DR-015 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA****VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. with eave 21.2 ft. from front lot line and 14.9 ft. from side lot line and addition 9.4 ft. with eave 8.4 ft. from other side lot line. Located at 1533 Woodacre Dr. on approx. 15,017 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((14)) 8. (Decision deferred from 4/6/04.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The lot has topographic difficulties as well as existing trees to be preserved.
3. A substantial portion of the rear of the lot is encumbered by a VEPCO easement precluding expansion or making it more difficult in that direction.
4. The revise plat has removed a substantial amount of the pavement that was previously shown for the turn-around to enter the carport from the rear.
5. The area that is the patio is fairly small and with the revisions, the previous concerns have been largely resolved.
6. The 42-inch oak tree will be preserved by redirecting the drive along the side of the house.
7. There will not be a significant negative impact on anybody.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ April 13, 2004, JAMES H. ROSSER & NICKI J. WATTS, VC 2004-DR-015, continued from Page 571

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition and porch enclosure with second story and carport enclosure with second story as shown on the plat prepared by Dominion Surveyors, Inc., dated November 14, 2003, as revised through April 9, 2004, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 13, 2004, Scheduled case of:

9:00 A.M. JAMES REED, JR., VCA 93-P-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 93-P-160 to permit construction of second story addition 10.0 ft. with eave 9.5 ft. from rear lot line and 8.5 ft. from side lot line such that side yards total 35.8 ft. and deck 8.0 ft. from rear lot line and 7.8 ft. from side lot line. Located at 10506 Marbury Rd. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-2 ((16)) 29.

Vice Chairman Ribble noted that VCA 93-P-160 was moved to June 1, 2004, for notices.

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~ ~ ~ April 13, 2004, Scheduled case of:

9:00 A.M. LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 3 lots with proposed lots 1, 2, and 3 having a lot width of 6.7 ft. Located at 10611 and 10609 Vale Rd. on approx. 6.04 ac. of land zoned R-E. Providence District. Tax Map 37-1 ((5)) A1 and 37-3 ((2)) 5A. (Admin. moved from 3/16/04 at appl. req.)

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Erika L. Byrd, McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, the applicant's agent, replied that it was.

~ ~ ~ April 13, 2004, LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003, continued from Page 572

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of two lots into three lots, with proposed Lots 1, 2, and 3 each having a lot width of 6.7 feet. A lot width of 200 feet is required in an R-E District. Mr. Sherman stated that Lot 1 would consist of approximately 1.9 acres; Lot 2, approximately 1.8 acres; and Lot 3, approximately 2.3 acres. He said it was staff's determination that the application did not meet variance standards 4, 5, 6, 8, or 9.

Ms. Byrd presented the variance request as outlined in the statement of justification submitted with the application. She said the parcel, totaling 6 acres, was located a distance of 820 feet from the public street, Vale Road, with the Albrights and their neighbors sharing a minimally improved driveway that exited onto Vale Road. Access was difficult, she pointed out, for both emergency vehicles and the homeowners, and the applicants suffered undue hardship being located so far from a public road. Ms. Byrd concurred that the lot width, being excessively long and narrow, did not meet Zoning Ordinance requirements, pointing out it was due to the property's pipestem configuration. The variance would be beneficial to the public, she said, because the Albrights, who were committed to improving the driveway, would construct a turn-around and would preserve an extensive Environmental Quality Corridor (EQC) area of the Difficult Run watershed. The neighbors supported the application, she said, as the proposal was harmonious and compatible with the surrounding area. Ms. Byrd said the application accomplished many of the Ordinance's purposes and Policy Plan goals. She noted that if allowed to subdivide the parcel, it would provide additional revenue to the County. Ms. Byrd informed the Board that County staff had determined, from an environmental and engineering standpoint, the property could be subdivided.

Responding to Ms. Gibb's question concerning the driveway, Ms. Byrd said the driveway would be improved to a width of 18 feet and would traverse a 30-foot wide easement that benefited the adjoining neighbor.

In response to Mr. Hart's question concerning a small stream shown on the plat, Charles Huntley, Sr., the project engineer, Huntley, Nyce and Associates, Ltd., 44289 Albemarle Point Place, Suite 120, Chantilly, Virginia, explained that the small tributary Mr. Hart questioned would be piped underneath the driveway at the standard 20-by-60 turn-around point, as directed by staff and the Fire Marshall. He assured that the area would not be disturbed as the grading would accommodate only the driveway.

Mr. Sherman concurred that the entire area to the southwest of the pipe was outside the limits of clearing and grading and would not be disturbed.

Mr. Hart noted a possible conflict with the development conditions concerning the well proposed for Lot 2, pointing out that if the proposed location was not suitable, its relocation would place it within the limits of clearing and grading.

Mr. Huntley explained that the driveway would enter the rear of the house with the specific area graded only two feet, and the slope would not be disturbed. He noted that the house was just in front of the steep slope.

A total of six houses would use the pipestem driveway, Ms. Byrd stated, in response to Mr. Hart's question.

Mr. Hart pointed out that some of the same problems with the property today were considered in 1967 at the time of the subdivision approval. He noted that part of the parcel had already been the subject of a variance. He questioned how the division of two lots into three could be justified by reason of a hardship and not be considered a convenience to maximize the yield from a 6-acre combination.

Ms. Byrd stated that the initial variance application was 35 years ago and the conditions in the immediate area and Countywide had changed extensively. The hardship that existed in 1967 had remained the same, she said; the property was extremely isolated from a public road.

To answer Mr. Hart's question on how a lot's shape had changed since 1967, Linden Albright, the applicant, 10609 Vale Road, Oakton, Virginia, explained the shapes of the three lots as depicted on an approved 1967 plat. He said he was surprised when he noticed that the plat was different than that which was recorded with his deed.

Susan Langdon, Chief, Special Permit and Variance Branch, was unsure how the mistake occurred, but

~ ~ ~ April 13, 2004, LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003, continued from Page 573

speculated that when the plat was submitted to Department of Public Works and Environmental Services (DPWES) for recordation, it was recorded in the other location.

Ms. Byrd submitted a subdivision plat recorded in 1971 with notes that referenced the 1967 variance and showed the current configurations.

Mr. Hart said he did not understand how they had to get a variance in 1967 to get the lot without enough street frontage and how that could be changed without a variance amendment or public hearing.

After reading the 1971 subdivision plat notes, Ms. Langdon said the variance was referenced, but there was no indication why the pipestem was put on the other side of the lot.

Addressing the Board, Mr. Albright said it was important that the Board consider the easement access and pointed out its tracking across the property. At Mr. Beard's request and by utilizing the overhead projector, he indicated the route to access his property from Vale Road and pointed out the land's varied topography.

Vice Chairman Ribble called for speakers.

Louis Childers, 10603 Vale Road, Oakton, Virginia, came forward to speak in support of the application. He said he had lived at his residence for 40 years. He said the plan preserved and maintained the heavily wooded area and was compatible with the neighborhood. Mr. Childers said staff's comment concerning the Land Use Analysis was misleading. He quoted the text, "The proposed lots, which would consist of approximately two acres on average, would be considerably smaller than the neighboring lots with similar Comprehensive Plan recommendations and zoning designation." He pointed out that the neighborhood and its surroundings were zoned both one and two acres, and he believed the public consensus was that was how the land should be developed. He called attention to staff's notation of the stream indicated behind the subject parcel, stating that he never saw that tributary flow through that draw. Mr. Childers said, however, the stream could have water at times, but he just had not seen it.

Sean McGuinn, 10613 Vale Road, Oakton, Virginia, came forward to speak in support of the application. He said he believed the plan was harmonious and compatible with the neighborhood. He said he especially appreciated that the proposal maintained the heavily wooded area, which was a main concern of his.

Mr. Albright said he loved the area, lived there for 29 years, would retire there, and wanted to preserve the rural nature of the property. He said there was not a stream behind the property. He pointed out that an adjoining parcel was slated to be subdivided into five acre lots. He maintained that his proposal was compatible with the area, and he requested the Board's approval. He responded to Ms. Gibb's question concerning a proposed drain field reserve that showed on the plat of his Lot 3, clarifying that he had no plans to change its location for the existing house he lived in, but he had tested the ground in other locations to make sure that there was an area that perked in the event that he had to replace the drain field for one of his two houses. He concurred with Ms. Gibb that he would not and could not put in a state maintained road.

Sarah Albright, 10609 Vale Road, Oakton, Virginia, the applicant, said that in the early 1970s Supervisor Martha Pennino appointed her to the Park Authority, and she felt like she was in at the beginning of growth in the County and now felt she was at the end. Their hardship was that their retirement funds might not be enough and she and her husband had serious health problems. She said they needed the income of selling one lot. She explained that their son moved into the dilapidated house next door and did extensive repairs. She said they enjoyed him being close, wanted him to continue to live by them, get married, and to help protect their investment in their home, they would share the renovation costs to upgrade his kitchen. She pointed out that the alternative was to raze the house, and a developer would construct a showplace that was not compatible with their neighborhood. Ms. Albright said they wanted to remain self-sufficient and to live in the neighborhood that they loved. She requested that the Board review staff's interpretation of the Comprehensive Plan and allow them to make their neighborhood an even better place to live.

Sandy Mastro, 3920 University Drive, Fairfax, Virginia, came forward to speak in opposition to the application. She said she was speaking on behalf of Mr. and Mrs. Firouz Rezazadeh, 10612 Hannah Farm Road, Oakton, Virginia, and they had concerns that the proposed subdivision, by adding one home, would negatively impact the value and enjoyment of their home and affect the nature of the neighborhood by

~ ~ ~ April 13, 2004, LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003, continued from Page 574

decreasing the privacy and quiet that they enjoyed. Ms. Mastro said the Rezazadehs were attracted to the neighborhood because of its large lots, few homes, and the amount of heavily wooded vegetation. They were concerned that the character of the neighborhood would change by allowing three lots on one parcel, which decreased the lot size and space surrounding each house and changed the interaction between them. The Rezazadehs requested that the Board deny the application, she stated.

Ms. Byrd, in her rebuttal, said they were aware of the Rezazadehs' concerns and addressed them with development conditions that preserved the EQC and tree save area. She pointed out that the Rezazadehs' lot was much smaller than any of the proposed subdivided lots and that it was located in a neighboring cluster subdivision. Ms. Byrd believed that the proposal had no negative effect or visual impact. She pointed out that the location of the proposed house was approximately 30 feet away from and 30 feet above the topographic level of the Rezazadehs' lot and that there was also a heavily wooded buffer between the properties.

Ms. Gibb questioned staff on the fact that Lot 5A was landlocked. Mr. Sherman explained that the lot had access to Vale Road via the easement, but had no frontage on a public street.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb said she was inclined to support the motion, but wanted to see the site before she made her decision. She disagreed with the staff report on its determination on two standards; the application met Variance Standard 8, she believed, in that the character of the zoning district would not be changed, and Variance Standard 9, as, in her opinion, it was in harmony with the intended spirit and purpose of the Ordinance. She said the lots were not too small compared with the surrounding parcels and considering the proposed development that would occur on the 11-acre neighboring parcel, and she was comfortable with the applicants' proposed EQC line and the limits of clearing and grading. Ms. Gibb moved to defer decision on VC 2004-PR-003 for one week.

Mr. Hart seconded the motion. He said there were four issues he wished clarified: 1) the location of the turn-around; 2) the potential conflict with the location of Lot 2's well and the undisturbed area, 3) the drain field reserve of Lot 3 with the undisturbed area; and, 4) the discrepancies with the drawings and the testimony on the grading area where the pipe would be placed. Mr. Hart said that he also wanted to view the site.

Mr. Hammack said he would be absent the following week; therefore, Vice Chairman Ribble called for an amended motion for a two-week deferral, to April 27, 2004, at 9:00 a.m. Ms. Gibb and Mr. Hart accepted the amended motion. The motion carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 13, 2004, Scheduled case of:

- 9:00 A.M. HAROLD PALACIOS, SP 2003-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure to remain 3.2 ft. from side and 7.3 ft. from rear lot lines. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with VC 2003-LE-158). (Admin. moved from 1/13/04 and 3/2/04 for notices.)
- 9:00 A.M. HAROLD PALACIOS, VC 2003-LE-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure 1.8 ft. with eave 0.8 ft. from side lot line. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with SP 2003-LE-038). (Admin. moved from 1/13/04 and 3/2/04 for notices.)

~ ~ ~ April 13, 2004, HAROLD PALACIOS, SP 2003-LE-038 and VC 2003-LE-158, continued from Page 575

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harold Palacios, 6251 Wills Street, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on error in building location to permit a dwelling to remain 8.8 feet with eave 7.8 feet from the southern side lot line and 14.6 feet with eave 13.6 feet from the northern side lot line; and an accessory structure, consisting of a 9.9 foot-high storage shed, to remain 3.2 feet from a side lot line and 7.3 feet from the rear lot line. A minimum side yard of 20 feet and minimum rear yard of 9.9 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 11.2 feet and 5.4 feet for the dwelling, 9.2 feet and 3.4 feet for the eaves on the dwelling, and 16.8 feet and 2.6 feet for the shed were requested.

The applicant requested a variance to permit construction of a two-story addition to be located 8.8 feet with eave 7.8 feet from the southern side lot line; a second-story addition over the existing dwelling, to be located 8.8 feet with eave 7.8 feet from the southern side lot line and 14.6 feet with eave 13.6 feet from the northern side lot line; a two-story addition located to the rear of the existing dwelling, 8.8 feet with eave 7.8 feet from the southern side lot line and 14.6 feet with eave 13.6 feet from the northern side lot line; and an accessory structure, consisting of a detached garage, to be located 1.8 feet with eave 0.8 feet from the southern side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the side yard; therefore, variances of 8.8 feet, 14.6 feet, 7.8 feet, and 13.6 feet were requested for the additions to the dwelling, and variances of 18.2 feet and 16.2 feet were requested for the garage and garage eave. Ms. Stanfield pointed out that, as noted in the staff report, building permits were issued in 1953 and 1954. The 1954 building permit showed that along the southern lot line an open porch was drawn in approximately 10 feet from the side lot line, which, she said, was probably where the existing dwelling was now located.

Miguel Garcia, 6251 Wills Street, Alexandria, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He clarified that the property had an existing shed, as indicated on the plat, and explained that Mr. Palacios sought more room to accommodate his growing family. He pointed out that the proposed addition would be built toward the rear of the property and nothing would be placed to the front or on either side of the house. He concurred with Ms. Gibb's observation that on each side of the applicant's home, two-story homes were recently built.

Susan Langdon, Chief, Special Permit and Variance Branch, said that there was no height indicated on the plat for a shed in that particular location, and the advertisement was for another accessory structure. She clarified that the variance was to permit construction of the garage, and the special permit was to allow the shed to remain. She questioned whether the shed that was advertised to remain, if its height was more than 8 feet, may require a variance.

Mr. Hart commented that the dimensions for the garage appeared too small in depth and width to accommodate two cars.

Responding to Vice Chairman Ribble's question, Mr. Garcia said the height of the existing shed would remain at 12 feet.

In response to Mr. Hammack, Mr. Palacios said the property was purchased three years ago.

Mr. Garcia responded to Mr. Hammack's questions concerning the garage, indicating the placement of the garage's doors, that the floor would be concrete, and that there already was an electric hook-up.

Ms. Langdon confirmed to the Board that the advertisement was accurate and proper, that the accessory structure was indicated in both the shed and the garage, and the existing shed was no larger than what was shown on the plat. She said that, if approved, the applicant could leave the accessory structure as it was or convert it, as he proposed, into a garage. Ms. Langdon stated that there were no drawings submitted with the application.

Vice Chairman Ribble commented that there was confusion as to what the proposal would look like and that there should be more clarification on the plat. He said he felt additional information was necessary and a deferral was warranted.

~ ~ ~ April 13, 2004, HAROLD PALACIOS, SP 2003-LE-038 and VC 2003-LE-158, continued from Page 576

Mr. Hart and Mr. Beard requested that the applicant provide the Board with more detail on the garage's dimensions, the house's addition, and the lay of the driveway. Mr. Beard also requested more detail on the shed located in the far back yard.

Vice Chairman Ribble clarified that the proposed garage would house cars, while the garden and lawn equipment would be moved to the shed in the rear yard.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

In order to allow time for the applicant to provide the Board with the requested information and clarification, Mr. Beard moved to defer both applications, SP 2003-LE-038 and VC 2003-LE-158, to April 27, 2004, at 9:00 a.m.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 13, 2004, Scheduled cases of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (Deferred from 4/15/03, 10/14/03, and 1/6/04)

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7901 and 7828 Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/03, 10/14/03, and 1/6/04)

Vice Chairman Ribble announced that there was a deferral request for each of these appeal applications.

Mr. Hart gave a disclosure, but indicated he did not believe it would affect his ability to participate in the cases.

Mr. Beard disclosed that he knew Robert Tramonte personally, but it would not affect his ability to participate in the cases.

Jerry K. Emrich, Esquire, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, the appellants' agent, explained that these cases were deferred several times in order to permit the processing of special exception applications and that only recently had he become involved when the original counsel was hospitalized. After discussing the staff report with the original counsel, he said he felt it appropriate that the cases be further deferred to a date late in September. He pointed out that staff recommended denial of the special exceptions, and the Planning Commission date to hear the special exception applications was deferred and may have to be further deferred. Mr. Emrich said his clients agreed to withdraw one of the special exception applications that concerned storage in the floodplain which, he noted, was staff's major issue. He was optimistic, he said, that the issues could be resolved, but conceded that the process was lengthy and had several issues in contention. In the staff report that recommended denial of the special exceptions, Mr. Emrich said he disagreed with staff's statement that the appellants were not responsive to requests for information. He professed that staff had requested and was provided a lot of information. Mr. Emrich said they would continue to work with staff and the Planning Commissioner on the resolution of issues and, at the appropriate time, would appear before the Lee District Land Use Committee, the Planning Commission, and the Board of Supervisors, and he said he believed the matter would be resolved. Mr. Emrich respectfully requested a deferral.

--- April 13, 2004, VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031; SILVIO DIANA, A 2003-LE-001, continued from Page 577

Margaret Stehman, Assistant to the Zoning Administrator, pointed out that Mr. Emrich's April 2<sup>nd</sup> letter requesting the deferral was distributed that morning. She said Ms. Jayne Collins would speak to the deferral.

Jayne Collins, Zoning Administration Division, said it was staff's position that there was little to no progress in clearing the violations that were issued in 2002. It was a year after the notices of violation were issued, she said, that Mr. Diana filed three special exception applications, and only one of which, if it was approved, would remedy some, but not all the problems. She noted that there were many issues to be resolved. Industrial uses were not allowed on residentially zoned property, and staff recommended denial of all three applications because there was no priority given to the environmental reclamation and protection that the Comprehensive Plan recommended. Ms. Collins stated that since 1995, the illegal land disturbing activities and the property's denuding and abuse, were ongoing, and the applications were deferred numerous times to allow for the special exception process to take place, which staff believed were not diligently pursued. Staff could not support another deferral.

Mr. Hart said he remembered the Board deferring decision on several cases on Cinder Bed Road to allow the violations to be cleared. He questioned what was different this time for denying a deferral.

Ms. Collins said these violations had gone on far too long, and staff would like to take other means to gain compliance with the Zoning Ordinance. She noted that staff did not recommend deferral on such cases because it took too long for the property to be cleaned up. She concurred with Mr. Hart's deduction, that with the withdrawal of one special exception application and the approval of the remaining two, only some, but not all of the violations would be cleared. Site plans, Non-Residential Use Permits (Non-RUPs), and building permits were required for much of the activity being conducted on one portion of the property, she explained, and there remained illegal usage of another portion of the residential zoned property, all of which were not solved by the special exceptions.

Mr. Emrich explained that the situation was complicated, but only after approval of their special exception applications by the Board of Supervisors would they know what was allowed on the property, and then action could be taken to remedy the violations and pursue legal usage of the property. He again took issue with the contention that they were not diligent and timely in responding to staff's requests. In response to Mr. Hart's question concerning what was proposed to address the on-going violations that were not cleared by the special exception approvals, he said it was a question of what could occur on the industrial portion of the site as to what equipment/units would be removed from the residential portion to the industrial zoned portion of the property. Mr. Emrich maintained that nothing additional would be done and that clarification was necessary of what was allowed before adjustments could be done. Also in response to Mr. Hart's question, he explained that the reason for the public hearing deferrals of the Planning Commission and Board of Supervisors was due to the health problems of the original counsel and staff's recommendation of denial. Mr. Emrich said substantial accommodations were made to resolve issues for staff's favorable recommendation.

In closing staff comments, Ms. Collins said staff would not proceed on any of the violations covered under the special exception applications.

Mr. Hammack moved to defer the concurrent appeal applications, A 2002-LE-031 and A 2003-LE-001, to September 28, 2004, at 9:30 a.m. He said he sympathized with staff in their efforts to clean up Cinder Bed Road, acknowledging that these cases were difficult. He noted that the Board's action today was not inconsistent with similar cases, to allow the appellants time to address issues and resolve violations, and that he himself was reluctant to hear the cases without knowing the Planning Commission's and Board of Supervisors' decisions.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 13, 2004, Scheduled case of:

9:30 A.M. WILLIAM P. AND MARY O. OEHRLEIN, A 2003-MV-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that Talbert Rd. does not meet the definition of street as set forth in the Fairfax County Zoning Ordinance and, as such, lot width cannot be measured along Talbert Rd. for Lots 2 through 5 of the proposed Giles Glenn Subdivision. Located at 9000 Hoes Rd. on approx. 10.0 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 15. (Moved from 2/3/04 due to inclement weather) (Deferred from 3/2/04 at appl. req.)

John B. Connor, Esquire, 1033 North Fairfax Street, Alexandria, agent for the appellants, requested a deferral. One deferral was already granted, he explained, and he requested an additional 90 days to complete a configuration that was acceptable by the County. In response to Ms. Gibb's question, Mr. Connor said a meeting was scheduled with staff to address factors concerning the property's Resource Protection Area (RPA), the preservation of a number of lots for the Oehrleins, and to address County concerns about irregular lots and meandering tentacles. He explained that William Shoup, Zoning Administrator, Zoning Administration Division, and Bruce Nassimbeni, Director of Environmental Review, Department of Public Works and Environmental Services (DPWES), were reviewing their proposal, and Mr. Connor said he was optimistic that a reasonable accommodation could be derived.

Mr. Hart informed the Board that the Planning Commission's administrative hearing on this matter was the prior week, during which Mr. Shoup indicated that he supported a deferral of the public hearing.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concurred that staff supported the deferral.

There were no speakers to the issue of deferral, and Vice Chairman Ribble called for a motion.

Ms. Gibb moved to defer A 2003-MV-049, to July 20, 2004, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 13, 2004, After Agenda Item:

#### Approval of April 6, 2004 Resolutions

Mr. Hammack moved to approve the April 6, 2004 resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Paula A. McFarland

Approved on: February 8, 2005

  
 Kathleen A. Knoth, Clerk  
 Board of Zoning Appeals

  
 John F. Ribble III, Vice Chairman, for  
 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 20, 2004. The following Board Members were present: Vice Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; and James D. Pammel. Chairman John DiGiulian and Paul W. Hammack, Jr., were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:04 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M.      DARSHAN S. PADDA AND KULWANT K. PADDA, VC 2003-DR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 3-A2 having a lot width of 20.09 ft. and proposed lot 3-A1 having a lot width of 148.6 ft. Located at 715 Walker Rd. on approx. 3.48 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((2)) 3A1. (Deferred from 2/10/04 at appl. req.)

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Vice Chairman Ribble called the applicants to the podium. Grayson Hanes, Reed Smith, LLP, 3110 Fairview Park Drive, Falls Church, Virginia, the applicants' agent, said the applicants were close to working out issues with the Great Falls Citizens Association and requested a deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had no objection to a deferral.

Vice Chairman Ribble called for speakers

Mary Cassidy Anger, 172 River Park Drive, Great Falls, Virginia, member of the Executive Board of the Great Falls Citizens Association, agreed with the applicants' request for a deferral.

Mr. Pammel moved to defer VC 2003-DR-178 to May 11, 2004, at 9:00 a.m., at the applicants' request. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M.      KAREN LYNNE WILSON, VC 2004-BR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. with eave 13.9 ft. from rear lot line. Located at 5633 Ravenel La. on approx. 11,249 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (73) 18.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Karen Lynne Wilson, 5633 Ravenel Lane, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition to be located 14.9 feet with eave 13.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 10.1 feet and 8.1 feet, respectively, were requested.

Ms. Wilson presented the variance request as outlined in the statement of justification submitted with the application. She stated that she was requesting the addition of a screened-in porch to protect her from insects and to allow her to enjoy her backyard. She said the addition would enhance the value of her home and surrounding properties.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2004-BR-018 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

KAREN LYNNE WILSON, VC 2004-BR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. with eave 13.9 ft. from rear lot line. Located at 5633 Ravenel La. on approx. 11,249 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (73) 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 April 20, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The dwelling on the property is located to the rear of the lot.
3. The property has an unusual lot configuration.
4. Given the location of the enclosed porch, there is no other suitable location for the addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ April 20, 2004, KAREN LYNNE WILSON, VC 2004-BR-018, continued from Page 582

1. This variance is approved for the location of the screened porch addition shown on the plat prepared by Alexandria Surveys International, LLC, dated December 8, 2003, as revised through January 29, 2004, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding the height as depicted on the variance plat, the shed shall be reduced in height, removed or relocated as to comply with Zoning Ordinance requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2908 Westcott Street on approx. 11,627 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 66.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Torok, 2908 Westcott Street, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit accessory storage structures to remain in the front yards of a lot containing 36,000 square feet or less. Accessory storage structures are not permitted in the front yards of lots containing 36,000 square feet or less pursuant to Sect. 10-104 of the Zoning Ordinance. The accessory storage structures consisted of an accessory storage structure (Shed C) located in the front yard adjacent to Westcott Street and two accessory storage structures (Sheds A and B) located in the front yard adjacent to Carlton Avenue.

The applicants also requested a variance to permit fences greater than 4.0 feet in height to remain in the front yard of a corner lot. Fences of greater than 4.0 feet in height are not permitted in front yards pursuant to Sect. 10-104 of the Zoning Ordinance. The fences consisted of lattice of 6.0 feet in height, requiring a variance of 2.0 feet, and frame fence of 5.5 feet in height running along the western lot line, requiring a variance of 1.5 feet.

Mr. Torok presented the variance request as outlined in the statement of justification submitted with the application. He said he had not been aware that he was in violation of the Zoning Ordinance when the sheds and fence were built. He indicated that his backyard was very small, there was a large brick patio on it, and there was no room to build any type of storage facility in that area. Mr. Torok stated that the sheds were well constructed and did not pose any safety problems. He also said he did not think they detracted from the

~ ~ ~ April 20, 2004, JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC  
2004-PR-019, continued from Page 583

aesthetics of the neighborhood. He said an appraisal of his property had been done a few months ago, and the appraiser's opinion was that there was no positive or negative effect on the property itself or on the surrounding properties. He said he had planted a hedge row to screen one of the sheds from the street and planned to do the same with the others. Mr. Torok stated that he had spoken to several of his neighbors, and they had no objections to the sheds already in existence. He stated that Sheds USA was concerned about a slope on the site of the newest one and had placed it in the wrong place. He advised that he was planning to move the shed up 10 feet toward his property and away from his neighbors' property lines. He said that there was no other place to put the sheds, and if he had to remove them, it would cause a hardship not only where storage was concerned, but also with the expense of doing so. Mr. Torok referred to the objection that had been raised by Mr. LaFrance and advised that after he had spoken with Mr. LaFrance and explained his plans for screening, Mr. LaFrance had rescinded his objection.

In answer to Vice Chairman Ribble's question, Mr. Torok said it was his intention to move Shed C.

Mr. Sherman confirmed to Mr. Hart that the issue was with the sheds being in the front yards rather than with the distance from the front or side lines. At Mr. Hart's request, Mr. Sherman displayed on the plat where the front yards stopped.

Mr. Sherman responded to another question from Mr. Hart, stating that no accessory structures were permitted in front yards and there was no criterion for the aggregate footprint of the sheds.

Mr. Hart and Mr. Torok discussed the sheds located near Carlton Avenue, shown in Photographs C and D. Mr. Hart noted that the sheds appeared to be mirror images of each other, but on the plat they appeared to be staggered. Mr. Hart asked if the plat was incorrect, and Mr. Torok said no. He said he had moved Shed A, planned to move Shed B to a tiered location, and Shed C would be moved back to allow for screening. Mr. Torok said he would use cinder blocks for the footings

Mr. Hart asked why the applicants needed three sheds and why they could not be placed in the rear yard closer to the patio and past the porch. Mr. Torok said a large oak tree was in the way, and he would have to tear the sheds down. He said that if he had to place one or all of them in the rear yard, they would sit against his neighbor's fence. He explained that he needed space for tools and gardening equipment as well as toys and bicycles.

In answer to Mr. Hart's question concerning the fence bordering Carlton Avenue, Mr. Torok said he had replaced the original fence with a lattice fence when he and his wife moved into the house.

In response to questioning by Mr. Hart, Ms. Langdon said the lattice and side fences required a variance.

Joe Bakos, Zoning Enforcement Branch, said he had missed the fences when he went out to inspect the property. Mr. Torok advised that the fences hid their living room and garbage cans from street view.

In response to statements made by Mr. Bakos and Mr. Torok, Mr. Hart explained that he was not concerned with the lattice fence, but with the one that was perpendicular to Carlton Avenue. He asked why the appellants needed to have a fence higher than four feet at that location. Mr. Torok responded that the fence had previously been located there, and they had only put the slats on the fence. Mr. Hart asked whether the old fence had been as tall as the replacement fence, to which Mr. Torok answered affirmatively.

Mr. Hart asked staff whether a new plat was needed before the Board took action. Ms. Langdon said that depending on where the appellants wanted to move the shed, it could require a variance to a side yard because it was over 8.5 feet in height. She said that what had been advertised was acceptable, but once the shed was moved into the side or the rear yard, it could end up being too close to the lot line and could need a variance for that reason.

Mr. Hart then asked what would happen if the Board approved a resolution that said "approved for" and then listed development conditions that specified location and sheds as shown on the plat. Ms. Langdon stated that if the Board did not ask for a new plat, staff would have to draw up a condition that would explain where the sheds would go. Mr. Hart asked what would happen if the shed was moved from Westcott Street. Mr. Torok said the shed closest to the maple tree shown on the plat would be in the front yard. With respect to

~ ~ ~ April 20, 2004, JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019, continued from Page 584

the Carlton Avenue side of the property, Mr. Torok indicated that if the sheds were squared and Shed B was moved back toward the patio, it would still be in the front yard. Mr. Hart then asked staff whether that would still be considered a front yard, and Ms. Langdon and Mr. Sherman answered yes.

Mr. Pammel asked if the house had a basement. Mr. Torok said the basement was finished with carpeting and a bathroom. He said the only storage space in the basement was in the small laundry room.

In answer to Ms. Gibb's question, Ms. Langdon said no more than 30 percent of the minimum rear yard could be covered, and that was the only coverage issue related to this application. She noted that there was also a driveway issue, but that did not apply to the sheds.

In response questioning by Ms. Gibb, Mr. Torok said he had seen the letter from Mr. Madison the morning of the hearing and said it was his opinion that he and Mr. LaFrance objected to having a cluttered yard which they felt would set a bad example for anyone adding accessory units to their property. He said cluttering would not be an issue if it was viewed from one's own home and there was proper screening.

In answer to additional questions posed by Ms. Gibb, Mr. Torok stated that Shed C would be moved back at least 10 feet from his neighbor's shared property line and would sit in front of the open porch. He also located on the plat all the trees he had planted since acquiring the property. He said his property was well screened from both streets by hedges, and the fence that had been replaced was a split rail.

Vice Chairman Ribble called for speakers.

Albert LaFrance, 6800 Jefferson Avenue, Falls Church, Virginia, came forward to speak in opposition to the application. He called attention to his letter dated April 15, 2004, and indicated that he was withdrawing his objections to granting a variance for Sheds A and B on Carlton Avenue and reaffirmed his objection to Shed C located on Westcott Street. He asked that Shed C be relocated in accordance with Zoning Ordinance requirements. He said he was concerned about having so many sheds in a front yard in a neighborhood where no other sheds were located in a front yard. He said he was also concerned that if the variance was approved, a precedent would be set.

Mr. Pammel asked whether Mr. LaFrance lived on a corner lot. He replied that he did and said it was considerably smaller than the applicants' lot. He said it was his opinion that all owners of corner lots had to make tradeoffs as to what could be done with limited backyard space.

In rebuttal, Mr. Torok reiterated that the sheds had been built to hide any equipment that could be considered offensive to his neighbors, and removing them would cause a hardship. He said he was willing to move Shed C back from the street and to provide additional screening. Mr. Torok noted that Mr. LaFrance lived several blocks from his home and that the neighbors abutting his property and those living nearby had no objections.

Vice Chairman Ribble closed the public hearing.

Mr. Hart said he needed more time to make an on-site visit, and he moved to defer decision on VC 2004-PR-019 to May 25, 2004, at 9:00 a.m. Ms. Gibb seconded the motion.

Mr. Hart stated that this was a difficult situation, and he was satisfied that it was an unusual lot with not only double front yards, but an acute angle with the house being set at an angle on the lot. He said the geometry posed a lot of questions. He said he was not certain that the sheds had been built for convenience rather than hardship. Mr. Hart said the Board needed to clarify exactly where the three sheds were going to be located. He said that if Sheds B and C were to be moved back 10 feet, he wanted to know whether or not that would create a side yard issue and an advertising problem and what and where the screening would be. He said he also wanted to look at the fence that was perpendicular to Carlton Avenue.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 4-1. Mr. Pammel voted against the motion. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Vice Chairman Ribble said the proposed locations of the sheds needed to be pinpointed on a plat, and the

~ ~ ~ April 20, 2004, JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019, continued from Page 585

applicants would have to confer with staff about the details.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M. DONNA LEE KENNON, VC 2004-LE-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. with eave 8.2 ft. from side lot line. Located at 2917 Breezy Ter. on approx. 13,989 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 20.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Lynn Gully (phonetic), Law Offices of Mark S. Allen, 111 Oronoco Street, Alexandria, Virginia, the applicant's agent, said that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition consisting of a carport enclosure 9.7 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 0.3 feet was requested.

Ms. Gully presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant was requesting an enclosed carport for security reasons. She said the applicant's lot was unique and was a little larger than the others on the block and the only one with an existing carport. Ms. Gully said the property consisted of a very steep slope behind the carport and also on the side of her home opposite the carport, which would prevent her from being able to build a car enclosure anywhere else on the property. She said the applicant had filed with the Federal Protective Service, and they had issued a Stay Order. Ms. Gully explained that the Federal Protective Service was located in the District of Columbia and granted protection to federal employees. She stated that the applicant had also filed a Security Issue Report with the Fairfax County Police Department regarding the same issue of concern. She said the enclosure of the carport would be in character with the community and would add to the aesthetic appearance. Ms. Gully noted that the applicant's neighbors had submitted letters of support.

Ms. Gibb asked whether the garage would be in the same footprint as the carport, to which Ms. Gully indicated it would, starting from the actual concrete slab, not the eave.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 2004-LE-024 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONNA LEE KENNON, VC 2004-LE-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 2917 Breezy Ter. on approx. 13,989 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 20. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

-- April 20, 2004, DONNA LEE KENNON, VC 2004-LE-024, continued from Page 586

2. Based on the agent's testimony, the garage is being located in the only possible place on the lot.
3. There is a 10-foot drainage easement on the opposite side and a steep slope that would prevent the construction in that location.
4. The requested variance is for a minimal 3.0 inches.
5. The garage will be in exactly the same footprint as the existing carport.
6. There will be no impact on the neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage, as shown on the plat prepared by Larry N. Scartz, dated May 31, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

~ ~ ~ April 20, 2004, DONNA LEE KENNON, VC 2004-LE-024, continued from Page 587

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M. KEVIN MCGIRL, VC 2004-BR-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. with eave 9.6 ft. from side lot line such that side yards total 21.8 ft. Located at 4911 Gadsen Dr. on approx. 15,566 sq. ft. of land zoned R-2 Cluster. Braddock District. Tax Map 68-1 ((10)) (9) 10.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin McGirl, 4911 Gadsen Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, consisting of a one-story, one-car garage, 10.1 feet from a side lot line with eave 9.8 feet from the side lot line such that the side yards totaled 21.8 feet. A minimum side yard of 8.0 feet and total side yards of 24 feet are required; therefore, a variance of 2.2 feet was requested.

Mr. McGirl presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because his driveway was very steep, and when attempting to put his children in the car, especially during inclement weather, the car doors close on them, which the garage would resolve. He noted that the subject lot sloped in the front and back and was irregularly shaped. Mr. McGirl said the garage would be integrated architecturally and would not be excessive. He said he had spoken to his neighbors, and they had not expressed any objections to the construction.

In answer to Mr. Hart 's question regarding why the garage would be 30 feet deep, the applicant said the existing garage was 22 feet deep, and he was requesting an additional 8 feet for a workshop. In response to Mr. Hart's question concerning whether the steps would obstruct the car being driven into the garage, the applicant said there would be no steps. He said the square shown on the plat was a 4-foot-by-4-foot concrete slab which was outside the side door of the existing garage. He noted that the utility connections and air-conditioner would have to be moved back.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to approve VC 2004-BR-020 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN MCGIRL, VC 2004-BR-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. with eave 9.6 ft. from side lot line such that side yards total 21.8 ft. Located at 4911 Gadsen Dr. on approx. 15,566 sq. ft. of land zoned R-2 Cluster. Braddock District. Tax Map 68-1 ((10)) (9) 10. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 2004; and

~ ~ ~ April 20, 2004, KEVIN MCGIRL, VC 2004-BR-020, continued from Page 588

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 15,566 square feet.
4. As the applicant stated, due to the unique nature of the property, especially taking in the combined area of the lot lines and the unique topography, this is a minimal 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by George M. O'Quinn, dated December 30, 2003, as revised through January 19, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

~ ~ ~ April 20, 2004, KEVIN MCGIRL, VC 2004-BR-020, continued from Page 589

The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Admin. moved from 2/24/04 and 3/30/04 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Fox, 10511 Judicial Drive, Fairfax, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow construction of a church with a maximum seating capacity of 250 and a total of 80 parking spaces. The application included 50 percent undisturbed open space, a stormwater management pond, and a four-foot wide concrete walkway from Braddock Road to the church entrance. The church building would consist of 7,100 square feet. No other uses or structures were proposed. Staff recommended approval of the application with the adoption of the proposed development conditions. Ms. Stanfield noted that the Board at the prior hearing had seen changes proposed by the applicant to the proposed development conditions that were presented in the staff report. She said that a memorandum dated April 20, 2004, which was distributed to the Board members contained staff's proposed changes to three of the proposed development conditions previously submitted by the applicant.

Ms. Gibb asked whether with churches in R-C Districts staff considers requiring the parking areas be something more permeable than pavement. Ms. Stanfield said would entertain any suggestions of recommendations for other types of parking. She said it was more typical that when parking was in excess of what would normally be required, staff would make a recommendation to the applicant.

Ms. Gibb said she thought permeable material would be more important in an R-C District than in other areas. Susan Langdon, Chief, Special Permit and Variance Branch, said that when there was a lot of overflow parking, staff would suggest that the overflow be some type of other porous pavement. She stated that staff had found that many churches did not want their basic parking to be porous pavers because it was harder to walk on and there were other issues. She said it would also depend on how much undisturbed open space an applicant was providing and the type of stormwater management or best management practices they were proposing to have on site.

Mr. Hart stated that on the plat there was a huge swath of land located west of Colchester Road, and he asked if it was a right-of-way. Ms. Stanfield replied that it was. She said the property was owned by the Virginia Department of Transportation (VDOT) and would ultimately be used to straighten the curve in the road. Mr. Hart asked what would become of that area. Ms. Stanfield said VDOT would still own all of the property as they did now. Mr. Hart asked whether VDOT rather than the applicant would be later changing the road, and Ms. Stanfield indicated VDOT would change it.

Mr. Hart asked how far away the public sewer was from the property. Ms. Stanfield replied that it was across Braddock Road and indicated that there was a sewer to the west as well. She said the easement would come across Braddock Road.

Mr. Hart asked for clarification regarding a note on the plat which said, "See stormwater narrative below." He noted that the area was within the undisturbed open space and asked whether it would be used by the

~ ~ ~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047,  
continued from Page 590

applicant for stormwater management if needed. Ms. Stanfield replied that it would be used for outfall if it was required by the Department of Public Works and Environmental Management at site plan review. She said they could be required to connect into the outfall facility that existed on the adjacent parcel. Mr. Hart asked whether the area was a ditch or a pipe and what would become of the area. Ms. Stanfield said she did not know and suggested the question be addressed by the project engineer. Mr. Hart asked whether the 50 percent undisturbed open space would be affected if the area was cleared. Ms. Stanfield said she understood that even with the area cleared, the applicant would still meet the 50 percent.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. He introduced Dr. Johnson Edosomwan, a trustee of the church, and Eileen Carroll of Rinker, Detweiler. Mr. Fox said the applicant did not consider that the application was far reaching or over reaching. He said the applicant would exceed 50 percent of undisturbed open space and was looking for a consolidated or a contiguous 50 percent to the greatest extent possible. He said that in the event there would be a requirement to connect to the outfall, there would still be large sections of undisturbed open space. As part of the process, he said the applicant had soils evaluation and infiltration studies performed, and it was anticipated that they would be able to avoid that. He said the soil infiltration test indicated that the applicant could handle the drainage on site and allow it to percolate naturally off site. Mr. Fox called attention to the proposed seating capacity, the parking area, and the newly proposed addition to the development conditions to allow a sidewalk to run from the entrance of the church on Colchester Road to Braddock Road. He said the applicant felt that the sidewalk would be beneficial to pedestrian traffic, and the design of the church would be in keeping with the homes in the neighborhood.

Mr. Fox called attention to the memorandum referred to earlier by Ms. Stanfield and stated that the applicant was in agreement with Development Condition 13; however, he had some concern about Development Condition 15. With respect to that condition, he said that on July 6, 2000, the applicant had received County approval of the septic field, and it was depicted on the map. Mr. Fox said the septic field would be sufficient enough to take care of any anticipated effluent from the facility. He said that while the applicant did not object to the necessity of connecting to public sewer, they would have to go across Braddock Road and make a connection under two residential properties, and obtaining easements from property owners to do that would be extremely difficult, involve years of negotiation, and be very costly. Mr. Fox asked that the language in Development Condition 15 be modified to read, "reasonable efforts have been made to obtain a public sanitary sewer connection from the Hampton Forest Subdivision," in lieu of "every effort has been made."

Ms. Gibb indicated that she was concerned about easements and all of the trees being cut down. She suggested that the wording in Development Condition 15 read "every reasonable effort." In response, Mr. Fox assured Ms. Gibb that all of the trees would not be cut down. He referred to the map and pointed out that there would be three septic fields. Ms. Gibb expressed concern that three drain fields encompassed a large area. Mr. Fox said the applicant did not want to get involved in situations that would entail more than the preparation and submission of a plat to an appraiser. He said making a reasonable offer to those residents should not entail anything more than restoring their property to its original state. He cited possible requests such as tot lots and other amenities a civic association may ask for. Ms. Gibb said she agreed with Mr. Fox's concerns.

Vice Chairman Ribble called for speakers.

Dr. Johnson Edosomwan, Trustee, One God Ministry, came forward to speak in support of the application. He discussed the mission of the church. He said he and his parishioners had held a meeting with the community and had addressed their concerns. He said he had confirmed that the septic fields would be on the side of the facility, assured the residents that while they did not anticipate that homeless people would attend their services, anyone was welcome to worship with them, that they had no plans for a daycare center, and that they had no plans to expand their hours of operation, which would be limited to church services and Sunday school at 10:00 a.m. on Sunday mornings and a prayer meeting at 7:00 p.m. on Wednesday evenings. He said the hours of operation would not have any impact on traffic.

Wanda Savage-Moore, 5602 Willow Crossing Court, Clifton, Virginia, came forward to speak in support of the application. She said she traveled Braddock Road on her way to and from work and attended a church close by on Sunday mornings. She stated that, in her opinion, traffic would not be an issue in that area. She

~ ~ ~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047,  
continued from Page 591

said she supported the church's mission and felt that there would be no disturbance to the quality of life nor would property values be affected.

Michael Russcol, 5935 Pocol Drive, Clifton, Virginia, came forward to speak in opposition to the application. He presented a letter signed by his wife and himself and a petition signed by 37 residents of Pocol Drive and Harper Drive opposing the location of the applicant's driveway on Colchester Road. He said ingress/egress would pose a very hazardous situation because it would be located at a very narrow, winding, and dangerous section of the road. Mr. Russcol stated that his neighbors had expressed concern that the site would drain onto Colechester Road, and in the winter, the drainage would freeze on the road and cause accidents.

David Lajaunie, 12530 Rochester Drive, Fairfax, Virginia, came forward to speak in opposition to the application. He said he objected to approval of the application primarily because the septic field would be overburdened. He cited the County's Department of Health regulations concerning the allowable effluent per seat, and based upon those figures, he said it was his opinion that the effluent emanating from the site would max out the proposed septic field. He said that food preparation and the caretaker position, as shown on the initial conceptual drawings, had been taken into consideration. He requested that the applicant obtain a sewer connection or reengineer the existing septic field to incorporate a pure flow or drip system which would allow the applicant to expand the amount of effluent to be leached through the surrounding areas. Without that, he recommended that the application be denied.

Mr. Beard questioned Mr. Lajaunie concerning his reference to a caretaker facility on the property. Mr. Lajaunie said he had not seen the design for two months, but the original one showed a caretaker position within the building with kitchen facilities. He said the problem with that was that the maximum limit of 500 gallons of effluent would be exceeded if food preparation or a 24/7 position was factored in. He said he had spoken to Artie Shannon, an engineer and reviewer for the County's Department of Health, who had provided him with the aforementioned information. He indicated that the site was marginal for residential purposes, much less institutional use, and he wanted to be assured that the County would protect those residences located within the watershed.

Brenda Kirkpatrick, 5734 Walcott Avenue, Fairfax, Virginia, came forward to speak in opposition to the application. She said the applicant had not addressed the issues expressed by herself and her neighbors. She stated that traffic backups, icy winter conditions, and accidents on that section of Colchester Road were of great concern. She said that after many meetings concerning water issues with Elaine McConnell, Springfield District, Board of Supervisors, the residents had been connected to public sewer because the land only perked for 3.33 per single-family house, and that caused them to be very concerned about sewage running onto their properties. Ms. Kirkpatrick said the applicant had promised the neighbors that they would only conduct one service on Sunday and one on Wednesday; however, the application indicated that they would hold two services on Sunday, one on Wednesday, prayer and Bible study on Friday, as well as additional functions that may occur periodically during the week. She questioned how the applicant would take care of the sewage problem, connection to public water, and runoff without affecting the neighboring properties.

In response to a question from Mr. Beard regarding whether contiguous properties had public sewer, Ms. Kirkpatrick said that all the properties were required to connect to public sewer.

Mr. Fox stated, in his rebuttal, that 25 years ago all the properties in the area had failed septic systems. He stated that at that time the properties were largely populated by minorities, and under the threat of civil rights litigation, a grant was received from Housing and Urban Development (HUD) to put a special system in that neighborhood. He explained that it was a system that was very different than what was referred to as an integrated sewer system in Fairfax County. He said that when a sewer system was referred to as being across the road in the Hampton Forest Subdivision, reference was being made to the main sewer system that served all of the regions in Fairfax County. He said that in the Lincoln Park and Vannoy Park Subdivisions, it was called a force system that had very limited capacity, and it had spawned the mini-mansion development in that area as generations changed. However, he noted that the County policy was that there would be no additional hookups to that special system, but residents would be permitted to hook up to the general system. Mr. Fox said he was perplexed by comments made by speakers here today. He said the applicant had gone to a great deal of expense to have the Department of Health review the perk

~ ~ ~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047, continued from Page 592

sites, and he advised that they had received the Department's approval. He assured the Board and the citizens that the applicant would make reasonable efforts to connect to the sewer system if they could.

Mr. Fox said that when the applicant met with neighborhood residents, a Department of Transportation planner was present and had made it very clear that an entrance on Braddock Road would be discouraged, especially since it would be in proximity to the recently installed traffic light. He said that apparently last fall and winter there was standing water that had caused icy conditions. He stressed that it was a Virginia Department of Transportation (VDOT) maintenance issue. Mr. Fox said the applicant had not indicated that they would single-handedly take care of the problem, but had pledged to work in concert with the citizens to attempt to get VDOT to take the necessary steps to correct the situation. He said the applicant was still committed to helping get that issue resolved. Referring to traffic on Braddock Road and Colchester Road, Mr. Fox said the citizens were speaking about weekday traffic, not what was generated on a Sunday, week night, or weekend. He said the DOT planners had thoroughly reviewed the traffic issue and had asked the applicant to dedicate a right-of-way along Colchester Road, and the applicant had agreed to do so.

With respect to a caretaker suite, Mr. Fox stated that it was a term used by the architect, but in reality it would be nothing more than a 205-square-foot closet used to store supplies associated with cleaning, and no one would be occupying the space.

Mr. Fox stated that the multipurpose room would consist of 960 square feet with a small adjoining 240-foot kitchen, and it was not designed to be used on a daily basis. He said the assumptions made by the citizens that the effluent count should be based on daily usage were incorrect. He said the facility would be used on a periodic basis and asked the Board to give credence not only to the concerns expressed by the citizens, but to also take into consideration those systems the County had put in place to address those concerns.

In response to a question from Ms. Gibb, Mr. Fox stated that approximately 25 to 30 persons would be attending the Wednesday evening services and the Bible study on Friday evening.

In response to Mr. Beard's request, Mr. Fox showed him a copy of the architectural rendering.

Mr. Fox pointed out to Mr. Beard that there was no sewer on the adjoining properties and said those were not included in the Lincoln, Lewis, Vannoy project.

Mr. Hart asked if the site was within the approved 400-foot sewer service area and would the building be located within that rule. Mr. Fox said he believed that it was.

Mr. Hart asked where the next median break was located east from Colchester Road. Susan Langdon, Chief, Special Permit and Variance Branch, said she thought it was at the Willow Springs School site. Mr. Fox said there was no median break at the curb cut on Braddock Road.

Mr. Beard asked for an explanation of the architect's rendering that included a full bathroom with a vestibule into it, and an entrance off the suite into the kitchen area that would serve the fellowship hall. He noted that there was also a janitorial sink in the hallway adjacent to the electrical closet. Dr. Edosomwan said the bathtub would be used only when necessary by preachers who wanted to change clothes and freshen up, especially if they came from out of town. He indicated that the kitchen would be used to facilitate the fellowship hall when an occasional wedding reception or banquet was held. He said most of the food would be prepared, brought to the facility, and kept warm, and tea or coffee would be prepared on site.

Mr. Beard asked how many gallons of water the tub in the baptismal area would hold. Dr. Edosomwan said the tub would hold approximately three bathtubs full of water. He said that baptisms were performed in groups, baptisms would be held approximately 12 times a year, and the tub would be drained after each group.

Mr. Beard asked whether staff had any information on the baptisms, and Ms. Langdon stated that staff had no specific information. Mr. Beard said that a little clarity on such issues would be appreciated. Ms. Langdon stated that the Zoning Ordinance did allow a caretaker, minister, or someone related to a church to live on the site, and it was very common in places of worship; however, it had not come up in the subject use.

~~~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047,  
continued from Page 593

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said he was familiar with the activities that took place in the past for the people who lived in the area to get a public sewer system, and the arguments used by the opposition should not negate the use of the subject property. Commenting on a letter received from Douglas Miller which stated that the site was impacted by marine clay, Mr. Pammel said that was not the case. He said marine clay was restricted to the eastern part of the County. He said that the soil characteristics in the subject area were hardpan, which was characterized by an overburden of soil on top of a clay that had a tendency to shrink and swell dramatically. Mr. Pammel said that although the subject property probably had some hardpan, there was adequate infiltration for a septic field.

Mr. Fox noted that most of the soils referred to in that regard were in the southern half of the subject site and would remain undisturbed open space.

Mr. Beard stated that he agreed with Mr. Pammel's comments; however, after having listened to the concerns expressed by the speakers who addressed the application, he encouraged the applicant to keep an open, ongoing dialogue with the neighborhood.

Mr. Pammel moved to approve SP 2003-SP-047 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 ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Admin. moved from 2/24/04 and 3/30/04 at appl. req.). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met all of the standards as prescribed by the Zoning Ordinance.
3. Although neighboring property owners requested the access to the site be off of Braddock Road and Braddock Road is the artery, based on that fact, this application does meet the criteria as established by the County for frontage on an arterial highway.
4. In terms of safety, it does not make sense to restrict the access to the property from Braddock Road. Safety problems will increase dramatically with people trying to get in and out on a fairly high-volume arterial highway with no median break.
5. The most logical answer is where the median is at Colchester, to allow people to make their turns onto Colchester and access the site off of Colchester, given it is only several hundred feet before one accesses into the church.
6. From a safety point of view, what the applicant has proposed is what should occur on this site.
7. The environmental issues have been addressed; there is concern about the public sewer issue, and the activities of the church would be dramatically improved if public sewer were connected to the site.
8. The application met all of the prescribed criteria set forth in the Ordinance.
9. The staff report is very thorough and has addressed all of the issues.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047,  
continued from Page 594

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Trustees of One God Ministry, A Global Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 12609 Braddock 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 E. Missell, dated October 22, 2003, as revised through March 17, 2004.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 250.
6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.
7. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following modifications:
  - A minimum of one row of evergreen trees shall be planted along the eastern lot line, from the northern edge of the church building, to the southern edge of the parking area.
  - Full Transitional Screening 1 shall be provided, a minimum of 25.0 feet in width, along Colchester Road from Braddock Road to the site entrance and on the southern side of the entrance.

Size, species and location of plantings shall be provided in consultation with the Urban Forestry Division, DPWES.
8. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with the Urban Forestry Division of DPWES.
9. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
10. The barrier requirement shall be waived.
11. The limits of clearing and grading shall be the minimum amount feasible as determined by DPWES and shall be no greater than shown on the special permit plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be

implemented during construction.

12. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
13. The applicant shall submit a tree preservation plan in a form as determined by the Urban Forestry Division, DPWES, as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division.

All trees shown to be preserved on the tree preservation plan shall be protected by fencing a minimum of four feet in height to be placed at the dripline of the trees to be preserved. Tree protection fencing in the form of a four foot high 14 gauge welded wire fence attached to six foot steel posts driven 18 inches into the ground and placed no further than ten feet apart, shall be erected at the final limits of clearing and grading and shown on the erosion and sediment control sheets. Tree protection fencing shall only be required for tree save areas adjacent to clearing and grading activities. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any construction work being conducted on the Application Property. A certified arborist shall monitor the installation of the tree protection fencing and verify in writing that the tree protection fence has been properly installed. Three days prior to commencement of any clearing and grading, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

14. At least 50% of the site shall be preserved as undisturbed open space. There shall be no clearing or grading of any vegetation except for dead or dying vegetation, as determined by the Urban Forestry Division. No structures or fences shall be permitted in the area of undisturbed open space.
15. The applicant shall demonstrate to the satisfaction of DPWES that every reasonable effort has been made to obtain a public sanitary sewer connection from the Hampton Forest subdivision. Such efforts shall not, however, include condemnation of required easements. If such a connection can be obtained, the area where the proposed septic drain fields are now depicted on the plat shall not be cleared and shall remain as undisturbed open space or if such connection occurs in the future, the area of the drainfields shall be revegetated to a natural state and shall be incorporated into the undisturbed open space.
16. If blasting is required, and before any blasting occurs on the application property, the applicant will insure that blasting is done per Fairfax County Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented.
17. If DPWES, in coordination with the Air Quality and chemical Hazards Section of the Health Department and with the Soil Science Office, determines that a potential health risk exists caused by the presence of rock containing asbestos on the site, the developer shall:
  - a. Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risk.
  - b. Commit to appropriate construction techniques as determined by DPWES, in coordination with the Air Pollution Control Division and with the Soil Science Office, to minimize this risk. Such techniques may include, but shall not be limited to, dust suppression measures during all blasting and drilling activities, covered transportation of removed material presenting this risk and appropriate disposal.
18. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance, notwithstanding that any parking lot lighting shall consist of bollard style light fixtures, with a maximum height of approximately

~ ~ ~ April 20, 2004, TRUSTEES OF ONE GOD MINISTRY, A GLOBAL CHURCH, SP 2003-SP-047,  
continued from Page 596

(3) three feet.

19. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES, except that no additional vegetation shall be cleared. Notwithstanding that which is depicted on the plat, the applicant shall use bioretention/infiltration trenches with underdrains around the perimeter of the parking area, and/or other low-impact design techniques for stormwater management and Best Management Practices as permitted and approved by DPWES.
20. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
21. Proposed right-of-way dedication along Colchester Road shall be provided in fee simple to the benefit of the Board of Supervisors at the time of site plan approval or upon demand, whichever occurs first.
22. A geo-technical engineering and soil study shall be submitted to DPWES for review and approval as determined necessary by DPWES and implemented as determined by DPWES.
23. The church building construction shall be generally consistent with the architecture presented in the attached elevations (Attachment 1). The building will be constructed with a brick façade.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M. JOSE FLORES, SP 2003-LE-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 addition to remain 5.0 ft. with eave 4.0 ft. from side lot line. Located at 6607 Buckskin St. on approx. 8,400 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (1) 508. (Admin. moved from 1/13/04 for notices.) (Deferred from 3/16/04 for notices.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jose Flores, 6607 Buckskin Street, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit a one-story addition, consisting of the enclosure of a carport, to remain 5.0 feet with eave 4.0 feet from a side lot line. A minimum side yard of 10 feet is required; however, eaves are

permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 5.0 feet and 3.0 feet, respectively, were requested.

Mr. Flores presented the special permit request as outlined in the statement of justification submitted with the application. He said he had been unaware that he needed to obtain a permit to enclose his carport. He noted that he did not change the length or width of the existing space.

In response to Mr. Hart's question concerning whether or not electricity and/or plumbing existed inside the carport enclosure, Mr. Flores replied that there was electricity, but no plumbing.

In response to Ms. Gibb's question about how the violation came to the BZA, Ms. Stanfield replied that a complaint was reported through Zoning Enforcement.

Vice Chairman Ribble called for speakers.

Dave Whedon, no address given, came forward to speak in opposition to the application. He said he had owned the subject property for 12 1/2 years from April of 1989 to June 14, 2002. He said that during the time he owned the property, he had asked the County whether he could enclose the carport and had been told that he could not because it was too close to the property line. He said that when he sold the property to Mr. Flores, he had informed Mr. Flores that he could not enclose the carport. Mr. Whedon called attention to some minor errors on the plat stating that the reference to a "screened porch" behind the house was a patio room, not a porch, which was built by a licensed contractor, for which he had gotten a permit. He stated that by enclosing the carport, it would result in the dwelling being a five-bedroom, two-bathroom house, and he did not see any mention that it was a fifth bedroom. He said the enclosure did not have central air or heat, and there was a window air-conditioner sticking out in the front window, which was visible on Buckskin Street.

In answer to questions by Mr. Beard, Mr. Whedon confirmed that he was the prior owner of the property and currently lived a mile away.

Mr. Ribble asked whether Mr. Whedon had previously applied for a variance. Mr. Whedon said he had applied for a permit for the patio room, but had not filed a formal application regarding the carport enclosure. He said he had called the County and was told that he could not enclose the carport because it would have been five feet from the property line, and ten feet was required. He said that when he purchased the property, the dwelling had three bedrooms, but by cutting out the two-by-fours and wallboard and installing a doorway, it became four bedrooms, one full bath, and a three-quarter bath.

Mr. Beard asked whether staff could identify the person that filed the complaint and was told that information could not be given.

Referring to a plat, Mr. Hart asked Mr. Whedon what had happened with the attached shed shown behind the carport. Mr. Whedon replied that it was probably still there. He said it was a utility shed that had a little storage and a vertical stack washer and dryer in it. He stated there had been a 220-volt electric baseboard heater to prevent freezing in the winter. He said that before the patio had been added, it was necessary to walk through rain or snow when walking from the kitchen back door to get to the utility shed to do the laundry.

Mr. Gutierrez (phonetic), 3820 Elbert Avenue, Alexandria, Virginia, came forward to speak in support of the application. He stated that the applicant was never informed by the former owner that he could not enclose the carport. He said the applicant enclosed the carport because he needed the extra space for his family and sister who was living with him. Mr. Gutierrez said the applicant had made a mistake, but was willing to fix it.

Mr. Hart asked Mr. Flores what had happened to the shed that had been attached to house behind the carport and currently appeared to be within the proposed enclosed carport area. Mr. Flores said it was still there, but if the special permit was approved, he needed to open it up and make one room. He said that when he bought the house, it did not have a living room because it had been closed to make the fourth bedroom. Mr. Hart asked whether the shed area was part of the carport enclosure, to which Mr. Flores answered affirmatively. Mr. Hart asked whether there was currently plumbing in the shed area, and Mr.

~ ~ ~ April 20, 2004, JOSE FLORES, SP 2003-LE-039, continued from Page 598

Flores said no. He said he had discarded the washer and dryer when he had moved in and currently had no laundry facilities. In answer to further questioning by Mr. Hart, Mr. Flores indicated that the roof was the same as it was when he bought the house, but he had moved the outside wall.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2003-LE-039 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSE FLORES, SP 2003-LE-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 addition to remain 5.0 ft. with eave 4.0 ft. from side lot line. Located at 6607 Buckskin St. on approx. 8,400 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (1) 508. (Admin. moved from 1/13/04 for notices.) (Deferred from 3/16/04 for notices.). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 2004; 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 Section 8-006, General Standards for Special Permit Uses, and Section 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.
3. The enclosure of the carport or space under the old roof would not have a significant impact on anyone.
4. Looking at the photographs, whether it is an open carport or a wall on the side with the configuration with the fence and sidewalk, it would not change anything.
5. There is enough room to maintain the structure.
6. The addition is a completed structure.
7. The addition is slightly further from the property line than the shed was at the time of the conveyance.
8. In the end condition, it would be too much of a hardship to remove the front and side walls.

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

~ ~ ~ April 20, 2004, JOSE FLORES, SP 2003-LE-039, continued from Page 599

the owner; and

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated September 23, 2003, submitted with this application and is not transferable to other land.
2. The applicant shall obtain a building permit and approval of final inspections.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:00 A.M.        ANDREW SHERIDAN, VC 2003-BR-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 1 having a lot width of 76.24 ft. Located at 4716 Wakefield Chapel Rd. on approx. 2.61 ac. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 285. (Deferred for decision only from 12/16/03, 2/17/04, and 3/16/04.)

Vice Chairman Ribble noted that a withdrawal of VC 2003-BR-147 had been requested.

Ms. Gibb indicated that she would recuse herself from the public hearing.

Mr. Pammel moved to accept the withdrawal of VC 2003-BR-147. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb recused herself from the hearing. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:30 A.M.        JOHN D. BOBOLSKY, III, A 2003-SP-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing an agriculture use to be established on property in the R-C District, which is located at Tax Map 67-2 ((1)) 42 and which does not meet minimum lot size requirements for the use, and is allowing the property

~ ~ ~ April 20, 2004, JOHN D. BOBOLSKY, III, A 2003-SP-033, continued from Page 600

to be used as a storage yard and junk yard, all in violation of Zoning Ordinance provisions. Located on the W. side of Popes Head Rd., approx. 700 ft. from its intersection with the Fairfax County Pkwy. on approx. 10,890 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 42. (Admin moved from 9/30/03 for notices) (Decision def. from 10/21/03).

Vice Chairman Ribble noted that A 2003-SP-033 had been withdrawn.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:30 A.M. JUBAL AND KIRSTEN THOMPSON; ESTATE OF MARY BROWN, ELTON K. DONALDSON, A 2003-DR-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area or width requirements of the Zoning Ordinance when created, does not meet current minimum lot area or width requirements of the R-1 District, and is not buildable under Zoning Ordinance provisions. Located at 8304 & 8308 Randwood St. on approx. 29,838 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2)) 5 and 6. (Admin. moved from 12/2/03 and 3/9/04 at appl. req.)

Vice Chairman Ribble noted that A 2003-DR-046 had been administratively moved to May 18, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ April 20, 2004, Scheduled case of:

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure is located in the front yard and closer than a distance equal to the minimum required side yard to the side lot line of the property in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Admin. moved from 3/2/04 and 3/30/04 at appl. req.)

Vice Chairman Ribble noted that A 2003-LE-053 had been administratively moved to April 27, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ April 20, 2004, After Agenda Item:

Request for Additional Time  
Holy Transfiguration Church (formerly Church Diocese of Newton for the Melkites in the  
United States of America, Inc.), SPA 80-D-069-2.

Mr. Pammel moved to approve 90 days of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date was June 9, 2004.

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~ ~ ~ April 20, 2004, After Agenda Item:

Request for Additional Time  
Floris United Methodist Church, SP 01-H-011.

Mr. Beard moved to approve 6 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date was October 12, 2004.

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~ ~ ~ April 20, 2004, After Agenda Item:

Request for Additional Time  
Keo S. Kelly, Kosal Kelly and Doan M. Tran, VC 01-P-1091.

Mr. Pammel moved to approve 12 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date was April 2, 2005.

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~ ~ ~ April 20, 2004, After Agenda Item:

Approval of April 13, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: October 16, 2007

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble II  
John F. Ribble II, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 27, 2004. The following Board Members were present: Vice Chairman John Ribble; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M. CARLOS CABALLERO, VC 2003-LE-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yard, accessory structures 0.0 ft. from rear lot line, and minimum rear yard coverage greater than 30 percent. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)) 1. (Decision deferred from 2/24/04 and 3/23/04)

Vice Chairman Ribble noted that VC 2003-LE-187 was deferred for decision only.

Mr. Hammack requested time to review the additional information the Board had received. Vice Chairman Ribble stated that the Board would move on to the next case and come back to the subject case later in the meeting.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M. MARK W. KLOSTERMEYER, VC 2004-PR-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 25.4 ft. with eave 22.9 ft. from front lot line of a corner lot. Located at 3446 Surrey La. on approx. 10,890 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 83.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark W. Klostermeyer, 3446 Surrey Lane, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a carport 25.4 feet with eave 22.9 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 4.6 feet and 4.1 feet, respectively, were requested.

Mr. Klostermeyer presented the variance request as outlined in the statement of justification submitted with the application. Mr. Klostermeyer said he did not have full use of the property because it was a corner lot and the front yard minimum requirements applied to the side yard where he was seeking to build a carport. He stated that his house was the first one located at the entrance of the subdivision on the corner. He said he was not seeking an amendment to the Ordinance, only a variance to his property, which was a corner lot with two front yards. He said the strict application of the Ordinance produced an undue hardship on the neighborhood, and the granting of the variance would allow him to park his vehicles on his property instead of the street. Mr. Klostermeyer explained that the cars parked along the street were so close to the entrance of the neighborhood that they posed a safety hazard to neighbors traveling in and out of the neighborhood. He said that parking was allowed on both sides of the street on Surrey Lane, and a church also used Surrey Lane for overflow parking.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2004-PR-023 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARK W. KLOSTERMEYER, VC 2004-PR-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 25.4 ft. with eave 22.9 ft. from front lot line on a corner lot. Located at 3446 Surrey La. on approx. 10,890 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 83. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant meets the nine required standards for variance applications.
3. The subject lot is shallow.
4. The proposed location is the only reasonable place for this 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ April 27, 2004, MARK W. KLOSTERMEYER, VC 2004-PR-023, continued from Page 604

1. This variance is approved for the location of a carport, as shown on the plat prepared by Ned A. Marshall, dated February 2, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M. LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 3 lots with proposed lots 1, 2, and 3 having a lot width of 6.7 ft. Located at 10611 and 10609 Vale Rd. on approx. 6.04 ac. of land zoned R-E. Providence District. Tax Map 37-1 ((5)) A1 and 37-3 ((2)) 5A. (Admin. moved from 3/16/04 at appl. req.) (Decision deferred from 4/13/04)

Vice Chairman Ribble noted that VC 2004-PR-003 had been deferred for decision only.

Mr. Hart requested an explanation of the changes that had occurred since the previous hearing. Erika Byrd, the applicants' agent, confirmed that the applicants had made changes in response to questions raised at the previous hearing and noted a strong letter of support had been received from Gary Buckley with the Fire Marshall's office for the reasons of public access and access for emergency vehicles. Ms. Byrd said the changes to the plan regarding the revised variance plat and the exhibits were consistent in terms of the configuration of the turnaround and the identification of the Environmental Quality Corridor area. She presented an exhibit showing the area the applicants agreed by a development condition to dedicate into a conservation easement, which would be protected and not disturbed. She reported that the well had been relocated to be within the limits of clearing and grading, which had been revised. She presented an exhibit reflecting the location of the reserve drain fields and clarified that the reserve drain fields for the two existing houses would only be necessary if the existing fields failed in the future. Ms. Byrd stated that the applicants agreed with the additional development condition provided at the hearing concerning the installation of a well in an area outside the limits of clearing and grading if the Fairfax County Health Department or other regulatory agency determined that the proposed well location on Lot 2 was unsuitable. She said that the proposed pipe to be located under the hammerhead was to allow storm water to go under the turnaround in the event of a major storm. Ms. Byrd stated that it was due to the distance that the property existed from a public street that resulted in the condition of extreme narrowness and shape that they had requested a variance.

Ms. Gibb confirmed with Susan Langdon, Chief, Special Permit and Variance Branch, that a conservation easement was not required. Ms. Langdon said there was a development condition regarding limits of clearing and grading, and it was conditioned to the plat submitted. It was shown as undisturbed, and the Department of Public Works and Environmental Services (DPWES) would decide what form they wanted it in.

~ ~ ~ April 27, 2004, LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003, continued from Page 605

Ms. Byrd confirmed that the letter from Mr. Buckley regarding the configuration of the hammerhead was written in his capacity at the Fire Marshall's Office. Ms. Byrd indicated that the applicants could have the hammerhead turnaround without subdividing the property, but that the area was shown as undisturbed, and they were obligated to adhere to what was shown on the variance plat.

Ms. Gibb commented that if the variance was approved and the subdivision plat was recorded, unless there was an easement, it would not be on the record plat, so any subsequent buyer would not know it was an undisturbed area. Ms. Langdon stated that Condition 1 required that the conditions be recorded in the land records of Fairfax County for each of the lots, so the conditions would follow through with the deed. She said that DPWES could decide whether an easement was necessary at the time of the subdivision plat.

Ms. Gibb said she understood the neighbors wanted the turnaround, but it could be provided without the variance. She said it was a steep wooded area with a very long, narrow driveway that required one vehicle to pull off in order for another vehicle to pass, and it was her understanding from the minutes of the previous subdivision that the Board's position was that they did not want another long pipestem. Ms. Gibb moved to deny VC 2004-PR-003 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Beard said the topography was so steep that he had trouble envisioning how construction vehicles could get in and out, but he was swayed by the Fire Marshall's letter and would not support the motion and would vote in favor of the variance.

Mr. Pammel noted that there had been a number of cases over the years where the division of lots was before the Board and a variance was requested because of the frontage requirements. Mr. Pammel stated that according to the applicants' testimony, it was a convenience to the applicants to have an additional lot to sell to resolve their problems, and he would support the motion.

Mr. Hart said he went out to the property and was struck by the site's isolation and it being a very long distance from the road. He said it was a long driveway, but he saw the unique distance from the road as a hardship because there was not a way to develop the property realistically. He stated that there were a lot of homes in the area on pipestem driveways, and one more pipestem would not have a negative impact. He said he was not troubled by the lot size at two acres, and with the revisions, the area of clearing was reduced, and the preservation more significant. Mr. Hart stated that because of the unique situation, the applicants had met the standards, and he would oppose the motion.

Mr. Hammack said he agreed with staff and their report. He said the property had benefited from variances in the past, which should be considered, and it would create a bad precedent for other larger properties in the area. Mr. Hammack said the applicants had reasonable use of the property, and there was substantial testimony that indicated it was a convenience on the applicants' part, so he would support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 3 lots with proposed lots 1, 2, and 3 having a lot width of 6.7 ft. Located at 10611 and 10609 Vale Rd. on approx. 6.04 ac. of land zoned R-E. Providence District. Tax Map 37-1 ((5)) A1 and 37-3 ((2)) 5A. (Admin. moved from 3/16/04 at appl. req.) (Decision deferred from 4/13/04) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ April 27, 2004, LINDEN R., SARAH E., AND JOHN A. ALBRIGHT, VC 2004-PR-003, continued from Page 606

1. The applicants are the owners of the land.
2. The property has not met the required standards, specifically that the strict application of the Ordinance would produce an undue hardship and would effectively prohibit or unreasonably restrict all reasonable use of the subject property.
3. There are two existing houses on 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
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 4-2. Mr. Beard and Mr. Hart voted against the motion. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M.      DAWN HARTOP AND JULIAN P. GABOUREL, VC 2004-LE-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from rear lot line. Located at 3402 Austin Ct. on approx. 9,225 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 66.

~ ~ ~ April 27, 2004, DAWN HARTOP AND JULIAN P. GABOUREL, VC 2004-LE-021, continued from Page 607

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dawn Hartop, 3402 Austin Court, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a sunroom addition to be located 16.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 8.5 feet was requested.

Ms. Hartop presented the variance request as outlined in the statement of justification submitted with the application. Ms. Hartop said a sunroom would improve the property and protect against mosquitoes. The only way to enter the backyard was through a bedroom downstairs, which was inconvenient and a security hazard. When the applicants bought the house, they wanted to expand. It would improve the value of her home and the neighborhood. She noted a similar addition in her neighborhood at 3401 Austin Court.

Mr. Pammel asked Ms. Hartop if it would deprive them of all reasonable use of the property if the sunroom was denied. Ms. Hartop said there were six people living in the house, and she was unable to get outside without going through the downstairs bedroom.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2004-LE-021 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAWN HARTOP AND JULIAN P. GABOUREL, VC 2004-LE-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from rear lot line. Located at 3402 Austin Ct. on approx. 9,225 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 66. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The lot is very shallow, with a depth of no greater than 100 feet, and is located at the end of a cul-de-sac.
3. Because of the shallowness and the positioning of the dwelling on the lot, it does deprive the homeowner of any reasonable expansion of the structure to allow a more satisfactory arrangement of the building and the uses therein.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;

~ ~ ~ April 27, 2004, DAWN HARTOP AND JULIAN P. GABOUREL, VC 2004-LE-021, continued from Page 608

- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys International, LLC, dated December 17, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M.      LAWRENCE E. PHILLIPS, VC 2004-SP-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 8396 Crosslake Dr. on approx. 10,826 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((13)) 56.

~ ~ ~ April 27, 2004, LAWRENCE E. PHILLIPS, VC 2004-SP-022, continued from Page 609

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence E. Phillips, 8396 Crosslake Drive, Fairfax Station, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, consisting of an enclosed porch, 18 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 7.0 feet was requested.

Mr. Phillips presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Phillips said he wanted to build a porch on top of an existing deck. He stated that the rear property was surrounded by woods. Vice Chairman Ribble established from Mr. Phillips that the property was exceptionally shallow.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2004-SP-022 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE E. PHILLIPS, VC 2004-SP-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 8396 Crosslake Dr. on approx. 10,826 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((13)) 56. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; 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 showing compliance with the standards for a variance.
3. The lot is oddly shaped. It's sort of a five-sided shape with a curve at the front.
4. The lot is fairly shallow; on the right-hand side it's 102 feet from front to back.
5. The house is set back further than the building restriction line in the front and sits square on the lot so that the remaining buildable area is rectangular.
6. There is an existing deck in the proposed location that backs to what appears to be fairly heavily vegetated woods.
7. There is a storm drain easement in the back.
8. No one would be significantly affected by the addition.
9. In a situation like this, it would be expected that reasonable beneficial use of this property would include some accommodation in a two-story house to have an area behind the house for outdoor use; a deck, patio, screened porch, or something like that.
10. In this situation where there is an existing deck and the porch is being enclosed, the imposition of the building restriction line in the rear backing to nothing would interfere with the reasonable beneficial use of the property in that context.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

~ ~ ~ April 27, 2004, LAWRENCE E. PHILLIPS, VC 2004-SP-022, continued from Page 610

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for an addition, as shown on the plat prepared by Phillip A. Blevins, dated February 3, 2004, as revised through February 4, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Chairman DiGiulian was absent from the meeting. Mr. Pammel abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 27, 2004, Scheduled case of:

- 9:00 A.M. MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit accessory structure to remain 2.8 ft. with eave 2.7 ft. from side lot line and 2.8 ft. with eave 1.8 ft. from rear lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with VC 2003-LE-165). (Admin. moved from 1/20/04 and 3/9/04 for notices.)
- 9:00 A.M. MANUEL DE JESUS RODRIGUEZ, VC 2003-LE-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. with eave 22.3 ft from front lot line and 8.3 ft. with eave 6.8 ft. from side lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with SP 2003-LE-041). (Admin. moved from 1/20/04 and 3/9/04 for notices.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Manuel Rodriguez, 7426 Northrop Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to a reduction to the minimum yard requirements based on an error in building location to permit an accessory storage structure, specifically a shed, to remain 2.8 feet with eave 2.7 feet from the southern side lot line and 2.8 feet from the rear lot line. A minimum rear yard of 11.1 feet and minimum side yards of 10 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 7.2 feet, 4.3 feet, and 8.3 feet, respectively, were requested. The applicant also requested a variance to permit the construction of an addition 23.8 feet with eave 22.3 feet from the front lot line and 8.3 feet with eave 6.8 feet from the side lot line and a fence 7.4 feet in height to remain in a rear and side yard. A minimum front yard of 30 feet and a minimum side yard of 10 feet are required, and the maximum permitted fence height is 7.0 feet; however, eaves are permitted to extend 3.0 feet into the minimum front and side yards; therefore, variances of 6.2 feet, 4.7 feet, 1.7 feet, 0.2 feet, and 0.4 feet, respectively, were requested.

Mr. Rodriguez presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Rodriguez said he built the shed in error by mistake and did not acquire a building permit.

Mr. Hammack asked if the shed was on footings and if it had electricity. Mr. Rodriguez said it did not have either, but had a block of wood under it. Mr. Rodriguez said he stored equipment and materials needed for the construction of the new addition in the shed. Mr. Hammack asked whether the proposed construction would be closer to the side lot lines than what already existed. Mr. Rodriguez said it would not.

Mr. Rodriguez answered questions regarding the 7-foot fence and said the wood fence existed when he bought the house and belonged to his neighbor. Susan Langdon, Chief, Special Permit and Variance Branch, said the fence was on the variance application because it was shown on the plat as being on Mr. Rodriguez's property line. Photos showed a chain-link fence on Mr. Rodriguez's property and next to it was the neighbor's fence. Mr. Pammel noted that there were two fences.

Mr. Rodriguez said he would move the shed after he built the addition. Mr. Rodriguez said he had a contract with the contractor, and he would get a building permit.

Vice Chairman Ribble called for speakers.

James Lawrence Pryor, 7425 Northrop Road, Alexandria, Virginia, came forward to speak in opposition to the application. Mr. Pryor said there was no way to clean around the shed, but if it was moved far enough to get a lawn mower around it, he had no objection. He said the new addition would be going beyond the porch even though Mr. Rodriguez said it would not. Mr. Pryor said Mr. Rodriguez wanted to bring it within 6.5 feet of the side lot line, but there was a 10-foot setback on the side yard for a garage. Mr. Pryor said another neighbor added a garage while staying within the 10-foot boundary setback. Mr. Pryor objected to Mr. Rodriguez's using the two-story addition to subdivide and rent. Mr. Pryor said that the applicant already had one tenant, which was against the rules of single-family housing, and he objected to the use. Mr. Pryor said the 7.4 foot fence was owned and installed by his neighbor and was put there by a previous neighbor so they would not have to look at the neighbor's messy yard.

~ ~ ~ April 27, 2004, MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 and VC 2003-LE-165, continued from Page 612

Mr. Hart asked a follow-up question regarding Mr. Pryor's statement that Mr. Rodriguez would divide the house and have tenants. Mr. Rodriguez said he was not going to do that. He said the size of the proposed garage was on the plat, and his office was not for a business, but just for reading. Mr. Rodriguez said he rented only to his family. Mr. Hammack asked whether it was his children that paid rent to him. Mr. Rodriguez replied that his child that rented was 30 years old.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to deny SP 2003-LE-041 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit accessory structure to remain 2.8 ft. with eave 2.7 ft. from side lot line and 2.8 ft. with eave 1.8 ft. from rear lot line. Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with VC 2003-LE-165). (Admin. moved from 1/20/04 and 3/9/04 for notices.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Based on the applicant's testimony, the shed can be moved to an area which doesn't require a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004.

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Ms. Gibb moved to approve VC 2003-LE-165 for the reasons stated in the Resolution.

Mr. Hammack recommended that the Board take no action on the 7.4-foot fence because the photographs submitted with the application showed a 3.4-foot fence and then it showed the 4-by-4 posts that were adjacent to the fence, but the 7.4-foot fence inside the property line, on the other neighbor's property was not shown, so Mr. Hammack said it could not be completely accurate with respect to the location of the fence. The photographs showed that the 7.4 foot fence was on Lot 14. Ms. Gibb amended her motion to exclude

~ ~ ~ April 27, 2004, MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 and VC 2003-LE-165, continued from Page 613

action on the fence.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MANUEL DE JESUS RODRIGUEZ, VC 2003-LE-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.8 ft. with eave 22.3 ft from front lot line and 8.3 ft. with eave 6.8 ft. from side lot line. **(THE BZA APPROVED THE ADDITION AND TOOK NO ACTION ON THE FENCE.)** Located at 7426 Northrop Rd. on approx. 8,800 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 92-4 ((3)) (3) 13. (Concurrent with SP 2003-LE-041). (Admin. moved from 1/20/04 and 3/9/04 for notices.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has provided testimony and by looking at his plans that he does comply with the required standards.
3. The applicant will almost stay within the current side yard that the covered stoop occupies so that the impact on the neighboring property will be minimal.
4. It seems a reasonable addition based on the plans and it does not seem that he could put the addition anywhere else on the property based on the narrowness of the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will

~ ~ ~ April 27, 2004, MANUEL DE JESUS RODRIGUEZ, SP 2003-LE-041 and VC 2003-LE-165, continued from Page 614

not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for an addition (**THE BZA APPROVED THE ADDITION AND TOOK NO ACTION ON THE FENCE.**) as shown on the plat prepared by Larry N. Scartz, dated January 22, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M. CARLOS CABALLERO, VC 2003-LE-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yard, accessory structures 0.0 ft. from rear lot line, and minimum rear yard coverage greater than 30 percent. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)) 1. (Decision deferred from 2/24/04 and 3/23/04)

Vice Chairman Ribble noted that VC 2003-LE-187 had been deferred for decision only.

Mr. Hammack said no one had been able to locate the contractors who did the construction for Mid Atlantic Court Construction. Two letters of opposition were distributed at the hearing. Mr. Hammack said it appeared that the work was done innocently by Mr. Caballero, but he could not support the extent of the variance sought. He said it was presented as a variance, not as a special permit or an error in building location.

Mr. Hart said he agreed with Mr. Hammack that it was difficult because the structure was already in place, but he could not conclude that the 21.7-foot high light poles at the property line facing Lot 7 in a residential house would be a hardship or that approving it under the variance standards would be anything other than a convenience. He said a 10-foot fence may not satisfy the variance standards as to hardship. Mr. Hart said he did not think that the application of the variance standards was necessarily interfering with all reasonable beneficial use of the property, and he did not believe that the fence and light poles met the variance standards, so he supported the motion.

Vice Chairman Ribble asked whether there was another option for the applicant, such as a special permit use. Susan Langdon, Chief, Special Permit and Variance Branch, said accessory structures were not

~ ~ ~ April 27, 2004, CARLOS CABALLERO, VC 2003-LE-187, continued from Page 615

covered under special permits for building in error, which was why the application was a variance.

Mr. Hammack asked what the requirements were to Mr. Caballero. Ms. Langdon said he would need to reduce the fence in height, remove the lights or bring them into compliance by lowering them to less than 7 feet in height, and remove some of the surfaces to meet the 30 percent coverage requirement.

Mr. Hammack moved to deny VC 2004-LE-187 for the reasons stated in the Resolution.

Mr. Pammel requested that the county attorney initiate action immediately with respect to the Mid Atlantic firm, or Mr. Richards, and to take appropriate action to bring him before the Board as well as the Circuit Court, if necessary, for flagrant violations to the Zoning Ordinance. Ms. Langdon said it would go to the attorney's office.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOS CABALLERO, VC 2003-LE-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yard, accessory structures 0.0 ft. from rear lot line, and minimum rear yard coverage greater than 30 percent. Located at 6435 Franconia Rd. on approx. 18,839 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-3 ((12)) 1. (Decision deferred from 2/24/04 and 3/23/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not presented testimony indicating compliance with the required standards for a variance application.

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

~ ~ ~ April 27, 2004, CARLOS CABALLERO, VC 2003-LE-187, continued from Page 616

- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED** with the following limitations:

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M.       SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit construction of a place of worship, with a maximum seating capacity of 350 and a total of 119 parking spaces. The application included 50 percent of undisturbed open space, an underground stormwater detention facility, and an eight-foot wide asphalt trail along the property's Pleasant Valley Road frontage. The church building would consist of 15,600 square feet. No other uses or structures were proposed.

Ms. Stanfield noted that staff had distributed to the Board changes to some of the development conditions proposed by the applicant. In the applicant's letter, there was a change proposed for Condition 7, which reduced the area of transitional screening along Pleasant Valley Road from 20 feet to 15 feet. Condition 15 requested that it read from center line having to do with the right-of-way. Condition 17 required coordination with the Chantilly Bible Church with respect to service times. Condition 18 should remain at the three feet in height as opposed to the 12 feet which was requested by the applicant. Part of the Condition 19 was deleted, which required bioretention or trenches around the perimeter of the parking lot, and provided for other low impact design techniques.

In response to Ms. Gibb's questions, Ms. Stanfield said the 50 percent open space was a close description, but at site plan they would be required to justify the computations. Ms. Stanfield said the newer church would stagger the hours based on what existed and would be monitored by Zoning Enforcement if any complaints were received. An inspector would have the applicant change the service times if they were overlapping with the other church and would be subject to violation. Ms. Stanfield said it would be Chantilly Church because it was the closest church with an entrance near to Sant Nirankari Mission so that was what staff proposed.

Mr. Pammel asked whether the FAR was calculated with the right-of-way dedication. Ms. Stanfield said the FAR was based upon the entire property because the right-of-way could be included in the FAR calculation.

Ms. Greenlief presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Greenlief said Sant Nirankari Mission was established 28 years ago and went from 15 to over 100 members. The members currently met in the United Methodist Church, but they wanted a church home of their own. Ms. Greenlief said the number of seats was reduced for parking. Another aspect of the application was the preservation of 50 percent of the site as undisturbed open space in a conservation easement. This would enable the use to meet the best management practices required by the County, but also provided a buffer along the rear and side lot lines. The site was almost all deciduous trees with some scrubbed pines, but the applicant would supplement along the lot lines to improve the screening and provide a year-round screen. The site sloped down, and the building and the parking were designed to flow with the land. The building would go from one story on the southern side to two stories on the northern side, and the parking was split into two lots. Development Condition 19 referred to the infiltration trenches as not being necessary to meet the water quality or detention requirements. To provide them would mean that clearing and grading would have to be expanded, and the required 50 percent undisturbed would be lost. Ms. Greenlief stated that the last sentence in Condition 19 should be omitted.

Mr. Hart asked about Condition 19 and whether anything could be done that would not threaten the 50 percent undisturbed. Ms. Greenlief said there was not.

Vice Chairman Ribble called for speakers.

Ram Nagrani, 9508 Ironmaster Drive, Burke, Virginia, came forward to speak in support of the application. Mr. Nagrani said it was his dream to have a small church. He said he had cooperated with staff and the neighbors and wanted to satisfy all the County standards.

Harold B. Heisler, 15240 Louis Mill Drive, Chantilly, Virginia, came forward to speak in opposition to the application. Mr. Heisler asked the Board to deny the special permit or grant an extension to demonstrate the true will of the community and understand the changes that were heard that morning. Mr. Heisler said he only became aware of the situation in mid-March of 2004. He referred to the staff report and said that it would change the character of the area irrevocably. Sant Nirankari would be the fifth church in the area, and he described the proposed building as narrow and long.

Pam Kave, 15236 Louis Mill Drive, Chantilly, Virginia, came forward to speak in opposition to the application. Ms. Kave said she rented Lot 207. She said the proposed location was problematic because Pleasant Valley Road had a sharp curve in the proposed planned area and there had been a number of car accidents because of it. There was also a temple down the road that had parking problems that overflowed into neighborhoods. Ms. Kave said her yard turned into a creek when it rained due to the drainage problem as Pleasant Valley Road had been developed. Her property was near the proposed storm water management underground facility. She said there was a huge drainage problem because of development and building along Pleasant Valley Road and a lack of detail and attention by VDOT as to how to deal with the drainage problem. She said it was a flood plain area and was not being managed properly, and the proposed construction would make it worse.

Cynthia Shang, 15121 Elk Run Road, Chantilly, Virginia came forward to speak in opposition to the application. Ms. Shang was a resident and board member of the Pleasant Valley Neighborhood Connection. She attended a meeting with Mr. Nagrani and his representatives on March 28, 2002. At that meeting she and neighbors in attendance voiced their concerns with the proposed development of a public meeting place. She said she understood that the special permit process took six weeks with the hearing held 90 days afterward. When no notice of public hearing was displayed, she said she assumed that the application had been denied, but consequently she along with others found out differently. She and another neighbor, Peter Roberts, collected 89 signatures over two weekends in opposition. She presented the petition to the Board. She said she wanted it to be known that they opposed any modification to the current R-C zoning of one residential building on the 4501 Pleasant Valley Road lot. Ms. Shang further said that any church was out of size and scale for the lot and would negatively impact the character of the area. The lot was surrounded on all sides but one by Pleasant Valley residential homes. She said a usage of 50 percent of the land for a building and parking lot not only violated the R-C zoning intent, but was out of character for that space. Traffic, parking, storm water runoff, noise, lighting, and reduction of open space would all adversely affect the community. The lot was on a dangerously curved area of Pleasant Valley Road, and exacerbating the danger of the curve was the current problem of storm water runoff and drainage. She said the Chantilly Bible Church located on the other side of Pleasant Valley Road had already contributed to the drainage problem.

~ ~ ~ April 27, 2004, SANT NIRANKARI MISSION, SP 2003-SU-045, continued from Page 618

She stated that the past winter there was a buildup of water and ice which resulted in numerous car accidents with one fatality, and building another large-scale building and parking lot would only add to the dangers of driving that stretch of road. According to her information, no hydrogeology studies had been done for the application. Ms. Shang said she believed the applicant had underestimated the runoff problem in that area and the problems associated with it. With the expected increased traffic from newly developed homes on Pleasant Valley Road and the number of school buses traveling on that section of the road, the danger was too great to be ignored or dismissed. As a public meeting place, traffic turning in and out of the site would also increase the potential for accidents. She noted that the staff report showed that the applicant had not provided adequate site distance at the access point on Pleasant Valley Road. Ms. Shang requested that the application be denied, and if it was not denied, she requested a 90-day extension to mobilize the community. She said the Board should ask the applicant where it would park its membership of their twice yearly large-scale weekend retreats.

Mr. Hart suggested Ms. Shang or a contact person should communicate with Supervisor Frey's office. Mr. Hart said the application had changed quite a bit, the parking was smaller, there was a road in the back which disappeared, the building was smaller, and the entrance had changed. A lot of revisions were done based on suggestions from the neighbors, and Mr. Hart said he did not think they were trying to be unresponsive, hide things, or rush it through, but that it was difficult to get the information out. Ms. Shang said they should not be penalized for not having a homeowners association because they did have a community group, it had been in contact with Supervisor Frey's office, and he knew of the president. She responded to Mr. Hart's comments that the building was not reduced and said it went from 8000 to 15,600 square feet. It also was 100 parking spaces that went to 119. Mr. Hart said he only knew that over the course of years it did get smaller.

Peter Roberts, 15247 Louis Mill Drive, Chantilly, Virginia, came forward to speak in opposition to the application. Mr. Roberts said he talked to many neighbors concerning this property and found them to be saying that the construction of the church was definitely out of character with the neighborhood. He noted the three other churches in the area and said the one that was adjacent to the property caused many issues, in particular the parking overflow. He concluded that one more church would add to the parking overflow into the community regardless of how much they say they had. He mentioned there were many complaints regarding noise generated from the temple. He said that light pollution would be a problem for the neighborhood.

Mr. Hart referred to cases in which development conditions required all parking be on the site and said a complaint must be made to staff so Zoning Enforcement could follow up and deal with it.

Guillermo Montero, 15246 Louis Mill Drive, Chantilly, Virginia, came forward to speak in opposition to the application. Mr. Montero noted that the three other churches were not imbedded in the neighborhood, but the planned church would be. He said it would affect the character of the neighborhood. He said that the Sant Nirankari Mission said they would conduct services on Sundays, but they were also having services on Friday evenings. Sant Nirankari Mission had said once a church home was established, they would have weekday evening meetings, too. He noted that the number of seats was 376, and the number of cars was 100. Mr. Montero said there was no lighting on the street and having 100 cars running their engines at night would be disturbing to the neighborhood.

Phillip Millett, 1813 Abbey Oak Drive, Vienna, Virginia, came forward to speak in opposition to the application. Mr. Millett said he had owned Lot 207 on Louis Mill Drive for six years. He received a letter from the applicant's agent on April 2, 2004, which described the church as small with 60-80 members, but at the hearing he heard numbers as high as 500. There was a downgrade on the property that caused severe flooding when there was heavy rain. He said there was standing water most of the time, which created a health problem, and added that paving would exacerbate the problem. He said he did not understand how a proposal that started at 8,000 and went to 16,500 square feet was considered to have shrunk.

In her rebuttal, Ms. Greenlief said she understood that Grace Covenant Church would not be built, so Sant would be the fourth church on Pleasant Valley Road. She said they had met the intent of the R-C District, and they would provide the 53 percent undisturbed open space and a well designed building. She said the character of the area had changed already with three churches. Chantilly Bible was an 1100-seat church with parking in the front. She said the Pleasant Valley Subdivision was an old subdivision that was not developed under the R-C provisions. It was between R-3 and R-4 density. Ms. Greenlief concluded that it

was compatible with the surrounding area. She said the vegetation preservation, the conservation easement, the sensitivity to splitting the asphalt, and the design of the building were compatible. Ms. Greenlief said there was a curve in the roadway that was depicted correctly on the plat, which occurred to the north. She said they were providing the dedication necessary to improve Pleasant Valley Road. It would be a Sunday use, not an everyday non-residential use, but the church planned to have evening meetings every now and then as other churches do. The entrance was placed where the Office of Transportation directed. Pleasant Valley did not fall under the storm water management methods that are in place currently because it was a very old subdivision. Ms. Greenlief said they could not exacerbate the drainage problem, and with the subject site undeveloped, she was sure water was flowing directly off the site onto other properties. She said the other churches met the special permit standards at the time of their approval, but if they were currently in violation, Sant Nirankari should not be penalized because of that.

Mr. Hammack asked about the original application going from 376 to 350 seats. Ms. Greenlief said the size of the footprint was not reduced. It went down to solve the parking ratio issue so there would be excess parking and not have the problem on the street.

Ms. Greenlief said they had to meet the 50 percent phosphorus removal. Susan Langdon, Chief, Special Permit and Variance Branch, said there was a lot of what was called low impact designs, a new technique that could be utilized. Mr. Hart asked if Ms. Greenlief could look at the development condition regarding the low impact methods, cisterns, rooftop detentions, and what could be done without threatening the 50 percent undisturbed area. Ms. Greenlief said they would look at it. Regarding the word "may" in the development condition, Ms. Greenlief said that if there were other techniques available that would not require them to cut into the conservation easement, then that was something they could do.

Mr. Pammel referred to the staff report and asked if Pleasant Valley Road was an arterial because it was not identified as such in the staff report. Ms. Langdon said it was a minor arterial.

Mr. Beard inquired about the hearing being administratively moved. Ms. Stanfield said it had been moved at the applicant's request. Mr. Beard asked if a placard had been placed at the location throughout the time. Ms. Langdon said it may have been picked up and reposted, but it was required to have a sign up a minimum of the 15 days prior to the public hearing.

Mr. Hammack referred to Development Condition 17 that gave information on service times and asked what mechanism there was to enforce it. Ms. Greenlief said it would be done in the same way parking problems were handled; a citizen would call in to report the problem to Zoning Enforcement.

Mr. Hammack said he wanted more information on traffic.

Vice Chairman Ribble closed the public hearing.

Mr. Beard said he heard objections from neighbors and that communication had broken down. He suggested a neighborhood committee be formed to meet with church officials to iron out ambiguous issues on night meetings, educational classes, and the impact of the facility, and the application be deferred to a future date.

Mr. Pammel suggested a 90-day deferral and for Ms. Shang to be the point person for the community.

Mr. Beard moved to defer decision on SP 2003-SU-045 to July 27, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Mr. Hart moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants, and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sect. 2.1-344 A-7. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 11:27 a.m. and reconvened at 12:33 p.m.

~ ~ ~ April 27, 2004, continued from Page 620

Mr. Hart 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 4-0. Ms. Gibb and Mr. Hammack were not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:00 A.M. HAROLD PALACIOS, SP 2003-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure to remain 3.2 ft. from side and 7.3 ft. from rear lot lines. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with VC 2003-LE-158). (Admin. moved from 1/13/04 and 3/2/04 for notices.) (Decision deferred from 4/13/04)

9:00 A.M. HAROLD PALACIOS, VC 2003-LE-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure 1.8 ft. with eave 0.8 ft. from side lot line. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with SP 2003-LE-038). (Admin. moved from 1/13/04 and 3/2/04 for notices.) (Decision deferred from 4/13/04)

Vice Chairman Ribble noted that SP 2003-LE-038 and VC 2003-LE-158 had been deferred for decision only.

Susan Langdon, Chief, Special Permit and Variance Branch, said the applications had been deferred for the applicant to provide architectural drawings and to get information on the proposed garage/existing shed.

Vice Chairman Ribble called the applicant to the podium and asked the applicant to state his name and address for the board. Harold Palacios, 6251 Wills Street, Alexandria, Virginia, complied.

Vice Chairman Ribble asked the applicant to explain what had transpired since the previous session. Miguel Garcia, 5734 Rolling Road, Burke, Virginia, the applicant's contractor, came forward with an elevation of the house and photographs of the shed. He said they wanted to remove the accessory structure, the existing shed where it said proposed shed on the drawing, so that they could get started on the house. They would need a special permit for the existing shed. He showed a preliminary plat for the proposed garage right next to the existing shed.

Vice Chairman Ribble confirmed with Mr. Garcia that they would remove what was to be the proposed garage. Mr. Garcia said it was, and it was part of the variance proposal. Ms. Langdon added that this was the part of the variance proposal that said accessory structure 1.8 feet with eave 0.8 feet from the side lot line; therefore, they were withdrawing that part of the request and still proposing the additions to the house. The special permit would be for the accessory structure in the rear and also for a portion of the existing house to remain closer to the lot line. The applicant wanted to move the garage to the back area, which was not advertised, so they could go forward with the variance, and if the additions were approved, then they would need to submit a new application for the garage or defer it and readvertise and send new notices until they could amend their variance application.

Vice Chairman Ribble asked what would be needed if the garage was not attached. Ms. Langdon said it would still need to meet the side and rear yard requirements, and because it was R-1, it would have to be 20 feet from the side lot line.

Mr. Hammack said the proposed two-story addition looked like it wrapped around the house on the left side, putting it closer to the side lot line. Mr. Garcia said it would not and that the proposed addition would bring a porch on the front, and then the addition would go toward the back. Mr. Garcia said the deck would be removed as well as the shed.

~ ~ ~ April 27, 2004, HAROLD PALACIOS, SP 2003-LE-038 and VC 2003-LE-158, continued from Page 621

Ms. Langdon said the applicant wanted to start on the house, which was based on the plat, a small addition on the front, addition on the back, and then a second story on the existing house, which was what was advertised. The applicant wanted to add the garage to the shed and leave the shed in the same spot. The garage would not be part of the application at this point.

Mr. Palacios confirmed for Mr. Hammack that the shed existed when he bought the property. Mr. Hammack determined from Mr. Garcia that the driveway would go around the back of the house.

Mr. Hammack moved to approve SP 2003-LE-038 for the reasons stated in the Resolution, with the inclusion of the language "and a shed."

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAROLD PALACIOS, SP 2003-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure to remain 3.2 ft. from side and 7.3 ft. from rear lot lines. Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with VC 2003-LE-158). (Admin. moved from 1/13/04 and 3/2/04 for notices.) (Decision deferred from 4/13/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

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:

~ ~ ~ April 27, 2004, HAROLD PALACIOS, SP 2003-LE-038 and VC 2003-LE-158, continued from Page 622

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a dwelling and a shed, as shown on the plat prepared by Bryant L. Robinson, dated June 25, 2003, as revised through October 6, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack determined from the applicant that the accessory structure had been withdrawn from the application.

Mr. Hammack moved to approve-in-part VC 2003-LE-158 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HAROLD PALACIOS, VC 2003-LE-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. with eave 7.8 ft. and 14.6 ft. with eave 13.6 ft. from side lot lines and accessory structure 1.8 ft. with eave 0.8 ft. from side lot line. **(THE APPLICANT WITHDREW THE REQUEST FOR THE ACCESSORY STRUCTURE.)** Located at 6251 Wills St. on approx. 13,358 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 15. (Concurrent with SP 2003-LE-038). (Admin. moved from 1/13/04 and 3/2/04 for notices.) (Decision deferred from 4/13/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owners of the land.
2. The applicant has satisfied the nine required standards for variance applications.
3. These are additions to an existing dwelling which would come no closer to the lot line than the existing dwelling was originally constructed as 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for additions to the existing dwelling only, as shown on the plat prepared by Bryant L. Robinson, dated June 25, 2003, as revised through October 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 2004. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:30 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8))(2) 2A. (Admin. moved from 3/16/04 at appl req.)

Vice Chairman Ribble noted that A 2003-SP-055 had been administratively moved to May 11, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ April 27, 2004, Scheduled case of:

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure is located in the front yard and closer than a distance equal to the minimum required side yard to the side lot line of the property in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Admin. moved from 3/2/04, 3/30/04, and 4/20/04 at appl. req.)

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2004-LE-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants use and own an accessory structure which is not located on the same lot as the principal use, in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16.

Vice Chairman Ribble noted that the Board had received a deferral request regarding A 2003-LE-053 and A 2004-LE-005.

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, requested that the applications be deferred to June 8, 2004.

Vice Chairman Ribble called for speakers to address the issue of a deferral.

Ms. Corta, 3138 Clayborne Avenue, Alexandria, Virginia, stated that she was opposed to a further deferral.

Ms. Kelsey said the application had been rescheduled by staff with her concurrence. She said the application was rescheduled the first time to combine the 2003 appeal with the 2004 appeal, and the second deferral occurred because they were waiting on aials from the National Archives. The County wanted to determine whether the carport was there or not prior to 1941.

Mr. Hammack moved to defer A 2003-LE-053 and A 2004-LE-005 to June 8, 2004, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Pammel were not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 27, 2004, After Agenda Item:

Request for Additional Time  
Brenda Luwis and Satyendra Shrivastava, VC 98-D-008

Mr. Beard moved to approve one year of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Pammel were not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date was April 13, 2005.

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~ ~ ~ April 27, 2004, After Agenda Item:

Request for Out-of-Turn Hearing  
Church of the Good Shepherd/Lorien Wood School, SPA 85-C-003

Mr. Hart established that the church was near the Zoroastrian Temple. Susan Langdon, Chief, Special Permit and Variance Branch, said this was a case that needed to be pre-staffed and staffed. The applicant was asking to add a childcare center which was on Hunter Mill Road. Ms. Langdon noted that there were no interior or exterior changes proposed, so they would still have July and August to prepare.

Mr. Hammack said given the controversy with any additional traffic on Hunter Mill Road, he moved to deny the request for an out-of-turn hearing. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Pammel were not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 27, 2004, After Agenda Item:

Approval of April 20, 2004 Resolutions

Mr. Hammack said that because he was absent the prior week, he could not vote on the resolutions, and he suggested the item be deferred to the following week.

Vice Chairman Ribble said it would be deferred until the next meeting as there were not four members present to vote.

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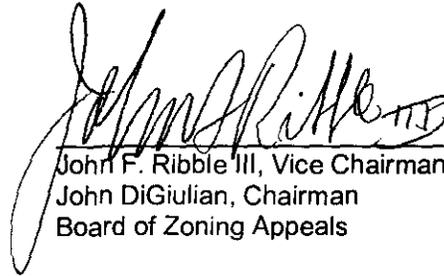
As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

Minutes by: Vanessa A. Bergh

Approved on: May 24, 2005

K.A. Knoth

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
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John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 4, 2004. The following Board Members were present: John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:06 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ May 4, 2004, Scheduled case of:

9:00 A.M. MARK AND CLAIRE TANENBAUM, VC 2004-PR-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 35.1 ft. with steps 33.8 ft. from front lot line. Located at 3124 Windsong Dr. on approx. 36,025 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((13)) 14.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John F. Heltzel, A.I.A., the applicant's agent, 9389 Forestwood Lane, Manassas, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a roofed deck 35.1 feet with steps 33.8 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, variances of 4.9 feet and 6.2 feet, respectively, were requested.

Mr. Heltzel presented the variance request as outlined in the statement of justification submitted with the application. He explained that the applicants had replaced the existing stucco on the house and used a siding that was more compatible with the neighborhood. He said removal of the stucco had altered the architectural design of the house, so they were proposing to design a porch to enhance the home's appearance. He said the applicants were requesting the variance to enable them to enhance the overall character of the house.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack stated that he was reluctant to make a motion to defer the decision on the application. He explained that given the uncertain impact of the recent ruling by the Virginia Supreme Court concerning the Cochran vs. Board of Zoning Appeals case, he wanted the Board to have an opportunity to study the litigation case more carefully and to evaluate its application with respect to variance applications. He said the Court's decision appeared to severely restrict the authority of Boards of Zoning Appeals to grant variances, and because it was in a judicial posture right now, he was not sure of its application.

Mr. Hammack moved to defer decision on VC 2004-PR-029 to June 15, 2004, at 9:00 a.m. Mr. Pammel seconded the motion.

Vice Chairman Ribble explained that the Virginia Supreme Court had recently made a decision that changed the rules by which the Board could grant variances. He said it was his opinion that because of the ruling it was almost impossible for a Board of Zoning Appeals to grant variances. Vice Chairman Ribble said a request had been made on behalf of the Board for a rehearing. He said that staff had not received any information as to when or if a rehearing would be granted. He said that until the Board had a more clear definition of its authority, all such requests for variances would be deferred.

Mr. Hart said he supported the motion. He said that in a case like this where the justification was largely for aesthetic reasons, he thought the Virginia Supreme Court had told the Board that they were not a part of such decisions anymore, at least with respect to the Cochran case. He said that taken as a whole, when a site already had a house standing on it, it would be difficult for the Board to conclude that the denial of the variance would deprive the owner of all reasonable beneficial use of the property. Mr. Hart said that until the Board had a response from the Court concerning a rehearing, an ordinary application that might have been approvable two weeks prior now fell on the other side of the line. He said the situation was unfortunate for anyone who had applied for a variance, but the Board could not proceed until they had a response, and he thought that a deferral would allow for that.

Ms. Gibb explained that the Board had not received the information regarding the litigation until after its

~ ~ ~ May 4, 2004, MARK AND CLAIRE TANENBAUM, VC 2004-PR-029, continued from Page 627

meeting last Tuesday. She said it was the result of a Virginia Supreme Court hearing which combined three cases against various Boards of Zoning Appeals, one of which was a case this Board had heard. She said the Board was very surprised that the Court would make a decision that would make it difficult to grant variances.

The motion carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 4, 2004, Scheduled case of:

9:00 A.M. WAYNE D. PARKS, SP 2004-DR-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 shed to remain 2.3 ft. from side and 12.4 ft. from rear lot lines and accessory structures to remain 6.6 ft. and 6.3 ft. from side lot line. Located at 1007 Kimberly Pl. on approx. 25,606 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 11-2 ((7)) 66.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wayne D. Parks, 1007 Kimberly Place, Great Falls, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a shed to remain 6.6 feet from the side lot line and 12.4 feet from the rear lot line. A minimum side yard of 12 feet and a minimum rear yard of 25 feet are required; therefore, reductions of 9.7 feet and 12.6 feet were requested. The applicant also requested approval for an accessory structure, specifically play equipment, to remain 6.6 feet from the side lot line, and a basketball standard to remain 6.3 feet from the side lot line. The Zoning Ordinance does not permit basketball standards within 12 feet of a side lot line; therefore, reductions of 5.4 feet and 5.7 feet were requested for the play equipment and basketball goal, respectively.

Mr. Parks presented the special permit request as outlined in the statement of justification submitted with the application. He explained that before he and his wife had purchased the house, they had submitted an application requesting approval from the Hawthorne and Great Falls Homeowners Association's Architectural Review Board for construction of the shed and the children's play set. He said that Board had reviewed the information submitted to them and had given their approval, indicating that the shed would be consistent with the aesthetics of the neighborhood, and the size of the play set was compatible as well. Subsequent to that, he said they were informed that the covenants, conditions, and restrictions of the homeowners association were not in compliance with the Review Board's approval. He said the basketball standard had been conveyed with the house and had been there before he purchased the property. Mr. Parks said he had spoken to his neighbor and subsequent to that had made every effort to landscape the property to minimize any negative impact on his neighbor.

In answer to Mr. Pammel's question, Mr. Parks said the shed was on bricks and four-by-fours on a concrete slab. He agreed that the shed could be moved if it was necessary.

Vice Chairman Ribble called for speakers.

Gary Noons, 1009 Kimberly Place, Great Falls, Virginia, came forward to speak in opposition to the application. He said the shed and play set would have an adverse impact on his property, both visually and aesthetically. He stated that Mr. Parks failed to notify his neighbors even though the application he had submitted to the homeowners association had two clearly marked sections that asked if the neighbors had been consulted to determine whether the accessory items would have any effect on them. Mr. Noons said the homeowners association had asked Mr. Parks to consult with him, but Mr. Parks had not done so. He presented photographs showing the applicant's shed as it appeared when looking out at his back yard. He said he was opposed to the size and height of the shed, and even though landscaping had been provided, it wasn't enough, especially in the wintertime.

In rebuttal, Mr. Parks explained that Mr. Noons was correct when he pointed out that there was a place on

~ ~ ~ May 4, 2004, WAYNE D. PARKS, SP 2004-DR-008, continued from Page 628

the application he submitted to the Architectural Review Board asking if he had consulted his neighbors. He said he had answered that with a no, thinking that the association would follow through with his neighbors. He said that at that time he did not think it was appropriate to do so because he had not yet purchased the property. He said he had discussed Mr. Noons' concerns with him, and as a result, they made an agreement that included his purchasing as many evergreen trees as he felt was appropriate to screen his property. He said he had purchased 28 evergreen trees at the cost of \$6,000 which were placed along the property line. Mr. Parks said it was his opinion that he had done everything to accommodate Mr. Noons' requests. He called attention to a letter included in the Board's packet from the president of the Hawthorne and Great Falls Homeowners Association dated September 7, 2004, that stated that the HOA had approved the shed prior to it being built. The letter read, in part, that after the HOA had reviewed the shed, they found that it was well within the size limits for the community, and in addition, the large-scale plantings should totally obscure Mr. Noons' view of the shed. The letter went on to say that the HOA did not enforce zoning regulations, and they would support the applicant's efforts should a variance be required. Mr. Parks said he did not have an opportunity to review the photographs submitted by Mr. Noons and explained that the dying trees referred to by Mr. Noons resulted from the trees not being placed in the ground soon enough, and it was his intention to replace them.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said he was concerned with a legal issue and was going to move to defer the application until June 15, 2004. He said the basis for that was a provision in the Ordinance that allowed the Board to grant a special permit based on an error in building location. He said he wanted to know more about the Virginia Supreme Court decision and how it related to these types of applications; therefore, even though he had no problems with Mr. Parks' application, he was reluctant to move ahead at this time. Mr. Pammel said the Board needed guidance not only from its own attorney, but from the County Attorney's Office as well so there would be no misunderstandings as to where they could go with these types of applications in the future.

Mr. Pammel moved to defer decision on SP 2004-DR-008 to June 15, 2004, at 9:00 a.m.

Mr. Hammack seconded the motion for purposes of discussion. He said he agreed with some of Mr. Pammel's comments; however, the standards required that the Board determine that noncompliance was done in good faith or through no fault of the property owner as a result of an error in the location of the building subsequent to the issuance of a building permit. He said that may be where a lot of emphasis would have to be placed on those hearings in the future. Mr. Hammack said that until the Board had consulted with legal counsel, he would support Mr. Pammel's motion to defer.

Vice Chairman Ribble said he doubted that the applicant knew about the Virginia Supreme Court case in advance. He said the Board could only speculate about what may happen in the future, and he had difficulty in supporting the motion.

Mr. Beard agreed with the Vice Chairman Ribble's comments and said at this time he could not support the motion.

Mr. Hart agreed with Mr. Beard. He said he could see the dilemma regarding a wave of future applications asking to get forgiveness instead of permission, if that was going to be the distinction, that everyone built something first and then applied to the Board for a special permit, which was approvable, because a variance was not. However, in a situation where the Virginia Supreme Court case was decided after this application was filed, he did not think it was chronologically possible that this applicant was taking advantage of such a problem. Based on the record before the Board, Mr. Hart said it was his opinion that it would be possible to go forward on the application.

Vice Chairman Ribble called for a vote on the motion to defer. The motion failed by a vote of 2-4. Vice Chairman Ribble, Mr. Beard, Ms. Gibb, and Mr. Hart voted against the motion. Chairman DiGiulian was absent from the meeting.

Ms. Gibb then moved to approve SP 2004-DR-008 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE D. PARKS, SP 2004-DR-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 shed to remain 2.3 ft. from side and 12.4 ft. from rear lot lines and accessory structures to remain 6.6 ft. and 6.3 ft. from side lot line. Located at 1007 Kimberly Pl. on approx. 25,606 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 11-2 ((7)) 66. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the required standards A through G based on his testimony that he did act in good faith, and this is supported by a letter from his home owners association.
3. The applicant has continued to act in good faith to minimize the impact of the mistake in location.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of a shed, play equipment and basketball goal post,

~ ~ ~ May 4, 2004, WAYNE D. PARKS, SP 2004-DR-008, continued from Page 630

as shown on the plat prepared by Bryant L. Robinson, dated January 28, 2004, revised February 12, 2004, submitted with this application and is not transferable to other land.

2. The existing evergreen trees planted around the shed to screen Lot 67 shall be maintained; any dead, dying or hazardous trees shall be removed and replaced with like kind.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ May 4, 2004, Scheduled case of:

9:00 A.M. GAYLON L. SMITH AND KAREN L. MARSHALL, VC 2004-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6006 Grove Dr. on approx. 8,640 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 32.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Lewis, Merrifield Garden Center, the applicants' agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested approval of a variance to permit the construction of a deck 5.1 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 4.9 feet was requested.

Mr. Lewis presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants were requesting to add onto the existing deck to make traffic flow functional from the front yard to the rear deck.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer VC 2004-MV-026 to June 15, 2004, at 9:00 a.m.

Mr. Hart stated that the application was similar to the first case heard that morning where the lot was only 72 feet wide. He said there were only seven or eight variances similar to this one that had been granted in the neighborhood over many years. Mr. Hart said that if the Board was looking at an issue of unreasonable restriction, one result would be obvious; however, if the Board was looking at whether or not the applicants would be deprived of all reasonable beneficial use of the property taken as a whole, another approach would be taken. He said that until an answer was received from legal counsel, he thought it was appropriate to defer the decision.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 4, 2004, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in

--- May 4, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 631

gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054).  
(Continued from 3/2/04)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04)

Vice Chairman Ribble announced that VC 2003-PR-194 and SP 2003-PR-054 would be heard concurrently. He called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Forrest J. Hatcher, 2747 Oldewood Drive, Falls Church, Virginia, replied that it was.

John E. Carter, 4103 Chain Bridge Road, Suite 101, Fairfax, Virginia, identified himself as the agent for the applicants and said that the revised affidavit which had been distributed to the Board members listed his name.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the hearing had been continued from March 2, 2004, to allow time for the applicants and staff to determine the answer to several questions posed by members of the Board. She said a memorandum had been placed in their packets from Cynthia Tianti, Assistant County Attorney, in response to those questions, in which Ms. Tianti discussed the proposed fence, particulars about the easement, and the location of the sheds. Ms. Langdon said that in response to Ms. Tianti's memorandum, revised development conditions dated May 4, 2004, had also been distributed to the Board.

Ms. Gibb asked if the plat submitted by the applicants was from the Park Authority. Ms. Langdon responded in the affirmative and said the reason the Park Authority prepared the plat was because they had agreed to provide a fence in order to prevent golf balls from going onto the subject property. She said that once they had prepared the plat, they realized that there were some other structures that were not legally built, which included three sheds, two of which were part of the application, and the addition to the house.

In response to Vice Chairman Ribble's question, Ms. Langdon said there was nothing concerning the future dedication of the road other than what was in Ms. Tianti's memorandum. She said that insofar as staff knew, there were no plans to require the dedication, but it ran to another person in the original deed. She said the County did not intend to ask for any type of road in that location.

Referring to the revised development conditions, Mr. Carter asked what the basis was for staff's recommendation that all sheds be removed. Ms. Langdon said the revised conditions were based on the memorandum from Ms. Tianti and the fact that there was an easement there. Ms. Langdon said they were suggested conditions, which the Board would choose whether or not to adopt, but typically staff would ask that any structures be moved out of easements, either by removing them from the site or relocating them.

Mr. Carter presented the variance and special permit requests as outlined in the statements of justification submitted with the applications. He said he did title work on the property to research the easement and found a number of legal issues relative to the easement. He said that when it was created in 1947 the language at that time created the easement of a 25-foot piece southeast of the parcel which was currently on Park Authority land. He said a later deed seemed to suggest it was moved over 25 feet on the land that became Mr. Hatcher's land. From a legal stance, Mr. Carter said he was not sure whether it was a valid easement. He said they would have to file a quiet title action in the Fairfax Circuit Court to get a final resolution on the easement. He stated that the easement had been abandoned. It had been withheld by some developers in the 1940s in anticipation of developing the entire area, including the land that was currently part of the Park Authority golf course, and there was no need for a road to go through the area. Mr. Carter stated that there had been an adverse possession of the easement for 35 years by the building that had been built through it, and there were numerous grounds for a court to quiet title the land. He said there had been a trust which had been dissolved for approximately 50 years that had the ability to request that a

~ ~ ~ May 4, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 632

roadway be put into the easement, but he was unsure whether any of the people involved at the time could be found. He indicated that notices would have to be sent to the neighborhood and published and the guardian ad litem be asked to appear and have a court rule to have the easement vacated. Mr. Carter said he was confident that would occur. Mr. Carter said he understood the Board's situation with respect to the recent Virginia Supreme Court's ruling on variances; however, he pointed out that Shed 1 had been in its current location on poured concrete for 40 years and predated the 1976 Zoning Ordinance.

In response to Ms. Gibb's request, Mr. Carter located shed 1 on the plat stating that it was the large one closest to the house.

Mr. Carter said Mr. Hatcher's father had purchased the house in 1954, there was a structure in that same location, and in approximately 1960 the structure was replaced by another shed that had been placed in the same location. He said one of the issues was an encroachment onto the land owned by the Park Authority, but Mr. Hatcher could take the position that the encroachment existed 15 years prior to the Park Authority's acquisition of the property. He said that much of the land would have been adversely possessed by the landowners prior to the Park Authority's taking ownership in 1969. Mr. Carter said more research needed to be done and acknowledged that was part of the variance issues.

With respect to the request for a special permit, Mr. Carter said they would like the Board to rule in favor of the applicants' request to allow the dwelling structure and the deck. He said the other sheds in question could be moved. He quoted from the memorandum received from the Park Authority that rescinded their offer to build the fence. Mr. Carter said he had spoken to Ms. Tianti, and she had informed him that the Park Authority would attempt to make a number of other changes on the property they managed that they hoped would alleviate the dangerous problem of golf balls flying onto the applicants' property. He said that if that did not work, Ms. Tianti said the Park Authority would consider revisiting the issue.

Forrest Hatcher stated that Sheds 2 and 3 could be moved. He requested that he be allowed to move Shed 3 to be equal to a zero clearance or at least one foot from the property line, as in keeping with Shed 2. He said none of his neighbors had expressed any opposition to his applications.

Vice Chairman Ribble asked for the exact location of the Park Authority's fence. Mr. Carter stated that it was on the property line, and 50 years prior there was a barbed-wire fence that existed along the same line. He said since then there had been confusion between the chain-link fence and the barbed-wire fence being on the property line when, in fact, they had been 4 1/2 to 5 feet off the property line along the southeast corner of the property.

Ms. Gibb and Mr. Carter discussed the location of the boundary line between the Park Authority and Hatcher properties and the location of the 25-foot easement.

In response to Ms. Gibb's question as to why the Board was concerned with that easement, Ms. Langdon said the Board had asked for clarification, and Ms. Tianti had responded by explaining who the easement went to and what it was for. Ms. Langdon said the Park Authority had no interest in it, and insofar as the changes noted in the revised development conditions were concerned, that was made in response to questions posed by the Board at the prior public hearing. Ms. Langdon said staff had no interest in it either.

Ms. Gibb asked where the underground easement was that the Park Authority claimed prevented them from putting a fence up on their property. Ms. Langdon said it was not listed on the plat; however, as she understood it, there was some type of utility easement that ran through the area, and that was why their large fence was located in its present location. She said it was not on the plat because it was off Mr. Hatcher's property.

Ms. Gibb stated that usually fences could be placed on easements as permitted by the language of the easement document. Ms. Langdon stated that she assumed that the Park Authority was aware of that and had spoken with the owners. She said the Park Authority may allow some landscaping, but nothing over 10 feet in height so it would not interfere with overhead lines.

Mr. Hart said it would be helpful to have copies of all the easement information as backup rather than just descriptive memoranda. He asked the applicant if he still wanted the 35-foot fence variance. Mr. Carter said

~ ~ ~ May 4, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 633

that he did want approval because if at some time in the future there was still a problem with golf balls being hit onto Mr. Hatcher's property, he wanted to have something in writing that would allow for such a fence. Mr. Carter said the applicant wanted at least 45 feet of protection, which would include adding a 10-foot net to the 35-foot fence.

Mr. Hart and Ms. Langdon discussed where the chain-link fence was located and whose property it was on. Ms. Langdon said there was no maximum height advertised. The location, however, was specific on the plat, and that was where the fence would have to go if it was built on Mr. Hatcher's property. Ms. Langdon said the chain-link fence was on Park Authority property and did not apply to this application. Mr. Carter said that the poles and the majority of the fence would be on the Hatcher property.

In answer to a question from Mr. Hart, Mr. Carter said the quiet title action would be to remove the easement to the north/northwest from the property line with the Park Authority. He said that if the applicant wanted to sell his property at some time in the future, there would not be a title insurance issue based on the existing easement. Mr. Hart asked if the area north of the chain-link fence was part of the easement, because they contained the sheds. Mr. Carter agreed with Mr. Hart's comment that one could not adversely possess against a sovereign. Mr. Carter said the land under the slab where Shed 1 existed could be considered by a judge to be an adversely possessed property, prior to the Park Authority buying the property in 1969, and if it was in existence prior to the adoption of the Zoning Ordinance, it should be grandfathered in.

Mr. Carter said the applicant was requesting that the special permit issues be approved today. He said he understood that the variance issues would be in limbo until clarification was received from the Virginia Supreme Court on its ruling. In answer to Mr. Hart's question, Mr. Carter said that if it was necessary the applicant was willing to move Sheds 2 and 3 a few feet over. Ms. Langdon said Shed 3 was under 8 1/2 feet in height, and, therefore, it could be located in anyplace in the side or rear yard; however, it was located on the Park Authority property, so that was why it needed to be moved back onto the site. She also said Shed 2 was over 8 1/2 feet in height, so in order to meet Ordinance requirements, it would have to be 12 feet from the side lot line and a distance equal to its height from the rear lot line. Ms. Langdon stated that Shed 1 was included in both the variance and the special permit. She said the variance part was that the shed was over 200 square feet in size, so even if the Board approved it to remain, the size would not be approved unless the Board also approved the variance.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2003-PR-054 for the deck, dwelling, and Shed 2, subject to the revised development conditions dated May 4, 2004, with the deletion of Development Condition 2. She said the house had been in its current location for a long time, there was testimony that the error was done in good faith, and the applicants had met Standards A through G with respect to the dwelling and deck. Based on the length of time it had existed in the current location, which was behind a fence and next to the Park Authority land, the little impact, and the fact that it was done in good faith, she said Shed 2 met the requirements for a special permit. Ms. Gibb stated that approval of Shed 1 could not be currently granted because the size would require a variance, and Shed 3 had to be moved off Park Authority land to a location completely on the applicants' property. Mr. Hart seconded the motion.

Mr. Hammack stated that he would not support the motion because he did not think it was appropriate to grant special permits for buildings constructed in easements. He said the easement issue should be resolved first, and the other issues involving the sheds and the encroachment should be addressed.

Ms. Gibb explained that she had looked up the deed, and although it may be worrisome to see something on the plat saying "for future roadway dedication," the language was simply repeated from deed to deed for years, and to her, it did not amount to anything.

Mr. Pammel stated that the cleanest way would be to vacate the easement. Ms. Gibb responded that it would take years and be expensive to get the easement vacated.

Mr. Hart stated that he was troubled by the roadway easement and the easement on the adjacent property in the context of the fence; however, even if the garage addition for the house was improper, it was not done by Mr. Hatcher, who had inherited it. Mr. Hart said the obstruction had blocked the easement for many years,

~ ~ ~ May 4, 2004, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 634

and action taken by the Board would not impair other owners' ingress/egress rights.

A discussion ensued regarding whether portions of the special permit application could be addressed currently and others at a later point. Ms. Langdon said it would be more appropriate to defer the whole application rather than breaking it up.

Mr. Pammel made a substitute motion to defer decisions on the applications.

Mr. Hammack stated that not only would an approval legitimize a structure in an easement shown on a plat, but the extension of the house would be closer to the golf course, which Mr. Hatcher had alleged was hazardous and had complained to the Park Authority regarding possible damage to property or injury to persons from golf balls.

Ms. Langdon stated that a building permit had been approved in 1966 for a carport to be 12 feet from the side lot line, and there had been no subsequent building permits that approved any further extension or the enclosure of that carport.

Mr. Hammack seconded the substitute motion.

Vice Chairman Ribble said he would support the substitute motion.

Vice Chairman Ribble called for the vote on the substitute motion to defer the decisions on VC 2003-PR-194 and SP 2003-PR-054. The motion carried by a vote of 5-1. Vice Chairman Ribble called for the vote on the main motion to defer decisions on VC 2003-PR-194 and SP 2003-PR-054 to November 2, 2004, at 9:00 a.m., with the applicants to provide an interim report in 90 days. The motion carried by a vote of 5-1. Ms. Gibb voted against the motions. Chairman DiGiulian was absent from the meeting.

Ms. Gibb and Mr. Hart requested that the applicants provide the Board with copies of the 1948 deed, any subsequent modifications, and information regarding the title and terms on the utility easement.

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~ ~ ~ May 4, 2004, 2005, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC. (WCRA), SPA 76-A-022-02 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis courts to permit additional tennis courts. Located at 4627 Holborn Ave. on approx. 6.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16.

Vice Chairman Ribble announced that SPA 76-A-022-02 had been administratively moved to June 8, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ May 4, 2004, 2005, Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit an increase in seats and land area, building additions and site modifications. Located at 6531 and 6525 Little Ox Rd., 10915 Olm Dr., 6400 Stoney Rd. and 6340 Sydney Rd. on approx. 18.7 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 34 and 87-1 ((1)) 2, 2A, 5 and 6. (Admin. moved from 2/10/04 at appl. req.)

Vice Chairman Ribble called the case.

Mr. Pammel noted that SPA 90-S-057-2 had been administratively moved to June 22, 2004, at 9:00 a.m., at the applicant's request. He proposed a committee be established comprised of four members of the church

~ ~ ~ May 4, 2004, ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2, continued from Page 635

governing congregation and four members of the community to work in advance of the public hearing to identify all of the issues, address each one individually, and recommend solutions. He asked staff to pass on the suggestion to the involved parties.

Ms. Gibb said the Board had requested committees be formed in the past, and they had come back with development conditions that the Board could not adopt because they were not within the Board's purview. She noted that the applicant had an attorney, and the letters the Board had received had addressed the same four issues.

Mr. Hart said he had no problem with encouraging everyone to work on outstanding issues, and the applicant's attorney was capable of determining how best to interact with the community.

Vice Chairman Ribble said the applicant's attorney would take whatever approach was needed to satisfy the people who were against the proposal, if possible.

Mr. Beard said a letter in the Board's package stated that the neighborhoods would be having a meeting on Thursday, July 31, 2004, at the church, and he hoped that some issues would be resolved prior to the public hearing.

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~ ~ ~ May 4, 2004, Scheduled case of:

9:30 A.M. CARLOS AND MALENA CABALLERO, A 2003-LE-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have installed a tennis court which covers more than 30% of the minimum required rear yard and includes a fence and a series of pole mounted light fixtures in excess of seven feet in height all in violation of the Zoning Ordinance provisions for accessory uses and structures. Located at 6435 Franconia Rd. on approx. 18,826 sq. ft. of land zoned R-2. Lee District. Tax Map 81-3 ((12)) 1. (Admin. moved from 12/16/03 at appl. req. to 2/24/04; however, deferred by BZA on 12/16/03 to 3/30/04) (Admin. moved from 3/30/04 at appl. req.)

Vice Chairman Ribble stated that A 2003-LE-047 had been administratively moved to May 25, 2004, at 9:30 a.m., at the applicants' request.

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~ ~ ~ May 4, 2004, Scheduled case of:

9:30 A.M. ELLEN PAUL, A 2004-DR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is operating a home business with more than one employee and with storage that exceeds the use limitations set forth for the approved Home Occupation Permits, in violation of Zoning Ordinance provisions. Located at 10611 Allenwood La. on approx. 5.35 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((1)) 5C.

Vice Chairman Ribble stated that A 2004-DR-003 had been administratively moved to July 6, 2004, at 9:30 a.m., at the applicant's request.

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~ ~ ~ May 4, 2004, After Agenda Item:

Approval of February 4, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 4, 2004, After Agenda Item:

Request for Reconsideration  
Carlos Caballero, VC 2003-LE-187

Mr. Hart confirmed that the Board had received and read the four letters in support that were referenced by Mr. Caballero in his letter dated April 28, 2004, in which he requested a reconsideration.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ May 4, 2004, After Agenda Item:

Approval of April 20, 2004 Resolutions  
(Deferred from April 28, 2004)

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 4, 2004, After Agenda Item:

Approval of April 27, 2004 Resolutions

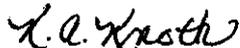
Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Paula A. McFarland / Mary A. Pascoe

Approved on: April 29, 2008



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, May 11, 2004. The following Board Members were present: Vice Chairman John Ribble; V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. THUAN & TRISHA NGUYEN, SP 2004-SU-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 18.0 ft. from side lot line. Located at 6461 Gristmill Square La. on approx. 15,535 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 399. (Admin. moved from 5/25/04)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Trisha Nguyen, 6461 Gristmill Square Lane, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of an addition 18.0 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 2.0 feet was requested. Ms. Langdon noted that prior to the change in zoning in the subject district, the property was zoned R-2 and developed under the cluster provisions, which required a minimum side yard of 8.0 feet with a total minimum side yards of 24 feet, which the request met.

Ms. Nguyen presented the special permit request as outlined in the statement of justification submitted with the application. She said the proposed addition was requested so they would have additional room for their growing family. She explained that she had been told that under the old zoning, the proposed addition would have been approved. Ms. Nguyen said the proposed addition would be harmonious with other homes and was within the requirement for the side lines. She explained that there were other homes in the neighborhood that had similar additions built during the initial construction. She said the proposed addition would be constructed on the existing deck, connecting to the garage and extending to the rear of the house. Ms. Nguyen explained that the garage was currently located 15 feet from the side lot line, and the proposed addition would be farther away at 18 feet from the side lot line. She stated that she had spoken with all her neighbors, and they had no issues with the building of the proposed addition. She said the neighbors on either side were in full support, and one had sent in an e-mail to that effect. Ms. Nguyen requested the 8-day waiting period be waived if the special permit were approved to expedite commencement of construction.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2004-SU-009 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THUAN & TRISHA NGUYEN, SP 2004-SU-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 18.0 ft. from side lot line. Located at 6461 Gristmill Square La. on approx. 15,535 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 399. (Admin. moved from 5/25/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 2004; and

~ ~ ~ May 11, 2004, THUAN & TRISHA NGUYEN, SP 2004-SU-009, continued from Page 639

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicants satisfied the Board that the five required findings had been met.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the addition, as shown on the plat prepared by The Engineering Groupe, Inc., dated October 29, 2003, as revised by T. Nguyen through February 26, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the votes, and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 2004.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M.      DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 8.4 ft. with eave 6.9 ft. from side lot line. Located at 2913 Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, the applicants' agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of a dwelling 25 feet with eave 23.5 feet and stoop 21 feet from the front lot line of a corner lot and 8.4 feet with eave 6.9 feet from the side lot line. A minimum front yard of

~ ~ ~ May 11, 2004, DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027, continued from Page 640

40 feet and a minimum side yard of 20 feet are required; however, eaves are permitted to extend 3.0 feet and stoops are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 15 feet, 13.5 feet, and 14 feet, respectively, were requested. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 11.6 feet and 10.1 feet, respectively, were requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She said the applicants were proposing to construct a home on a vacant corner lot. She explained that the lot was part of the Melville Subdivision created in 1940, prior to the adoption of the first Zoning Ordinance. Ms. Greenlief said the front yard setbacks were 40 feet from Lee Highway and Cedarest Road and 20 feet for the other two lot lines as the rear lot line can take a side yard dimension. She stated that the effect of the Zoning Ordinance on the property would, without the granting of a variance, interfere with all reasonable beneficial use of the property taken as a whole. She presented an illustration showing the effects that the current Zoning Ordinance minimum yard requirements had on the property, pointing out that the buildable area's dimensions would be 10 feet in width by 86 feet in length, and submitted that a 10-foot-wide house was not a reasonable use. She presented the available house location plats for the other lots in the Melville Subdivision and said that none of them were 10 feet in width. Ms. Greenlief noted that a PDH development was recently approved across Cedarest Road and said that those homes were not 10 feet in width, which she said would basically be the size of a small trailer, which was not a reasonable use for the subject R-1 zoned lot containing 10,077 square feet.

Ms. Greenlief explained that the immediate neighborhood was an area of mixed uses, with a Fairfax County Fire Station, a townhouse development zoned R-8, and the recently approved PDH development, which was a consolidation of a number of lots which proffered to a maximum of 24 dwelling units at a density of 4.23 dwelling units per acre. The remaining Melville Subdivision lots were developed with single-family detached dwellings. She noted that the lot immediately to the east was vacant and farther to the east the lots were part of the Lee Manor Subdivision. She stated that the proposed dwelling would be an elegant and appropriate entrance home to the subdivision, colonial in style, and in character with the mixed characteristics of the area.

Ms. Greenlief pointed out on the tax map that the situation with the subject property was unique, not generally shared by other lots in the vicinity, and was not a recurring situation, in that there were no other lots in the area with the situation of being a corner lot with a narrow width. She stated that although no other front yard variances had been granted, there was a side and rear lot variance on Lot 12 granted in 1981 for a house and deck that were already built.

Ms. Greenlief pointed out a support letter from the adjacent property owned on Lot 3 to the north, who supported the type of house proposed, and indicated the subject lot was an important entrance to the community and that they wanted a "real-looking house, not a trailer, on the property."

Ms. Greenlief submitted a plat of the subdivision showing that in 1940 these were two separate lots as they were originally created.

Ms. Greenlief summarized by stating that the applicants acquired the property in good faith, the property had exceptional narrowness and the extraordinary situation of being platted prior to any Zoning Ordinance but being held to the R-1 minimum yard requirements, one of the most restrictive in the current Ordinance, even though the lot did not meet the R-1 minimum lot size or width for a corner lot on either street line. She stated that the strict application of the Zoning Ordinance will produce undue hardship and would effectively prohibit or unreasonably restrict all reasonable use of the property. She said the authorization of the variance will not be a substantial detriment to adjacent properties and that the adjacent Lot 2 could be developed with a side yard of 20 feet or more and without a variance. Ms. Greenlief said the character of the zoning district and the area would not be changed, and the granting of the variance would not be contrary to public interest.

Mr. Hart pointed out that in 1940 the lots were designated Lots 1 and 2, but on the current tax map they were designated Lots 1A and 2A, both having approximately 70 feet in width, and he asked what happened to change the designations and who was responsible for the change. Ms. Greenlief explained that in 1949 a building permit was applied for, approved, and a house was built that combined both lots and showed them on one building permit. She said when the applicants purchased the property, it was one building lot, but the deed of sale indicated there were two lots in the subdivision, and after the purchase of the property, the

~ ~ ~ May 11, 2004, DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027, continued from Page 641

applicants separated it into two different deeds, retaining ownership of the subject Lot 2A, with Lot 1A being owned by a corporation of which the applicants are shareholders.

Vice Chairman Ribble announced that some equipment problems were being experienced and the Board would recess to resolve the issue so as to ensure the preservation of the record.

The meeting recessed at 9:16 a.m. and reconvened at 9:18 a.m.

Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

The meeting recessed at 9:19 a.m. and reconvened at 9:55 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart asked what happened that resulted in Lots 1 and 2 being changed to Lots 1A and 2A and whether the applicants caused that. Ms. Greenlief responded that she believed the numbers were changed when the deeds were separated. She said there was originally one deed that listed Lots 1 and 2 of Melville Subdivision and currently there were two separate deeds.

Mr. Hart pointed out that the current configuration seemed to be the same as on the plat in 1940. He asked if the dimensions were changed or if it was just a numbering change. Ms. Greenlief replied that the only change was the additional right-of-way on Lee Highway.

Mr. Hart clarified that there was a building permit in 1949 and a house was built on both of the lots and asked who tore the house down. Ms. Greenlief stated it was the applicants.

Mr. Hart asked if they owned both lots with one house on two lots, why the applicants could not rebuild one house on two lots. Ms. Greenlief responded that these were two separate building lots and two legal lots in a subdivision that was recorded in 1940, and when the applicants bought the property, they knew there were two separate lots, and they did not intend to keep the house. She said they bought two separate lots, and she said she did not think that combining them into one building lot would negate the fact that they were two separate legal lots. She added that requiring them to create one building lot and build one lot would not be a remedy as the lots are assessed separately.

Mr. Hart clarified that a corporation owned Lot 1A, and he asked if the applicants were affiliated in any way with the corporation, to which Ms. Greenlief replied that the applicants owned the corporation.

Mr. Hart asked if Ms. Greenlief had seen the letter the Board had received from the Briarwood Citizens Association, and Ms. Greenlief responded affirmatively. Mr. Hart noted that one of the issues referenced to in the letter pertained to a service drive along Lee Highway and asked if the house were built on the other lot, if the driveway would go out to Lee Highway. Ms. Greenlief replied that it could go out to Lee Highway, but the applicants planned to grant an access easement over their driveway to the lot so access onto Lee Highway would not be necessary.

Mr. Hart asked whether a service drive would have to be built if a house were built on a pre-existing lot, and Ms. Greenlief replied in the negative and said if it were one building lot and the applicants subdivided it into two building lots, they would have to go through subdivision and get a building permit and build the house and would not be subject to the service drive requirement.

Mr. Hart asked staff if the access to the other lot could be dealt with in the development conditions, whether

~ ~ ~ May 11, 2004, DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027, continued from Page 642

staff had a position regarding that, or whether it would be better to have some provision for access to the other lot so a driveway onto Lee Highway would not be necessary. Ms. Langdon said a condition could be imposed on the subject lot that access be provided to the adjacent lot. She indicated that staff had no position on the issue, but she added that if development did occur on the other lot and there were no provision and the applicants decided not to allow access over their property, the other lot would have to get access directly off of Lee Highway, Route 29, which would not be the preferred situation.

Mr. Hart asked where the driveway would be located, and Ms. Greenlief said it would be in the back where the existing driveway was located.

Mr. Hart asked when the house was demolished, to which Ms. Greenlief answered that a demolition permit was obtained in September of 2003.

Regarding the issue raised in the Briarwood letter, Mr. Hart asked why the house could not be built smaller without the things projecting out into the backyard or toward the front. Ms. Greenlief responded by saying the house was going to be the entrance to the subdivision. She noted that the letter indicated the portico and stoop were a nicety, but she indicated it was an architectural feature without which the house would look like a box. She added that the projection in the back was part of the master bedroom and that all the houses on Cedarest had the garage with room behind and gave examples of Lots 4, 5, and 6. She said the depth of the house was no different than the others, but that the subject house had a hardship of being exceptionally narrow and having two front yards, which the other lots did not have.

Mr. Hart commented that with the projection in the back, the yard would be smaller than the size a townhouse would have without room for a deck or patio and asked if the projection could be removed and what kind of an exit would be located there. Ms. Greenlief said the back yard would be 8.0 feet where the projection was located, but the majority of the yard would be 12 feet, and there would be sliding doors. She said there would not be room for a deck, and she did not anticipate the Board seeing an additional application.

Mr. Hart commented that, according to staff, there could not be a patio located there because if it were attached, it would be considered a structure. Ms. Langdon confirmed that a patio could not be located there if it were attached, but she said they could make it a separate structure, and if it were at ground level and under 7.0 feet in height, it would be considered an accessory structure, and there would be no rear or side yard requirement.

Ms. Gibb asked what was located on Lots 7 and 8. Ms. Greenlief explained that Lots 7 and 8 and all the lots to the west had been rezoned, and there would be 24 homes within a PDH-5 development with a 20-foot-wide landscaping strip along Cedarest and the backs of four or five homes.

Ms. Gibb asked what was currently there. Ms. Greenlief replied that there was a home on Lots 8 and 9, which were combined into one lot with a dotted line on the tax map, and there were homes on Lots 3, 4, 5, and 6, and she was unsure what was located on Lot 7.

Vice Chairman Ribble called for speakers.

John Lehrer, 2847 Hideaway Road, Fairfax, Virginia, representing Briarwood Citizens Association, came forward to speak in opposition to the application. He indicated that he has presented a letter to the Board at the hearing which he said clearly stated his points. He said the applicants were asking for variances on all sides of the house and that they had not thought through how to deal with the entrance for the second lot, which the applicants owned directly or indirectly through their corporation. Mr. Lehrer indicated that the house was out of character with the neighborhood because homes were being jammed in across the street from Cedarest and townhouses across the street from Fairfax.

Mr. Hart asked if there were other houses with a side-load three-car garage in the neighborhood. Mr. Lehrer replied that to his knowledge, no, the homes were all of considerably smaller scope and scale than the proposed house.

Ms. Greenlief, in rebuttal, stated that the applicants were requesting a variance on only two sides, not all sides, and that they had dealt with the access and were willing to have a development condition requiring an

~ ~ ~ May 11, 2004, DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027, continued from Page 643

access easement through the subject lot for Lot 1A. She said she believed it was not out of character with the area and it was not the applicants' fault that the PDH-5 was rezoned and there were large homes on small lots across the street. She indicated the garage would be either a two- or three-car garage or a storage room in the back, and she said one of the reasons the three-car garage was considered was so the back lot would not have to have access onto Route 29 and the access easement could be provided. She added that if it were a two-car garage with an additional car parked within the area, there could be a problem with the second lot getting access to the back.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to defer decision on VC 2004-PR-027 to June 15, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote, and Chairman DiGiulian was absent from the meeting.

Mr. Pammel indicated that there was a Supreme Court decision limiting the Board's ability to act on variances and that by the decision deferral day, it was hoped the Board would have received a response to the Board's attorney's request for a rehearing.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. MICHAEL J. ROBIC, VC 2004-HM-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line. Located at 13606 Floris St. on approx. 22,143 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 24-2 ((2)) 11.

Vice Chairman Ribble noted that the Board received a letter requesting the withdrawal of VC 2004-HM-030.

Mr. Hart moved to accept the withdrawal of VC 2004-HM-030. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. DARSHAN S. PADDA AND KULWANT K. PADDA, VC 2003-DR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 3-A2 having a lot width of 20.09 ft. and proposed lot 3-A1 having a lot width of 148.6 ft. Located at 715 Walker Rd. on approx. 3.48 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((2)) 3A1. (Deferred from 2/10/04 and 4/20/04 at appl. req.)

Mr. Hart made a disclosure that his firm currently had two cases where there were attorneys from the applicants' agent's firm on the opposing side unrelated to the subject application, but believed it would not affect his ability to participate.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, the applicants' agent, replied that it was.

Mr. Hanes requested that the matter be deferred. He indicated that it was difficult, in view of the Cochran case, to know what the applicants' presentation should consist of. He said he believed a reasonable and beneficial use had to be addressed and that in order to do that, he would need to look into a number of things, such as subdivision of property and partial use on the property, and exhaust those possibilities before he came before the Board to say he believed there was no reasonable beneficial use if the variance were not granted. He added that it would give the opportunity for the Board to become accustomed to the new rules that were attempted to be set forth by the Supreme Court. Mr. Hanes added that he found with interest the fact that we no longer had to deal with citizens associations since they could be completely ignored as to whether or not they were for or against variance cases. He noted that there was a suggestion in the record from the Great Falls Citizens Association, who he said he understood had previously been in favor of the subject application and had recently changed their position, of a new requirement that in order to get a

~ ~ ~ May 11, 2004, DARSHAN S. PADDA AND KULWANT K. PADDA, VC 2003-DR-178, continued from Page 644

variance, you had to give up something.

Vice Chairman Ribble called for speakers to address the deferral request. There were no speakers.

Mr. Beard moved to defer VC 2003-DR-178 to November 16, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. LAURENCE L. ELFES, VC 2004-PR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9762 Oleander Ave. on approx. 12,105 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1 ((16)) 8.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Laurence Elfes, 9762 Oleander Avenue, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a fence 5.5 feet in height in the front yard of a corner lot. The maximum allowable fence height in a front yard is 4.0 feet; therefore, a variance of 1.5 feet was requested.

Mr. Elfes presented the variance request as outlined in the statement of justification submitted with the application. He said the requested variance was to replace a fence in disrepair that had been constructed approximately 26 years ago and that he recently had become aware that a variance was required. He stated that the granting of the variance would allow additional privacy and screening from additional development and traffic expanding on Sutton. Mr. Elfes indicated that he did not believe there would be any impact on the neighborhood.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on VC 2004-PR-025 to June 22, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart explained that the Supreme Court of Virginia had recently decided a case which appeared to change the way in which the Board could grant variances and established new rules. He indicated that the Board's attorney had asked for a rehearing to clarify the decision, and until that occurred, the Board was deferring decisions on variance cases.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. MYRNA Z. KROH, VC 2004-PR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. with eave 3 ft. 6 in. from side lot line. Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Myrna Kroh, 6162 Darleon Place, Alexandria, Virginia, replied that there was a problem with the affidavit. She explained that she was the owner of the subject property, but prior to the filing of the application, she had transferred the property into a trust, the deed for which had been recorded less than two weeks prior to the hearing. She submitted a new notarized affidavit showing the property was in the trust. She indicated that when she submitted the original application under the name of the trust, she was directed by the County Attorney to take it out of the trust because the deed had not been recorded as part of the trust.

Vice Chairman Ribble advised the applicant that the new affidavit required the County Attorney's approval. Ms. Kroh stated that it had been approved by the County Attorney. She submitted a copy of the approved affidavit and stated that she reaffirmed the affidavit.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story detached garage 5.0 feet, with eave 3.5 feet, from the western side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 15 feet and 13.5 feet, respectively, were requested.

Ms. Kroh presented the variance request as outlined in the statement of justification submitted with the application. She explained that she wanted to develop the property into her retirement home and wished to put the garage in a location with easy access. She stated that there was precedent in the neighborhood and indicated that the lot located at 3114 Covington had a variance granted in 1995 for the same issue and the property immediately west of the subject property on Robert Evans Drive had a two-story brick garage that was five feet from the applicant's lot line. Ms. Kroh said she wanted more of an open view in the yard and that the removal of some 100-year-old oak trees was a major issue if the garage was to be located without the granting of the variance.

Mr. Hart asked whether it would be storage or living space in the upstairs of the garage, and Ms. Kroh replied that she wanted to use the area as a studio for an office away from the house to do things that one does in retirement.

Mr. Hart asked whether there would be electrical and plumbing in the area above the garage. Ms. Kroh responded that there would be electrical and a bathroom, but no kitchen.

Mr. Hart asked if the applicant had a drawing of the elevation of the garage because based on the size and the proximity of the addition to the side lot line, it would be helpful to see what the side facing the neighbor would look like. Ms. Kroh answered that she did not have one at the hearing, but could provide one. She stated that there would be no windows on the west side and that there was an error on the plat regarding the materials to be used. She said that the addition would be built with brick and stone to match the 55-year-old house.

Mr. Beard asked if the shed depicted in the photographs belonged to the applicant. Ms. Kroh replied affirmatively and explained that the shed was in disrepair and sat on a 16-by-16 slab and that her plan was to replace the shed with a greenhouse at some point in the future.

Mr. Beard asked how close the shed was located to the property behind it. Ms. Kroh said the shed was located within five feet from the property line and backed up to the garage located on the property on Robert Evans Drive, which was also within the five feet of the property line. She added that she understood there was a permit issued for the construction of the garage, but did not find a variance granted for it.

Vice Chairman Ribble asked for what the applicant planned to use the studio. Ms. Kroh stated that she was unsure what she was going to do once she retired, that she had been employed by the government for 27 years as an engineer and that she wanted a place away from the house to do things, perhaps use it to write.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to defer decision on VC 2004-PR-035 to June 22, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Ms. Gibb explained that the recent Supreme Court decision set forth much stricter standards for review and that a variance cannot be granted unless all reasonable beneficial uses of the property taken as a whole were interfered with.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:00 A.M. MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-04 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-P-089 previously approved for community swimming pool and tennis courts to permit site modifications and change in development conditions. Located at 9330 Pentland Pl. on approx. 4.68 ac. of land zoned R-3. Providence District. Tax Map 58-2 ((1)) 3 and 3B. (Admin. moved from 6/8/04 at appl. req.)

Vice Chairman Ribble noted that SPA 81-P-089-04 had been administratively withdrawn.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17.

Vice Chairman Ribble informed the Board members that the notices for the case were not in order. Margaret Stehman, Zoning Administration Division, confirmed that was correct and said the appellants' agent was present and wished to speak.

Jerry Phillips, the appellants' agent, requested a deferral to July 20, 2003, to allow the appellants time to correct the notices.

Vice Chairman Ribble indicated that due to the deficiency in the notices, the case could not go forward and called for speakers to address the issue of deferral. There were no speakers present.

Mr. Beard moved to defer VC 2004-PR-035 to July 20, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 11, 2004, Scheduled case of:

9:30 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8)) (2) 2A. (Admin. moved from 3/16/04 and 4/27/04 at appl req.)

Vice Chairman Ribble noted that A 2003-SP-055 had been administratively moved to June 22, 2004, at 9:30 a.m., at the appellants' request.

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~ ~ ~ May 11, 2004, Scheduled cases of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, and 3/23/04 at appl. req)

--- May 11, 2004, RONALD AND LETA DEANGELIS, A 2003-SP-002; ROBERT DEANGELIS, A 2003-SP-003; and GEORGE HINNANT, A 2003-SP-004, continued from Page 647

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan , an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, and 3/23/04 at appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan , an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, and 3/23/04 at appl. req)

Vice Chairman Ribble noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to October 26, 2004, at 9:30 a.m., at the appellants' request.

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--- May 11, 2004, After Agenda Item:

Approval of May 4, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: Kathleen A. Knoth

Approved on: June 22, 2004

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 18, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. EDWARD C. GALLICK, TRUSTEE, ET AL., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with Lot 1 having a lot width of 95.14 ft. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129. (Reconsideration granted on 2/10/04

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, the applicants' agent, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Ms. Kelsey requested the hearing be deferral to July 20, 2004, pending the results of the reconsideration request regarding the Cochran case.

Chairman DiGiulian called for speakers to address the question of a deferral; there was no response.

Mr. Ribble moved to defer VC 2003-PR-157 to July 20, 2004, at 9:00 a.m., at the applicants' request. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, VC 2004-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of canopy 18.0 ft. from front lot line. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 66. (Concurrent with SP 2004-DR-004). (Admin. moved from 4/6/04 at appl. req.)

9:00 A.M. FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit construction of a new church. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-3((1)) 66. (Concurrent with VC 2004-DR-013). (Admin. moved from 4/6/04 at appl. req.) Admin. Moved to 6/8/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-013 and SP 2004-DR-004 had been administratively moved to June 8, 2004, at 9:00 a.m., at the applicants' request.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. JOE A. HATCHER, VC 2004-LE-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. with eave 7.3 ft. from side lot line. Located at 6102 Leewood Dr. on approx. 10,662 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((12)) 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. Joe Hatcher, 6102 Leewood Drive, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the

~ ~ ~ May 18, 2004, JOE A. HATCHER, VC 2004-LE-032, continued from Page 649

staff report. The applicant requested a variance to permit the construction of an addition to be located 7.5 feet with an eave 7.3 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 4.5 feet and 1.7 feet, respectively, were requested.

Mr. Hatcher presented the variance request as outlined in the statement of justification submitted with the application. He said he was requesting the variance to allow him to build a handicapped accessible bedroom and bathroom for his 83-year-old mother-in-law, who had limited mobility due to osteoarthritis. He explained that he had researched ADA guidelines and found the following was recommended: a five-foot turning radius for bedrooms and bathrooms, a minimum of 36 inches in width for hallways, and a minimum of 32 inches for doorways with a recommended width of 36 inches for wheelchair access. He said his house, which had been built in 1956, had approximately 1100 square feet of living space with two small bathrooms with doors that were only 22 inches wide. He said the largest bedroom measured 14 by 15 feet and with furniture did not have the space required for a wheelchair. Mr. Hatcher said that moving was not a viable option, and in order to make the home handicapped accessible, adding onto the existing structure was necessary. He said that the existing carport, which measured 16 by 26 feet and encroached into the minimum side yard, was the space in which a handicapped accessible bedroom and bathroom which would comply with the recommendations provided by the ADA guidelines could be built. He said that the strict enforcement of the Zoning Ordinance which required a minimum 12-foot side yard would reduce the size of the proposed bedroom and bathroom to a width too narrow to provide the recommended turning radius with the furniture, would cause an undue hardship, and interfere with all reasonable beneficial uses of the property taken as a whole. He said placing the addition in the rear of the structure would limit access to the backyard and would restrict his reasonable beneficial use of the yard. Mr. Hatcher said he believed his request fell within the guidelines as defined by the recent Supreme Court of Virginia case.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision on VC 2004-LE-032 to July 6, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. VIJAY B. BHALALA, VCA 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-SU-106 to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vijay B. Bhalala, 13549 Currey Lane, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20.8 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 9.2 feet was requested.

Mr. Bhalala presented the variance request as outlined in the statement of justification submitted with the application. He said he had a front setback variance of 7.2 feet previously approved and was requesting two additional feet to make the garage 20 feet by 25 feet instead of 18 feet by 25 feet because 18 feet was too narrow for his car. He said the two extra feet would not obstruct the view of traffic.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision on VCA 2003-SU-106 to July 6, 2004, at 9:00 a.m. Mr. Pammel said the Board had requested a rehearing in the Cochran matter and needed further guidance before it could act on the subject request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. KEVIN NORTH, VC 2004-SU-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 17.4 ft. with eave 16.5 ft. and 12.6 ft. with eave 11.7 ft. from rear lot line. Located at 13223 Wrenn House La. on approx. 13,177 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (17) 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin North, 13223 Wrenn House Lane, Oak Hill, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of a two-story addition to be located 17.4 feet with eave 16.5 feet and an enclosed porch to be located 12.6 feet with eave 11.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 7.6 feet, 5.5 feet, 12.4 feet, and 10.3 feet, respectively, were requested.

Mr. North presented the variance request as outlined in the statement of justification submitted with the application. He said the property was built with a small farmhouse in 1794, and in the 1830s a two-room addition was added. He said the property was historically significant because it was one of the few remaining oak wooden peg and timber framed farmhouses in the area that had remained unchanged since the addition in the 1830s. Mr. North explained that at the time the developer, Hazel Peterson, developed the Franklin Farm tract, the house was saved, and an unusual building lot was created around it with many angular lines that adjoined five other properties, which created a challenge in terms of adding an addition to the property. He said it was important that the addition be historically accurate and did not take away from the charm and historic fabric of the existing structure. Mr. North described the proposed addition, its proposed location, and how it would be connected to the existing structure. He showed photographs of the site from 1984 and currently. He said the property beside the proposed location of the addition, Parcel A, was owned by the Franklin Farm Foundation, whom he had spoken with, and they were very supportive of the efforts to create an addition that respected the existing historic structure. He said the addition would not impose on any other property, and he had spoken with all of the neighbors, all of which were supportive of the addition, its location, and sight line. Mr. North said that if the addition was slid back to avoid the one corner from protruding into the setback, the addition would block the cellar/basement entrance and the existing old stone chimney. He said he had worked with the architects in creating models and moving the project around, and the proposed location was the only way to accommodate the needs of his growing family and also preserve the historic character and structure of Wrenn House. Mr. North said the County had granted him the opportunity for a partial tax abatement on the addition to the historic structure, but to comply he must have all construction completed by August 30, 2005.

Mr. Pammel established from Mr. North that the only entrance to the basement was the outside entrance, and the basement could not be entered from the main house.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hart said this was a situation where there was a pre-existing use on the lot, and the Supreme Court's decision in the Cochran case called into question whether a variance could be granted for the property. He noted that there was a rehearing request pending in the Cochran case.

Mr. Hart moved to defer decision on VC 2004-SU-038 to July 6, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. MICHAEL S. BUFANO, VC 2004-MV-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. with eave 11.3 ft. and stairs 11.7 ft. from the rear lot line. Located at 7113 Richard Casey Ct. on approx. 8,538 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((29)) 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. Michael Bufano, 7113 Richard Casey Court, Alexandria,

~ ~ ~ May 18, 2004, MICHAEL S. BUFANO, VC 2004-MV-031, continued from Page 651

Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 11.8 feet with eave 11.3 feet and stairs 11.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet and stairs are permitted to extend 5.0 feet into the minimum rear yard; therefore, variances of 13.2 feet, 10.7 feet and 8.3 feet, respectively, were requested.

Mr. Bufano presented the variance request as outlined in the statement of justification submitted with the application. He said he received flawed advice from a contractor who had removed his existing deck, leaving lumber everywhere, and he later found out that a variance was needed. He said he was requesting the variance to have a screened porch to better enjoy his backyard and to address the potential West Nile virus problems with mosquitoes. Mr. Bufano said the sliding glass kitchen door would lead directly into the screened area.

Mr. Hammack asked whether the proposed addition for the screened porch was larger than the footprint of the deck that had been removed and whether it went any closer to the rear lot line than the deck had. Mr. Bufano said it was larger, and it went out to the left in order to place a grill there, but it did not go any closer to the rear lot line than the deck had, and the stairs to the right were the existing stairs.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision on VC 2004-MV-031 to July 6, 2004, at 9:00 a.m., pending the Board learning more about the recent Supreme Court decision and the potential rehearing relating to variances. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. FRANCIS AND ROBIN SAILER, VC 2004-PR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.5 ft. with eave 4.5 ft. and 7.6 ft. with eave 6.6 ft. from side lot line. Located at 8423 Stonewall Dr. on approx. 12,000 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Francis J. Sailer, 8423 Stonewall Drive, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition, specifically a garage, 5.5 feet with eave 4.5 feet from the side lot line, and a second addition, specifically a screen porch, 7.6 feet with eave 6.6 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 6.5 feet, 4.5 feet, 4.4 feet, and 2.4 feet, respectively, were requested.

Mr. Sailer presented the variance request as outlined in the statement of justification submitted with the application. He said his business required him to frequently travel internationally, leaving his wife home alone as much as five to six months during the year, and his wife's business required her at times to return to the home very late at night, so an enclosed garage would give her safety. Mr. Sailer said his neighborhood had changed, and over the last 15 years others had built garages within two to three feet of the lot line, but he was requesting only 5.5 feet. He said that other neighborhoods zoned R-4 had been built immediately adjacent to his, and one could only be entered through his neighborhood, Stonewall Manor. Mr. Sailer stated that conditions were changing, and he hoped that the Supreme Court on rehearing would recognize that the law was a living thing, the region was changing, and there was good reason for the kinds of variances that were being or had been granted. He said that with the skyrocketing housing prices, it was unfeasible for him to move to the kind of house he wanted his house to be, so he was stuck in the house without a garage with some unsafe conditions in a neighborhood that was turning into what he wanted his house to look like without the ability to do so. Mr. Sailer said the inability for him to build the garage would effectively prohibit

~ ~ ~ May 18, 2004, FRANCIS AND ROBIN SAILER, VC 2004-PR-033, continued from Page 652

or unreasonably restrict his utilization of the property the way other properties very close to his, both old and new areas, were being used. He said one of his neighbors submitted a letter of support, and he did not believe there was any opposition to the request.

Mr. Hart asked what the difference was between the footprint of the existing carport and the proposed garage. Mr. Hart said it appeared from the plat that the garage was bigger and closer to the street than the existing carport. Mr. Sailer said it was, and the idea was to bring the garage forward to fit a second small car to the forward section of one of the other cars. Mr. Hart asked whether there was a room behind the garage because he said most of the garages the Board saw were 22 to 24 feet deep. Mr. Sailer explained that in the part of the garage toward the street there would be two spots for cars, on the left side of the garage toward the rear would be an area large enough for a third small car, and the fourth quadrant on the right in the rear would be a workroom.

Mr. Hart noted that there was a part of the screened porch that bumped out, and he asked whether there was a functional reason why the bumped out portion had to go closer to the lot line rather than to the rear or in some other configuration. Mr. Sailer responded that the screened porch was sort of irrelevant, and he was focused more on the garage, but the porch was configured as it was because his wife was an artist, and aesthetics were important to her.

Mr. Hart asked whether the hot tub and the deck needed a variance. Susan Langdon, Chief, Special Permit and Variance Branch, said they did not, but staff had a condition, Condition 4, that stated that the deck had to be removed or relocated and brought into conformance with the Zoning Ordinance because it was too close to the side lot line. She said the hot tub was not a problem.

Mr. Hart asked about the overhead wires that he said seemed to conflict with the new garage. Mr. Sailer said the service cable would be moved.

Mr. Ribble asked whether the additional paving in the front yard was allowed under the Ordinance. Ms. Langdon replied that it met the Ordinance requirements.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Beard said the applicant had noted that he was aware of the Cochran matter. Mr. Beard stated that approximately 22 variances had been requested in the area, and of those, only four had been denied. He said he understood it was a frustrating situation for the applicant, and he was sympathetic to the applicant and the other citizens.

Mr. Sailer said he was unaware if the question had been settled of whether or not the Board was requesting a Supreme Court decision rehearing, and he said wanted to formally request that the Board seek a rehearing, and to the extent an argument could be made, he requested that beyond the merits of the case, the Board make the additional procedural argument that at least the Supreme Court's decision should only have only prospective effect and not affect previously granted variances or pending variance applications on the date of the decision.

Mr. Beard moved to defer decision on VC 2004-PR-033 to July 13, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-02 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 previously approved for billiard hall with an eating establishment to permit change in permittee. Located at 14114 - 14116 Lee Hwy. on approx. 8.6 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel Harris, President of Harco III, Inc., 1520 K. Street, Washington, D.C., replied that it was.

~ ~ ~ May 18, 2004, HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-02, continued from Page 653

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested to amend SP 95-Y-069, previously approved for a billiard hall, to permit a change in permittee. No other changes were proposed. Staff recommended approval of SPA 95-Y-069-02 subject to the proposed development conditions.

Mr. Harris presented the special permit amendment request as outlined in the statement of justification submitted with the application. He requested an amendment to the previously approved special permit for a billiard hall to change the trading name of the establishment from the Shark Club to Fast Eddies.

Mr. Ribble asked if Mr. Harris understood and would abide by the development conditions in the staff report. Mr. Harris replied that he understood and would abide by them.

Mr. Hart asked Mr. Harris if he understood that if the signage was to be changed, compliance with the development conditions regarding signage was required, and Mr. Harris said he understood. Mr. Hart said that because of the construction of the interchange at Routes 28 and 29, the entrance from Route 28 was closed, leaving the traffic signal by the gas station as the only functional entrance to the shopping center. Mr. Hart said that on a number of occasions he had seen vehicles parked in the fire lane by the front curb, and he said that even though it was not part of the development conditions, Mr. Harris should encourage patrons not to park in the fire lane.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 95-Y-069-02 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-02 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 previously approved for billiard hall with an eating establishment to permit change in permittee. Located at 14114 - 14116 Lee Hwy. on approx. 8.6 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-703 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Harco III, Inc., T/A Fast Eddie's, and is not transferable without further action of this Board, 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.

~ ~ ~ May 18, 2004, HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-02, continued from Page 654

2. This Special Permit is granted for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by The Tech Group Inc., (Anthony Morse) dated March 31, 1998, as revised through April 7, 1998, and signed May 13, 1998, 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 made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat and these development conditions.
5. The hours of operation shall not commence prior to 7:00 a.m. nor extend past 2:00 a.m. daily.
6. Any signage erected on the building shall be of a size and materials which are compatible with existing signage in the shopping center as determined by DPZ, and shall be subject to the requirements of Article 12 of the Zoning Ordinance.
7. The maximum number of employees on-site shall not exceed 16 at any one time. The maximum number of pool/billiard tables within the use shall not exceed 22. Within the building the maximum number of eating establishment tables shall not exceed 160 seats, and the maximum number bar seats shall not exceed 70. Seasonal outdoor seating shall not exceed 50 seats on the east side of the building in the area shown on the special permit plat. There shall be no seasonal outdoor seating on the north side of the building. Irrespective of that shown on the special permit plat, a minimum of 162 parking spaces shall be provided on-site as shown on the plat, based upon the formula for calculating parking as follows: 1 parking space for every three persons using the billiards tables, using 8 persons for each billiard table, 1 parking space for every 4 eating establishment table seats (both indoor and outdoor), 1 parking space for every 2 bar seats, and 1 parking space for every 2 employees present at one time. Prior to the issuance of a Non-Rup, the applicant shall prepare a parking tabulation revision for the review and approval of the Department of Public Works and Environmental Services, (DPWES) and Zoning Permit Review Branch of the Department of Planning and Zoning (DPZ), reflecting all current uses on the site, to verify that adequate parking exists on the site to serve all uses. If it is determined that adequate parking does not exist on site to accommodate the billiard hall, the maximum number of seats for the eating establishment shall be reduced to meet the parking spaces available for the use. Two parking spaces shall be reserved for the use of a limousine; limousines shall be prohibited from parking or standing at the front curb for the billiard hall.
8. No events such as those the feature strippers, stripteases, bathing suit, or underwear costumes shall be permitted.
9. No trailers for storage or any other purpose shall be permitted for this use.
10. No further additions or expansion to the billiard hall or eating establishment shall be permitted without approval of an amendment to the special permit.

These development conditions incorporate and supercede 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 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

~ ~ ~ May 18, 2004, HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-02, continued from Page 655

explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit building addition, side modifications and increase in land area. Located at 9105, 9111 and 9115 Backlick Rd. on approx. 1.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B and 27.

Chairman DiGiulian noted that SPA 87-V-070 had been administratively moved to May 25, 2004, at 9:00 a.m.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:30 A.M. ALVIN E. MEADOWS, A 2004-SP-006

Chairman DiGiulian noted that A 2004-SP-006 had been withdrawn.

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~ ~ ~ May 18, 2004, Scheduled case of:

9:30 A.M. JUBAL AND KIRSTEN THOMPSON; ESTATE OF MARY BROWN, ELTON K. DONALDSON, A 2003-DR-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area or width requirements of the Zoning Ordinance when created, does not meet current minimum lot area or width requirements of the R-1 District, and is not buildable under Zoning Ordinance provisions. Located at 8304 & 8308 Randwood St. on approx. 29,838 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2)) 5 and 6. (Admin. moved from 12/2/03, 3/9/04, and 4/20/04 at appl. req.)

Chairman DiGiulian noted that A 2003-DR-046 had been withdrawn.

~ ~ ~ May 18, 2004, Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 4. (Admin. moved from 10/28/03 and 12/9/03 at appl. req. to 2/3/04) (Moved from 2/3/04 due to inclement weather) (Deferred from 3/9/04 and 3/16/04 at appl. req.)

Donna Pesto, Zoning Administration Division, presented staff's position as set forth in the staff report. She stated that the appeal was of a Notice of Violation which had been issued on June 19, 2003, citing the appellant for installing two freestanding outdoor vehicle lifts that were not approved as part of the special exception for the service station use. She said the public hearing had been deferred five times, once due to inclement weather and four times at the appellant's request, and during the 11 months since the issuance of

~ ~ ~ May 18, 2004, MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037, continued from Page 656

the Notice of Violation, the lifts were still in place, and no special exception application had been filed. Ms. Pesto said the subject appeal was similar to a 1996 appeal where an appellant had outdoor vehicle lifts which were deemed to be an expansion of the service station, and ultimately the appellant had secured approval of a special exception that included an expansion of the service station, and the appeal had been withdrawn. She stated that it was staff's position that the outdoor vehicle lifts in the subject case were an expansion of the special exception use and were in violation of the provisions of the Zoning Ordinance that required additional Board approval. She said it was staff's belief that 11 months had been more than adequate time to have submitted a special exception application or removed the lifts to clear the violation.

Mr. Hart asked whether there was anything improper about what the appellant was doing if they had a special exception. Ms. Pesto replied that it was unknown whether the Board would approve a special exception that would allow for the outside repair of automobiles, and it would be the first of its kind. She said it was her understanding the appellant was going to seek a special exception to expand the building to include additional indoor service bays as opposed to the outdoor service bays.

Mr. Beard said he was personally aware that the lifts had been there for years and asked why it was suddenly an issue. Ms. Pesto replied that a complaint had been received and pursued through Zoning Enforcement.

Jane Kelsey, the appellant's agent, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, came forward to speak. She apologized for previously requesting a deferral of the application on grounds she had been unable to fulfill. She said that she had requested a deferral in order to amend the special exception plat so it could be submitted with the application and at the time understood from the lessee and operator, Mr. Noratzu, that he had spoken with the landlord's agent and would be able to get shared parking spaces. Ms. Kelsey reported that staff had said the outdoor lifts would be required to provide parking spaces as though it were a service bay. She said they were unable to secure the parking spaces through the landlord which would enable them to meet the Zoning Ordinance requirement as interpreted by staff. In addition, she stated that the landlord had refused to provide the appellant with the names of the members of the limited liability corporation that owned the property, and the application would be rejected without that information. Ms. Kelsey said she could not in good faith file a flawed application and had exhausted all the remedies to resolve the issue, so she was prepared to go forward with the presentation of the appeal.

Ms. Kelsey stated that there were two outside lifts which had been in place since the current lessee had begun operating the facility, and there had been problems with both the inside and outside lifts, so they were repaired and upgraded. She said the County records had no evidence regarding when the lifts were first placed on the property. Ms. Kelsey said she had spoken with the son of a previous lessee and operator of the station, who had worked at the station continuously since his father owned the station, and he had given a written statement confirming that the lifts had existed on the site since he had begun working there shortly after his father had taken over the station in the 1980s, and although referred to as portable lifts, they were attached to concrete for safety reasons. She said that after the appellant had repaired and upgraded the lifts after the current lessee took over, a former employee had filed a complaint with the County. Ms. Kelsey said the lifts were in the same location they had always been, and although one of the latest lifts installed was a little higher than the previous one, they were essentially the same type of shop equipment. Ms. Kelsey said, as far as she knew, there had been no other complaints. She said she had spoken with representatives of the New Alexandria Citizens Association, and they had no complaints and did not even know the lifts were there until she called it to their attention. Ms. Kelsey said there would be no harm done to the community if the lifts could be called pieces of shop equipment similar to air dispensing machines and the Board ruled in favor of the appellant.

Mr. Beard asked whether portable jacks to repair cars would be permissible under the use. Ms. Pesto said that the way parking was determined for service stations was based on service bays, and an outdoor lift which serviced a vehicle would be deemed to be a service bay, but she was unsure how a portable jack for a tire change would be looked at.

Mr. Pammel said he thought there were a number of service stations in the area that had outdoor hydraulic lifts, and he knew specifically of one.

Mr. Hart asked whether there was a definition of service bay or lift in the Ordinance. Ms. Pesto said there was not. Mr. Hart asked whether there were any written determinations interpreting what a service bay or lift

~ ~ ~ May 18, 2004, MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037, continued from Page 657

was. Ms. Pesto said there was not a specific interpretation except in the 1996 case she had earlier referenced where staff had determined that the addition of the outdoor lifts constituted an expansion of the special exception use.

Mr. Hart remarked that it was vague to him what had happened with respect to the special exception approval. He said that currently when there was an approval, a notation was made on the plat, but the 1986 plat did not have a notation, and he asked whether everyone was assuming that the plat before the Board was the operative plat. Ms. Pesto said staff was assuming it was the operative plat. She said the Zoning Evaluation Division had indicated that the actual writing on the plats saying this was the approved plat began at some time in the 1980s.

Using the assumption that it was the operative special exception plat and the lifts already existed around the time of the special exception, Mr. Hart asked for clarification whether staff's position was that there was a problem because it would be an expansion, the lifts were not shown on the special exception plat, and parking spaces were lost because of the lifts. Ms. Pesto said that was correct. She said the special exception plat clearly showed parking which was required in the location occupied by the lifts. She said three bays would require six parking spaces, and with five employees, a total of 11 parking spaces would be required and were provided on the site. Ms. Pesto said there were photographs associated with the special exception that showed a car parked in one of the parking spaces as it had been shown on the special exception plat and no lift. She stated that for a service station two parking spaces per service bay plus one parking space per employee were required.

Mr. Hart asked whether the lifts were the landlord's or the applicant's property. Ms. Kelsey said the lifts were permanently attached to the ground, and the applicant and his partner had leased the site, but she did not know who owned the pieces of equipment within the service station.

Ms. Kelsey said that one of the ways to solve the parking issue would be to close the entrance closest to Fort Hunt Road, but that would need the landlord's approval. She said she had recently spoken with the landlord, but had not received an answer.

Mr. Hart asked what the appellant's position was with respect to whether the 1986 plat was, in fact, the special exception plat. Ms. Kelsey explained that her client was the current lessee operator, and the person who had gotten the special exception plat was the father of one of the current employees. She said she had spoken with the employee, but did not know the answer.

Mr. Hart asked whether there were any other objects outside on the site that were not a structure, like equipment, a tire rack, or trash cans, not shown on the plat. Ms. Kelsey said she had submitted some photographs, but did not know the answer. She said that the photographs that were Attachment 15 to the staff report showed a Firestone sign and sheds, which she said likely contained tires.

Mr. Hart asked if Ms. Kelsey agreed that the appellant was short parking spaces. Ms. Kelsey said there currently were four employees, not five, so 10 parking spaces would be required. She said the lifts were blocking two parking spaces, and the parking spaces could not be used if there was a car in the lift.

Mr. Hart said that if the limited liability corporation that owned the property had filed an annual report, the names of the members may be included in the report which could be found on the state corporation commission Website. He said that even if it was not a Virginia LLC, there should be paperwork in Richmond if they did business in Virginia.

Mr. Beard asked whether Ms. Kelsey's position was that the lifts were fixtures or leasehold improvements that would run with the property. Ms. Kelsey said she had not reviewed the lease and did not know what belonged to the landowner or the lessee. She said her client had spent the money to have the lifts installed.

Mr. Beard said there was no question in his mind that the lifts were movable pieces of automobile shop equipment that could be used for multiple purposes. Ms. Pesto said staff did not necessarily agree that it was shop equipment, but thought it was a service bay. She said the equipment was installed and fastened. She said she had been told by the Department of Public Works and Environmental Services, without knowing the specifics of the particular hydraulic lifts, that it was very likely that building, mechanical, and electrical permits were required for the installation, and none were obtained. Ms. Pesto said it was more

~ ~ ~ May 18, 2004, MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037, continued from Page 658

than a wash station or an oil or tire rack.

Ms. Kelsey showed photographs on the overhead viewer and discussed the locations of the lifts and parking spaces.

Mr. Hammack asked why the landlord or owner was not named as a party to the appeal and whether the shopping center was under a master special exception. Ms. Pesto said just the service station parcel was under the special exception. She said she did not know if the owner was copied or not on the Notice of Violation, but generally both were cited. Ms. Pesto said the inspector had informed her that the appellant had indicated to her at the time of the site visit that he was the owner, and that was why the Notice was given to him.

Ms. Kelsey said the original building permit under which any underlying electrical would have been done would have been issued in 1941, and she understood that building permits from that time no longer existed. She said she did not know whether the repair and upgrade would require a new building permit.

Mr. Hart said the lifts may be the property owner's as opposed to the tenant's, and the property owner's rights may be affected if there was an order to remove the lifts, and Fairfax County had not told the property owner that the proceedings were occurring and their rights in the fixture or equipment were being affected. He said there had been similar prior cases where the owners and operators were both the recipients of the Notice of Violation letters. Ms. Pesto said that perhaps the owner of the shopping center, who owned the land on which the service station was being operated, should have also received notice, but because the inspector had believed the appellant owned the service station, including the land, that was how the Notice was issued. She said that regardless of the ownership of the land underneath, the lifts constituted an expansion.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Pammel said it concerned him that a major party in this case had not been notified or involved. He said it was an expansion of the business, and it was done without site plan approval and without the other necessary approvals required by the County if it occurred after the original building permit. He said the present appeal was flawed because it did not include the owners of the land on which the activity took place, and it needed to be deferred until the owners of the shopping center who lease to Mr. Nowrouzi become a part of the action before the Board. He said the Board did not have the right to address rights of individuals without them being notified.

Mr. Pammel moved to defer decision on A 2003-MV-037 to September 21, 2004, at 9:30 a.m., so staff could do what was required to bring the property owners into the application and allow time for the property owners to have a representative or counsel come before the Board at that time. Mr. Pammel noted that a special permit for error in building location would be another possible avenue applicable to the lifts, but would not address the lost parking. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7, specifically dealing with the Cochran decision. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 10:40 a.m. and reconvened at 12:03 p.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, After Agenda Item:

Approval of April 8, 2003; April 29, 2003; and May 27, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion. Mr. Hart noted that there were three misspelled words in the April 8, 2003 Minutes. With those changes, the motion carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 18, 2004, After Agenda Item:

Approval of May 11, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: September 9, 2008

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 25, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. ANASTASIOS & ANNA GRYPEOS, VC 2003-MV-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of parking spaces less than 10.0 ft. from front lot lines and loading space in required front yard. Located at 6925 Richmond Hwy. on approx. 1.23 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 93-1((18)) (D) 117, 126, 130 and 138. (in association with RZ 2003-MV-059) (Admin. moved from 4/13/04 at appl. req.)

Chairman DiGiulian noted that VC 2003-MV-166 had been indefinitely deferred.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 15.0 ft. with stoop 11.0 ft. from front lot line. Located at 4925 Twinbrook Rd. on approx. 5.16 AC. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with SPA 81-A-002-04). (Decision deferred from 3/16/04).

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, SPA 81-A-002-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for church to permit building addition and site modifications. Located at 4925 Twinbrook Rd. on approx. 5.16 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with VC 2004-BR-008). (Decision deferred from 3/16/04).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Reverend Hyong Shik Sohn, Senior Pastor and agent for the applicant, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, said the application had been continued from March 16, 2004, to allow the applicant and the neighbors to address outstanding issues concerning lighting, fencing, stormwater management, noise, landscaping, and the applicant's May 11<sup>th</sup> and May 12<sup>th</sup> memorandums that evidenced the resolutions. Ms. Shields pointed out the revised set of development conditions dated May 25, 2004, that were distributed and stipulated the applicant's agreements. She noted they were measurable and enforceable and included the neighbors' request for a board-on-board fence, and she assured that during the site plan review process, the offsite stormwater management pond was deemed to have adequate capacity.

Responding to Mr. Hart, Ms. Shields confirmed that there were no new architectural renderings.

Reverend Sohn said the church held a meeting with the citizens April 27<sup>th</sup> to discuss and address the issues of lighting, noise attenuation, and landscaping. He briefly explained their resolutions, which were derived from County Staff recommendations. Reverend Sohn confirmed a house of worship's necessity for music and singing, but assured that his church would not be a nuisance to the neighbors. He explained the noise level mitigation proposals included in the May 25<sup>th</sup> Development Conditions. Reverence Sohn confirmed that the church sincerely sought to be a good neighbor and would exist in harmony with its surrounding residential community. Concluding his presentation, he pointed out that they retained a land development design company, Williams Enterprises, Inc., to provide and facilitate professional and equitable resolutions.

Addressing Mr. Hart's question, Harold Rodriguez, an engineer with Williams Enterprises, Inc., submitted

~ ~ ~ May 25, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 661

that the building's architectural design was still in progress. He displayed three optional materials that were being considered.

For Mr. Hart's clarification, Ms. Shields referenced language in Development Condition 13, specifying staff's intent that the building be compatible and architecturally consistent with the surrounding residential construction.

To further clarify, Susan Langdon, Chief, Special Permit and Variance Branch, noted that Development Condition 11 required genuine masonry materials, like brick or block, not a faux stone composite.

Responding to Mr. Beard's question of why there were no drawings depicting the proposal, Ms. Langdon said the applicant had not yet determined the final design. She explained that although staff requests architectural designs and elevations, they are not required at time of submission. She pointed out that in cases like this, staff sought to incorporate as much detail as possible in the conditions.

Chairman DiGiulian called for speakers.

Christine I. Lee, a member of the church, submitted information on the components and properties of the product GenStone, a construction material.

On behalf of his client, Mr. Rodriguez requested that Development Condition 11 be revised to assure no redundancy with the sound mitigation measures to which they had committed.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 81-A-002-04 for the reasons stated in the Resolution.

Mr. Pammel added a new Development Condition 12 to stipulate that the proposed structure be architecturally compatible in design and materials with the surrounding area. Mr. Hammack seconded the motion.

Mr. Beard repeated his position that the proposal was too ambiguous, and although inclined to support the motion, said he would feel more comfortable if there were a rendering to evidence the integrity of the facility and its relation to its surroundings.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF PILGRIM COMMUNITY CHURCH, SPA 81-A-002-04 Appl. under Sect(s) 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for church to permit building addition and site modifications. Located at 4925 Twinbrook Rd. on approx. 5.16 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with VC 2004-BR-008). (Decision deferred from 3/16/04). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the prescribed standards for a special permit amendment.
3. The permit had already been approved by this Board and development has taken place on the site.

~ ~ ~ May 25, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 662

4. Staff recommended approval, subject to the development conditions dated May 25, 2004.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4925 Twinbrook Road (5.38 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Williams Enterprises, Inc., dated October 30, 2003, revised through February 25, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 352 seats in the sanctuary of the church.
6. The single family dwelling on the property shall be limited to use for classroom and small gathering space. It shall not serve as a rectory or worship area.
7. Transitional screening shall be modified as follows:
  - a. A single row of 25 evergreen trees, containing a mixture of red cedar, loblolly pine and Leyland cypress (or an equivalent substitute as approved by the Urban Forestry Division), shall be planted between the westernmost parking spaces and the east end of the proposed stormwater management/Best Management Practices (SWM/BMP) facility shown on the plat dated February 25, 2004.
  - b. A double row of evergreen trees shall be planted along the southern boundary adjacent to the existing church and the proposed building to provide visual screening and noise attenuation. These trees shall consist of Leyland cypress in the open portion of this area and American holly within the shaded portions of this screening yard. Additional American Holly or Canadian hemlock shall be planted along the southern property line, west of the proposed building to supplement the existing transitional screening, as recommended by the Urban Forestry Division. An equivalent substitute for the trees stated may be used as approved by the Urban Forestry Division.
  - c. Any transitional screening trees that have died along the southern boundary between the existing parking lot and the existing church shall be replaced to satisfy the transitional screening requirement in this area. All trees will be American holly and Canadian hemlock, or an equivalent substitute as approved by the Urban Forestry Division.
  - d. All evergreen trees shall be a minimum of six feet in height, at time of planting, and planted per the Fairfax County Public Facilities Manual (12-0805).
8. The barrier requirement shall be modified to only require construction of a six (6) ft. board on board fence of natural color along the north side of the access road between the west and east ends of the property, and along the southern boundary between the west end of the fellowship hall and the east

end of the existing parking lot.

9. To soften the visual impact of this facility, a grouping of four (4) evergreen trees shall be provided along the northeastern side and four (4) evergreen trees shall be provided along the southwestern side of the proposed building. In addition, four (4) evergreen trees shall be planted between the proposed SWM/BMP facility and the existing parking lot. All landscape trees shall be a minimum of six feet in height, at time of planting, and planted per the Fairfax County Public Facilities Manual (12-0805).
10. If the existing play area is relocated from its current location, evergreen trees, a minimum six (6) ft. in height at time of planting, shall be planted around the play area to provide screening from the adjacent residential properties. Number, species and location shall be determined in consultation with the Urban Forester.
11. Subject to the review and approval of DPWES, a study prepared by an acoustical engineer shall be provided at the time of building permit application in order to determine the STC ratings of walls, roofs, doors and windows required to achieve compliance with a sound level at the property lines of no more than 50 dB. The building shall be constructed pursuant to the specifications contained within the study. The south side of the building shall incorporate a masonry façade to provide additional soundproofing.
12. Notwithstanding Condition #14, the proposed fellowship hall shall be architecturally compatible, in respect to design, materials, and colors used, with the residential structures in the surrounding area.
13. Internal floor layout shall locate classrooms along the northern and southern ends of the building to provide a separation between the fellowship area and the adjacent properties. Double layers of drywall shall be utilized to provide additional thickness to interior walls.
14. The exterior building materials used in construction of the fellowship hall shall be consistent with the exterior building materials used in the primary church structure. In addition, the design of the fellowship hall shall incorporate architectural elements, such as windows (faux or real), roof gables, pop-outs, etc., as approved by DPWES, to provide a building which is residential in appearance and similar in style to surrounding residential construction. Photographic documentation and any additional materials which DPWES requires to make such a determination shall be provided by the applicant with submittal of a building permit.
15. A five (5) ft. wide sidewalk connecting the existing and new buildings, and the new building and the parking lot shall be shown on the plat prior to any site plan approval.
16. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet. At the time when proposed lighting is constructed, all existing lighting shall be modified to meet the same standards.
17. The limits of clearing and grading shall be no greater than as shown on the Special Permit Plat, labeled Limits of Clearing and Grading, and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to the construct the improvements shall be submitted to the DPWES, including the Urban Forestry Division, for review and approval. Irrespective of the limits shown on the special permit plat, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
18. A Stormwater Management (SWM) facility, for detention and water quality control, shall be provided using a combination of measures that will include the use of on- or off-site detention and innovative BMP, including infiltration trenches, rain gardens, or other environmentally sensitive measures, in

~ ~ ~ May 25, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 664

accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. Additional required detention may be provided in the existing SWM dry pond located just off-site in the Weston Hills subdivision, if there is additional capacity and permission to utilize said capacity can be obtained. Innovative BMP facilities shall be subject to a maintenance agreement acceptable to DPWES, including the maintenance standards set forth in Attachment A.

19. Prior to the issuance of a Non-RUP, approval of the septic system shall be obtained from the Health Department. If such approval is not received, the site shall be connected to the existing public sewer system.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 2004. This date shall be deemed to be the final approval date of this special permit.

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Addressing VC 2004-BR-008, Mr. Pammel said he believed there were unique circumstances and a clear definable hardship that justified approval. He pointed out that the structure had existed since 1941, and during the ensuing years, right-of-way was taken, and at a point in time, the structure was in compliance with the Ordinance. Although the facility was no longer in compliance, he said it was through no fault of or action by the property owner.

Mr. Pammel moved to approve VC 2004-BR-008. Mr. Hammack seconded the motion.

Mr. Hart concurred that there was a hardship, but due to the Cochran court ruling, said he believed it appropriate to defer.

Ms. Gibb concurred that a deferral was appropriate.

Mr. Hammack offered to withdraw his second if the maker of the motion would agree to a deferral.

Mr. Pammel stated that a definite hardship was apparent and to bring the structure into compliance was unreasonable.

Mr. Pammel moved to defer VC 2004-BR-008 to July 13, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Mr. Beard voiced his discomfort regarding voting on cases where public hearings were held weeks earlier, as remembering issues and relevant facts were a concern.

Mr. Beard moved that the Board defer public hearings on variance applications until a future date not yet determined. Ms. Gibb seconded the motion for purposes of discussion.

~ ~ ~ May 25, 2004, TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 and SPA 81-A-002-04, continued from Page 665

Discussion followed among Mr. Beard, Ms. Gibb, Mr. Hart, and Chairman DiGiulian concerning such a policy and its implementation.

Concurring that a public hearing's deferral in lieu of its decision was recommendable, Chairman DiGiulian tasked staff to contact applicants, apprise them of the Supreme Court case affecting such applications, allow them the choice to go forward, and schedule the cases to be heard at one time. The motion carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2908 Westcott Street on approx. 11,627 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 66. (Decision deferred from 4/20/04).

Thomas Torok, 2908 Westcott Street, Falls Church, Virginia, came forward and requested that his case be deferred as he had just learned of the Supreme Court case. He said he would make himself available for whatever date was scheduled.

There were no speakers to address the deferral request.

Mr. Hammack moved to defer VC 2004-PR-019 to July 27, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. AHMAD AMARLOOI & MANSOUREH KAVIAN, VC 2004-MV-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 13.0 ft. from the front lot line, second story addition 9.1 ft. from side lot line and addition 9.0 ft. from one side lot line and 10.0 ft. from other side lot line. Located at 1205 H St. on approx. 9,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (44) 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. Mr. Ahman Amarlooi, 1205 H Street, Alexandria, Virginia, replied that it was.

Bill Sherman made staff's presentation as contained in the staff report. He stated that the applicant requested a variance to permit construction of a roofed deck 13 feet from the front lot line; a second story addition 9.1 feet from a side lot line; and a two-story addition 9.0 feet from one side lot line and 10 feet from the other side lot line. A minimum front yard of 30 feet and minimum side yard of 12 feet are required; therefore, variances of 17.0 feet, 2.9 feet, 3.0 feet, and 2.0 feet, respectively, were requested.

Mr. Amarlooi stated that he wanted to add a bedroom over the one-story side portion of his home and that a larger kitchen and dining room would be added to the rear of his house. In response to Mr. Hart's question regarding the Gearing letter contained in the file, Mr. Amarlooi stated he had discussed the issue with the next-door neighbors and agreed to maintain their privacy by having no windows on the west side of the second-story addition.

Chairman DiGiulian called for speakers.

Beverly Gearing, 1207 H Street, Alexandria, Virginia, stated she and her husband had no objection to the proposal as Mr. Amarlooi agreed to their request as referenced in their May 17<sup>th</sup> letter.

~ ~ ~ May 25, 2004, AHMAD AMARLOOI & MANSOUREH KAVIAN, VC 2004-MV-034, continued from Page 666

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VC 200-MV-034 to July 20, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

For the applicants' benefit, Mr. Hart briefly explained that a Virginia Supreme Court decision on April 23, 2004, appeared to restrict the Board's ability to grant variances on properties on which there was already a structure. Mr. Hart added that although the BZA was still pursuing the issue through the courts, no settlement was yet determined; therefore, they were deferring decisions on a number of cases.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 (Admin. moved from 5/18/04)

Chairman DiGiulian announced that SPA 87-V-070 was deferred indefinitely.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. DAN F. BRINKWORTH, VC 2004-LE-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. with eave 4.3 ft. from side lot line. Located at 3718 Logan Ct. on approx. 14,879 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((14)) (14) 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. Dan F. Brinkworth, 3718 Logan Court, Alexandria, Virginia, replied that it was.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to permit the construction of a garage addition to be located 4.5 feet with eave 4.3 feet from the side lot line. A minimum side yard of 10 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.5 feet and 2.7 feet, respectively, were requested.

Mr. Brinkworth said he originally planned a carport, but later decided a garage was more beneficial. He submitted that it was architecturally compatible with the neighborhood, that his next-door neighbor supported the proposal, and that there were several other similar variances that were approved in his neighborhood. Mr. Brinkworth noted that his lot's steep incline precluded any other area where the garage could be placed. He pointed out that the cul-de-sac limited on-street parking, and his family had three cars which they would park in the driveway or inside the garage, a benefit to all. In response to Mr. Hart's question concerning a whether a building permit was obtained for the pouring of the concrete slab, Mr. Brinkworth assured that a building permit was not required for a driveway or a carport pad.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that a carport must be open on three sides with the only enclosed side being adjacent to the house and it can have walls up to 18 inches high. She clarified that if the walls were over 18 inches, the structure would be considered an addition.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision on VC 2004-LE-039 to July 20, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 25, 2004, continued from Page 667

Addressing the audience, Ms. Gibb cautioned applicants to consider the current uncertainty of variance dispositions due to the Cochran case. She said those cases whose decisions were deferred did not have a guarantee or a time frame regarding the matter's resolution.

Ms. Langdon told the Board that staff was informing applicants of the Court's decision and that it was probable their cases' decisions would be deferred. She explained the requirement to schedule a public hearing within 90 days of an application's acceptance and the notification requirements. She stated that staff had been and would continue to assist applicants with determining a future hearing date depending on whether the case had already been advertised or its decision deferred.

Discussion followed among Board members and Ms. Langdon concerning the procedure for a public hearing if a case were called but not opened for public hearing, the deferral of an application or its decision, and the required legal notifications.

After considering the deferral issue complications, Mr. Pammel commented that he did not want to incur additional financial burden on those applicants who had already fulfilled their requirement for legal notification. Mr. Pammel moved that the Board hear the advertised cases, and for those cases not yet advertised, until resolution of the issue, for staff to inform applicants that their public hearing would be scheduled at a later date.

Mr. Ribble asked staff if there was a method to provide the Board members the information they had heard at public hearings at which decisions were deferred, so that they may recall the circumstances, deliberate the issues, and ultimately facilitate their decision at some future date.

Ms. Langdon said staff was processing a system that utilized the new equipment, specifically a compact disk compatible with their computers.

In response to a request from Ms. Gibb, Ms. Langdon explained the notification dates for July's public hearings.

Discussion followed among the Board members and Ms. Langdon concerning applicants' expenses for required notifications as well as the inconvenience to applicants, speakers, and interested citizens over the matter of deferrals.

Reiterating his position, Mr. Pammel affirmed that the Board was required by law to hear applications within 90 days, and regardless of the Cochran case, if an application was advertised and notices sent, the Board had the obligation and responsibility to hear those cases. He maintained that the Board hear the cases that were advertised and whose notices were sent.

Concerning the motion on the floor, Chairman DiGiulian asked the maker, Mr. Pammel, whether he wanted to include applications not yet advertised.

Mr. Pammel further moved that for applications not yet advertised, staff notify applicants that, because of the Cochran decision and until its resolution, the Board was unable to hold a public hearing.

In response to Ms. Langdon's question concerning scheduling, Mr. Pammel suggested that an early date in September was possible for staff to begin scheduling hearing dates. Ms. Langdon assured Ms. Gibb that applicants were being informed of all scenarios regarding the ramifications of the Cochran decision, as well as the fact that the requested rehearing may not be granted. Ms. Langdon also said that most of the trade persons and professionals involved with special permit and variance processes were aware of the Cochran decision and were contacting staff for updates.

Chairman DiGiulian called for a second on Mr. Pammel's motion.

Mr. Hart seconded the motion, but requested its clarification.

Mr. Pammel stated that the Board would hear all variance applications that had been advertised and whose notices were sent; that this would probably carry into the next three weeks, and beyond that time, staff would advise applicants that because of the Supreme Court decision, the Board would not hear variance

~ ~ ~ May 25, 2004, continued from Page 668

applications until the issue is resolved. He clarified that the applicant could choose to extend his application beyond the 90-day time frame.

Mr. Hart suggested that the Board hear the applications already advertised and noticed, but that staff encourage applicants to defer their public hearing.

The Board stated that those applicants who had requested a deferral and whose applications are listed on the agenda were guaranteed a deferral and could be advised that it was not necessary to appear at the hearing, as their case would not go forward.

For Mr. Beard's clarification, Mr. Pammel explained that the Board would hold hearings, and for the individuals whose notices were sent and their application advertised, and who were present for their public hearing, they had the option to request a deferral of their public hearing. For those who chose to hold their public hearing, the Board will hold the public hearing, but defer the decision.

Chairman DiGiulian called for a vote on Mr. Pammel's motion, which carried by a 7-0 vote.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. BENNY D. HOCKERSMITH, VC 2004-SP-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. with eave 5.83 ft. from side lot line such that side yards total 21.1 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. (Concurrent with SP 2004-SP-010).

9:00 A.M. BENNY D. HOCKERSMITH, SP 2004-SP-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 0.10 ft. with eave 0.16 ft. from side lot line and 6.4 ft. with eave 5.94 ft. from rear lot line. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. (Concurrent with VC 2004-SP-036).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benny D. Hockersmith, 7210 Reservation Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on error in building location to permit a 10.2-foot high shed to remain 1.9 feet with eave 1.74 feet from the southwestern side lot line and 6.4 feet with eave 5.94 feet from the rear lot line. A minimum side yard of 8.0 feet and minimum rear yard of 10.2 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and rear yards; therefore, modifications of 6.2 feet and 3.4 feet were required for the side lot line, and modifications of 3.8 feet and 1.26 feet were requested for the rear lot line.

Addressing the variance application, Ms. Stanfield said the applicant sought to permit construction of an addition, consisting of a two-car garage, to be located 6.5 feet with eave 5.83 feet from the northeastern side lot line, such that side yards total 21.1 feet. A minimum total side yards of 24 feet is required; therefore, variances of 1.5 feet for the addition to the side yard, 2.9 feet for the total side yards, and .57 feet for the eave were requested. Ms. Stanfield pointed out a discrepancy in her staff report of the distances from the side lot line of the shed and eave from that which was advertised. She said while preparing her report, she received a verbal message from the land surveyor who indicated the correct distances and who subsequently submitted a revised plat that recorded the distances. Ms. Stanfield explained that the advertised lot line distances were closer than the correct distances; therefore, the application did not require readvertising.

Mr. Hockersmith told the Board he built the shed several years prior, after speaking with his neighbors first about where he intended to place it because his lot's topography restricted where it could be placed, and he

received no complaints. He said he learned only recently that a variance was required. He next addressed the issue of his garage. He explained its style and that it was architecturally compatibility with his house. Mr. Hockersmith noted his lot's narrow shape, which prohibited placing a garage anywhere else. He responded to Ms. Gibb's question concerning how the shed was built and the foundation on which it was placed. He pointed out that there was sufficient room to walk behind the shed, and although it would require a fair amount of effort, he willingly agreed to move the shed forward.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2004-SP-010 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BENNY D. HOCKERSMITH, SP 2004-SP-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 0.10 ft. with eave 0.16 ft. from side lot line and 6.4 ft. with eave 5.94 ft. from rear lot line. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. (Concurrent with VC 2004-SP-036). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating that he has met the required standards A through G.
3. The shed would be difficult to move and it is surrounded by trees.
4. The applicant testified that there is sufficient room between the fence and the shed to provide proper maintenance.
5. The shed is located next to a power line easement.

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

~ ~ ~ May 25, 2004, BENNY D. HOCKERSMITH, VC 2004-SP-036 and SP 2004-SP-010, continued from Page 670

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a shed, as shown on the plat prepared by John A. Kephart, dated March 5, 1990, as revised through February 25, 2004, 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. Beard 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 June 2, 2004. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to defer decision on VC 2004-SP-036 to July 24, 2004. Mr. Hammack seconded the motion, which carried by a 6-0 vote. Mr. Ribble was not present for the vote.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M.      HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hossein Fattahi, 8723 Litwalton Court, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of additions, consisting of the enclosure of an existing carport with an attached storage shed, 6.5 feet from the southern side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 3.5 feet was required.

Mr. Fattahi said he wanted to enclose an existing carport. He called the Board's attention to the fact that a variance was approved several years prior, but because he was unable to complete the project, he again had to come before the Board. He briefly explained the proposed design. He stated that he and his wife needed a garage. He pointed out that the existing carport was 7.7 feet from the lot line, not 6.5 feet as determined by staff.

There were no speakers, and Chairman DiGiulian closed the public hearing.

~ ~ ~ May 25, 2004, HOSSEIN FATTAHI, VC 2004-PR-037, continued from Page 671

Mr. Beard moved to defer decision on VC 2004-PR-037 to July 20, 2004. Ms. Gibb seconded the motion, which carried by a 6-0 vote. Mr. Ribble was not present for the vote.

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~ ~ ~ May 25, 2004, Scheduled case of:

9:00 A.M. KENNETH ARTHUR & DEBRA SPRADLIN, VC 2004-BR-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. with eave 16.8 ft. from rear lot line. Located at 9325 Hobart Ct. on approx. 8,803 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((19)) 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent for the applicant, William A. Reames, Patio Enclosures, Inc., 13230 Marina Way, Woodbridge, Virginia, replied that it was. He requested a deferral of the hearing.

There were no speakers to the issue of a deferral.

Mr. Hammack moved to defer VC 2004-BR-046 to July 20, 2004, at the applicants' request. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Pammel noted that an opposition letter had been received from Mr. and Mrs. Folk. He said Mr. Reams should be aware of their position.

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~ ~ ~ May 25, 2004, Scheduled Appeal case of:

9:30 A.M. DONALD J. AND JAKI S. MCCARTHY, A 2004-MA-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that two dwelling units exist on a single lot located in the R-1 District in violation of Zoning Ordinance provisions. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A.

Donald McCarthy, 3915 Glenbrook Road, Fairfax, Virginia, identified himself as the property owner.

Jayne Collins, Staff Coordinator, presented staff's position as set forth in the staff report. She stated that the appellants were appealing the determination that two dwelling units existed on a single lot located at 3915 Glenbrook Road. Staff's determination was that a single-family detached dwelling was the principal dwelling unit, and a garage/apartment was also a dwelling unit. Both were located on the subject lot, she said; therefore, the McCarthys were in violation of Sect. 2-501 of the Zoning Ordinance. She described each unit's layout, the design, and the kitchen-bathroom amenities. Ms. Collins pointed out that County assessment records indicated the unit was constructed in 1945, was continuously taxed as a single-family dwelling and one detached garage, and that there was no record of a second dwelling on the lot. She noted that a plat, accompanying a Deed of Subdivision document that divided the original Lot 20 into the present day Lots 20A and 20B, depicted an existing dwelling and a garage on the subject lot. Ms. Collins stated that with few exceptions, two dwelling units were not permitted on one lot. One exception, she submitted, was a special permit offered in 1946 to address the housing shortage after World War II. She explained the current accessory dwelling unit provisions. She noted that the subject property's second dwelling unit was not permitted under those provisions and that no evidence existed to confirm that the garage apartment was ever legally established; therefore, it was not considered a nonconforming use. Ms. Collins requested the Board uphold the Zoning Administrator's February 5, 2004 Notice of Violation.

Vice Chairman Ribble assumed the Chair.

Ms. Collins responded to questions from Ms. Gibb concerning tax assessments and the removal of utilities and kitchen amenities necessary to remedy the violation.

~ ~ ~ May 25, 2004, DONALD J. AND JAKI S. MCCARTHY, A 2004-MA-007, continued from Page 672

In further explanation, Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said there was a position on the assessment records that indicated the number of dwelling units on a lot. She said the purpose of removing utilities to clear a violation was to assure that conversion back would not be easy. Addressing Ms. Gibb's concern, Ms. Stehman clarified that staff assesses each case individually to determine compliance or to clear violations.

Ms. Gibb commented that the second unit existed openly since the 1950s, apparently was operated in good faith, and the appellants were not operating in a clandestine manner. She believed it would be a financial hardship, as well as harsh, if they were required to remove the amenities and cut off utilities.

Ms. Collins responded to Mr. Hart's question concerning disconnecting kitchen utilities. She noted that the appellant could use the garage as an office and have electricity. She clarified that the addition of such things as microwaves or wet-bars were determined on a case-by-case basis, that full-sized stoves or a second kitchen were prohibited and that the unit could not be rented.

Mr. Hart commented that it was difficult to determine where the line was drawn.

Concurring with Mr. Hart's position on the difficulty of the issue's determination, Ms. Stehman said staff considered many factors such as addition of utilities and electrical amenities, whether it was family used, if it was a basement arrangement, and the access within or outside the unit. She maintained that many variables were considered to assess whether it was an allowable use or whether a notice was issued. Ms. Stehman reiterated that if it were rented or occupied as an independent dwelling, the use was considered in violation.

Discussion followed between Mr. Hart, Ms. Stehman, and Ms. Collins concerning detached garage units, breezeways, applicable lot sizes, and special permit requirements for accessory dwelling units.

Ms. Stehman pointed out that two violations, a contractor's office for gutter repair and an illegal shed, had been resolved, and the only issue on appeal was the second dwelling, the kitchen and upstairs garage unit.

In response to questioning by Mr. Beard, Ms. Stehman clarified that the second dwelling unit was the issue, not the fact that it was an income producer as a rental unit. She said a second dwelling unit was not allowed on lots even if occupied by family members. She explained specifics contained in a document titled 'A Second Kitchen' letter, which allows a second kitchen provided there is free access by all members of one household.

Ms. Collins explained to Ms. Gibb that the unit could not be considered a nonconforming use because it was never legally established under a previous Zoning Ordinance.

To further clarify, Ms. Stehman said the Ordinance allowed a single unit per lot or building site since 1941, and during 1946 to 1953, to address the post World War II housing shortage, a special permit was available allowing duplexes. She pointed out that the subject property had not applied for the special permit during that period and consequently was not approved for it. During the late 1980s or early 1990s, she said there was an accessory dwelling unit special permit provision added to the current Zoning Ordinance that allowed accessory dwelling units, but stipulated that at least one of the residents be over age 55 or have a disability. To be an allowed detached dwelling unit, it must be on over two acres, but the subject property was subdivided prior to the adoption of that Zoning Ordinance amendment. Ms. Stehman said that today the appellants would not be eligible to apply for that special permit unless some way was devised to connect the dwellings.

Donald McCarthy came forward to speak and said the property originally was a farm, the house built in 1945, and an apartment was added in 1950 for the owner's son and his bride to work the family farm. He stated that the 1941 Ordinance had no restrictions on multiple dwelling units and said it was the 1978 Ordinance that prohibited more than one dwelling unit. He affirmed that having multiple dwellings and outbuildings on farms was common in the 1940s. Mr. McCarthy stated that the County had no record of building permits for the principal dwelling or the garage/apartment, but an affidavit from the original owner's daughter, Annabelle Linden, attested that the apartment was legally established in 1950. He maintained there was no change in the apartment, its construction or use, in 54 years, and it was in continuous use as a dwelling unit without

complaint or adverse impact on the neighbors. Mr. McCarthy stated that the property was legally subdivided in 1958 to its 1.7-acre lot size and that it qualified as a nonconforming use. He questioned whether the burden of proof of a second dwelling unit's legality was the County's obligation or that of the property owner.

In response to Ms. Gibb, Ms. Stehman explained the 1941 Zoning Ordinance provisions regarding Agricultural Districts. She gave the 1941 Ordinance's description of "lot," noting that a "building site" was referenced but not defined. She stated that there was a subdivision plat on record, that there was no record depicting a building site, and that Tax Administration records have assessed the property as a house and a garage. She said staff had no indication there was a second building site. She pointed out that the 1941 Zoning Ordinance concerning the Agricultural District referred to houses as single-family detached, and the Rural Residence District had no mention of multi-family dwellings, but apartment houses were not allowed in the residential districts, but were allowed in general business districts. Ms. Stehman noted that amendments to the 1941 Ordinance spoke to duplexes and multi-family dwellings.

Ms. Gibb commented that when viewing old house location surveys, a building's outline was visible, but an apartment inside a garage was not necessarily depicted. She said she believed that the situation warranted some legitimacy because the use had existed openly for a long time. She disagreed with the appellant in that it was not staff, but he who bore the burden of proof. She voiced her reluctance to displace something that had gone on for 54 years.

Ms. Stehman responded to Mr. Hart's questions concerning specific language in the 1941 Zoning Ordinance provisions concerning Agricultural Districts, Rural Residence Districts, lot sizes, and permitted uses. She said staff's position was that the appellants were not in compliance with the lot area and yard requirements for the second building site because there was no evidence of the second building site.

Ms. Gibb pointed out that there were amendments adopted during 1941 to '47 to allow compliance for many substandard sized lots under the 1940 Zoning Ordinance.

Ms. Stehman stated that a number of amendments were adopted, the initial ones relative to lots of record and what were considered lots of record, but that was not an issue with this appeal. She said some amendments followed that spoke to setbacks and expanded uses such as duplexes or that allowed multi-family dwellings, but to her knowledge, there were none that allowed two dwelling units on one lot.

As he understood the 1941 Ordinance language, Mr. Hart said the plot plan required in 1946 for a duplex was not germane as the McCarthys had two different buildings, each with a different front door; that there didn't appear to be an expressed prohibition, and there didn't appear to be a requirement either. He questioned how it was determined that in 1950 the use was prohibited.

Ms. Stehman stated that the McCarthy appeal was not the County's first concerning two dwelling units on a lot, but the first to challenge the definition of building site or lot, and to suggest that it could be allowed. Staff's position, which had been consistently upheld by the Board of Zoning Appeals, was that it allowed only one house per lot.

Chairman DiGiulian called for speakers.

Annabelle Myers Royston Linden, daughter of the original property owners, Benjamin and Annie Myers, called attention to her March 5, 2004 letter, (contained in the record). She stated briefly that the apartment was built in accordance with the Zoning Ordinance at that time for her brother and sister-in-law and had been operated continuously since that time as a rental apartment.

Chairman DiGiulian called for closing staff comments.

Ms. Collins stated that since the adoption of the first Zoning Ordinance in 1941, two dwelling units on a lot were never permitted, and the 1946 Amendment evidenced that fact. She noted that assessment records consistently assessed the property as a house and an accessory garage. She maintained that it was not a nonconforming use as it never was legally established.

In his rebuttal, Mr. McCarthy stated that, although rather vague, nowhere in the 1941 Zoning Ordinance was there language prohibiting two dwelling units, and only in 1978 was it specific that there could be only one

dwelling unit per lot.

Chairman DiGiulian closed the public hearing.

Commenting that he had years working with the County, Mr. Pammel stated that the traditional interpretation of the Ordinance had been carried down through the years and he knew of no circumstance where two residential units were permitted on one lot as cited in the 1941 Ordinance. Mr. Pammel stated that the residential structure portion of the garage was not legally established as required by the County Ordinance in effect at that time. He agreed that it was somewhat of a hardship that the unit no longer could be utilized as a rental property, but in his experience and as he interpreted the Ordinance, he believed that the Zoning Administrator had rendered a proper interpretation. Mr. Pammel moved to uphold the determination of the Zoning Administrator. The motion failed for lack of a second.

Stating that he deferred to Mr. Pammel's experience, Mr. Hart said that he was concerned about the interpretation of "building site" in the 1941 Zoning Ordinance and that his interpretation differed from that of Mr. Pammel and staff. He read sections where a lot might be termed other than a building site, or that building sites contained varied acreage, and there were various scenarios which may allow multiple building sites on a lot since these were not expressly prohibited. Mr. Hart said he felt that to rule what the McCarthys had was prohibited or illegal and that their documentation was not acceptable, or that over the years their use, although not regulated, in retrospect, was now considered noncompliant, he could not reconcile himself with that determination because of this business of disjunctive lots and building sites. He concluded by asking why the Zoning Ordinance did not say "no structure shall be erected or placed on a lot of less than one-half acre" if the intent was to allow only one dwelling per lot and not to allow multiple half-acre building sites on one lot.

Mr. Pammel stated that all Ordinances used in Fairfax County had been permissive and only in recent years had prohibited language been included. To decide the McCarthy case, he said he went back to the traditional usage of the Ordinance to determine how it was applied and used during that period. He said he believed staff made the same ruling, that only one residential unit is permitted per lot. Mr. Pammel referenced the Proffitt application, where the Board ruled that there were two residential dwellings on one lot. He pointed out that the 1941 Ordinance was replete with gaps; the language had not been crafted to address the scenarios and circumstances the new land use laws were creating. Mr. Pammel concurred that there was a lack of clarity with the language, but the fact remained that the McCarthys' uses were not documented with permits, and if the Board determined the use was appropriate, there may be many more similar cases to come before the Board with the same argument, a lack of clarity in interpretation. He cautioned the Board to be most careful with how it determined this interpretation.

Concurring that the issue was problematic, and only last year the Board received the 1941 Ordinance to read, Chairman DiGiulian stated that the Board must view each case individually, and he could not find the Zoning Administrator's interpretation correct.

Mr. Hart voiced his difficulty with having to tell someone that something that happened 54 years ago was illegal and it appeared that no one had said anything at the time or in between. He said the Board must be certain that its interpretation of what was said in the 1941 Zoning Ordinance, as amended, be absolutely correct. He pointed out that although there was no supporting documentation, there was a witness's unrebutted testimony that all was done in compliance with zoning. Mr. Hart said that as he understood it, as long as there was sufficient room, a half acre per structure, one could have a structure on something other than a lot, and it was permissible for one or more. He could not understand why a house and a garage were not permitted.

Mr. Ribble stated that these situations have a lot of circumstances surrounding them.

Ms. Gibb said that displacing a use after 54 years was a problem for her, and because of the ambiguity of the language regarding a building site, she moved that the decision of the Zoning Administrator be overturned.

Mr. Ribble seconded the motion, which carried by a vote of 5-1. Mr. Pammel voted against the motion. Mr. Hammack was not present for the vote.

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~ ~ ~ May 25, 2004, Scheduled Appeal case of:

9:30 A.M. CARLOS AND MALENA CABALLERO, A 2003-LE-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have installed a tennis court which covers more than 30% of the minimum required rear yard and includes a fence and a series of pole mounted light fixtures in excess of seven feet in height all in violation of the Zoning Ordinance provisions for accessory uses and structures. Located at 6435 Franconia Rd. on approx. 18,826 sq. ft. of land zoned R-2. Lee District. Tax Map 81-3 ((12)) 1. (Admin. moved from 12/16/03 at appl. req. to 2/24/04; however, deferred by BZA on 12/16/03 to 3/30/04) (Admin. moved from 3/30/04 and 5/4/04 at appl. req.

Chairman DiGiulian pointed out that the plat in the back of the staff report, which was prepared by his office in 1976, appeared to show the proposed construction of a tennis court, but he was unable to find any record at his office. Nevertheless, he said he would recuse himself.

Jayne Collins, Staff Coordinator, presented staff's position as set forth in the staff report. She explained that the appellants had installed a tennis court that covered more than 30 percent of the minimum required rear yard and included a fence and a series of pole-mounted light fixtures in excess of the seven-foot height allowed. She stated that these were in violation of the Zoning Ordinance provisions for accessory uses and structures. Ms. Collins noted that the appellants attempted to resolve the violation by applying for a variance, which was denied by the BZA on May 4, 2004. She requested that the Board uphold the Zoning Administrator's August 29, 2003 determination.

Carlos Caballero, 6435 Franconia Road, Springfield, Virginia, submitted that he was unaware of the zoning rules at the time his court was constructed. He said the tennis court was constructed for the benefit of the neighborhood children to provide a convenient, safe, and healthy play area. He called the Board's attention to the fact that his neighbors supported the facility. Mr. Caballero apologized for the violation, but asked the Board to allow the use, saying it would not set a negative precedent. Mr. Caballero concluded his presentation by expressing his determination to pursue his appeal to allow the tennis courts as it was beneficial for the children.

Vice Chairman Ribble called for speakers.

Martha Cain, 6502 Summerton Way, Springfield, Virginia, came forward to speak. She said that her home bordered the Caballero's property. She contradicted Mr. Caballero's statement that there was adequate screening and that there were no other tennis courts within close proximity. Ms. Cain said Mr. Caballero should have contacted zoning before he built his courts. She stated that her property value had decreased because of the negative impact of the courts.

Sean Reilly, 6506 Summerton Way, Springfield, Virginia, came forward to speak. He said his home faced the Caballeros' tennis courts, and concurred with Ms. Cain's statement that all vegetation had been cleared, there was no screening or buffering, and there was another tennis court available for public use in the immediate area. He said the lights were a distraction, and he closed his shades at night because of the glare. He said the Caballeros were interested in purchasing two lots in the neighborhood, and he was concerned over a precedent if they were granted this variance, having ignored the Zoning regulations as they had in this case, and that they might proceed to do something similar.

In his rebuttal, Mr. Caballero stated that his problems were created by a neighbor motivated by racism and bigotry. He stated he did not personally know the Cains, but was cursed at and verbally abused by Mr. Cain, who had threatened to destroy him. He concurred that he had removed sick and dead pine trees from his other property, but it was for safety reasons to clear the sight distance from Franconia Road. There already had been one fatality, he said, and he intended to replant the grass. Mr. Caballero said he could not understand how the court's lights were a problem as the offended properties were a good distance away and the lights were designed to direct downwards. He stated that the problem was not the court nor its lights, but a hateful vendetta. He requested that the Board approve a variance and not consider the personal problems some people apparently had against him.

Vice Chairman Ribble assured Mr. Caballero that the Board only considered land use and was not influenced by personal issues.

Ms. Collins reiterated that tennis courts were permitted, but they must be located in accordance with Zoning Ordinance provisions, and the appellants' was not.

~ ~ ~ May 25, 2004, CARLOS AND MALENA CABALLERO, A 2003-LE-047, continued from Page 676

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator.

Mr. Pammel seconded the motion.

Mr. Hart noted that there was no indication that the conditions and measurements of the property were done incorrectly by the Zoning Administrator. He pointed out that the variance had been considered, had been deferred, and ultimately was denied. He said the question was not to revisit the issue of whether the courts were allowed and under what conditions, but whether the Zoning Administrator's determination was correct or incorrect. Mr. Hart pointed out that in the record before the Board there was nothing to show that the Zoning Administrator was incorrect.

Mr. Beard concurred with Mr. Hart's statement. Mr. Beard pointed out that Mr. Caballero had been the victim of incompetent advice and unethical work by a professional contractor, and that he should not be viewed as a bad person.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Chairman DiGiulian recused himself.

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~ ~ ~ May 25, 2004, After Agenda Item:

Approval of Retention of Legal Counsel

Mr. Ribble moved to retain Brian McCormack regarding Board of Supervisors of Fairfax County, Virginia, et al., v. Board of Zoning Appeals of Fairfax County, Virginia, et al., At Law No. 221391. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 25, 2004, After Agenda Item:

Approval of May 18, 2004 Resolutions

Mr. Pammel moved to approve the May 18, 2004 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 11:50 a.m.

Minutes by: Paula A. McFarland

Approved on: February 15, 2005

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, June 1, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. BRUCE A. CISKE & MARY D. CISKE, VC 2004-MV-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from rear lot line. Located at 3705 Maryland St. on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 101-4 ((21)) 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. Bruce Ciske, 3705 Maryland Street, Alexandria, Virginia, replied that it was.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a screened porch addition, consisting of an enclosure of an existing deck, 14.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.1 feet was requested.

Mr. Ciske presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had purchased the house in good faith in 1999, at which time the property complied with all existing Ordinances and there were no issues regarding the construction of the house. He explained that the house was built in 1969, nine years prior to the enactment of the current Zoning Ordinance which required the 20-foot rear yard setback, and he said an extraordinary situation was created in that the house was constructed prior to the current Ordinance. Mr. Ciske said his request would not be a general or recurring requirement for the property or the neighborhood. He explained that the application of the Zoning Ordinance created an undue hardship in that while there were other locations where a screened porch could be built, it would require the cutting down of mature trees and the addition of new doors. He stated that building the screened porch on the existing deck would not change the footprint of the property, and the deck location had an existing door leading to it. Mr. Ciske said the purpose for the porch was to allow better use of the back yard at a time where there was concern about West Nile Disease. He explained that the back yard contained open drainage for a number of neighbors, which created an area for pests. He stated that the variance would not change the R-2 nature of the neighborhood as there would remain a single-family dwelling on the property and that the variance was in harmony with the spirit and purposes of the Zoning Ordinance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack explained that the BZA was awaiting a response from the Virginia Supreme Court to their request for reconsideration on a case which caused some uncertainty regarding which rules applied when granting variances. He noted that the BZA had been told that the reasons which were given by the applicant in his presentation were not valid.

Mr. Hammack moved to defer decision on VC 2004-MV-040 to June 29, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH, SPA 99-S-070, (in association with SE 2004-MV-001)

Chairman DiGiulian noted that SPA 99-S-070 had been administratively moved to June 29, 2004, at 9:00 a.m.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. BRENT R. AND JENNIFER L. GUERNSEY, VC 2004-SP-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 square feet or less. Located at 6722 Holford La. on approx. 16,565 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 222.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jennifer L. Guernsey, 6722 Holford Lane, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit an accessory structure, consisting of children's play equipment, to remain in the front yard of a lot containing 36,000 square feet or less. The Zoning Ordinance does not permit accessory structures other than flagpoles, statues, and basketball stands to be located in a front yard containing 36,000 or less. The subject property contains 16,565 square feet.

Ms. Guernsey presented the variance request as outlined in the statement of justification submitted with the application. She said the side yards were too narrow to permit the placement of the swing set and movable child climber in those locations, and the back yard was steeply sloped and did not provide a safe place for children to play. She explained that although the neighborhood was hilly, most properties had a place to locate similar equipment in the side or back yard. Ms. Guernsey noted that the equipment was permitted under the Zoning Ordinance in locations other than the front yard. She stated it would not substantially change the character of the residential neighborhood and would not be used for any commercial purposes, such as daycare. She said she had been in close communication with the neighbors to ensure they had no objections and received letters of support from some of them.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Due to the BZA's pending reconsideration request to the Virginia Supreme Court on a case which caused some uncertainty regarding which rules applied when granting variances, Mr. Pammel moved to defer decision on VC 2004-SP-042 to June 29, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. JASON HAMPEL AND SARAH MALERICH, VC 2004-SU-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 12108 Wayland St. on approx. 20,515 of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 55.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jason Hampel, 12108 Wayland Street, Oakton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 5.0 feet from the eastern side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 10 feet was requested.

Mr. Hampel presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built in the middle of a lot having the minimum width for an R-2 zoned property. He explained that the proposed location was the only place the garage could be built because there was a 15-foot-wide storm drain easement located in the middle of the back yard, a septic field in the front, and a septic tank on the front right. Mr. Hampel stated that the house was set back over 25 feet from the other side lot line, leaving a combined side setback with the proposed garage of over 30 feet, and the house on the opposing side sat 25 feet from the shared lot line, leaving a distance of 50 feet from the subject house to the neighbor's house. He said he had consulted with all the immediate neighbors, who voiced no concerns with the proposed garage and location.

~ ~ ~ June 1, 2004, JASON HAMPEL AND SARAH MALERICH, VC 2004-SU-043, continued from Page 680

Mr. Hampel noted that he had previously applied for a variance for a 23-by-29-foot structure, consisting of a garage with a master bedroom suite above, located six inches closer to the lot line than the current request, and although two BZA members voted in favor of his request, the majority had concerns with the second story and the depth of the structure. He said the current request was for a standard, one-story, two-car garage with no living space above. He explained that the current proposed garage was 6.5 feet shorter than the previous request, lined up with the back of the house, was set back from the front to match the family room on the opposing side, and was six inches narrower to move farther from the lot line.

Mr. Hampel stated that because in the prior hearing the BZA had said there was no precedence for a variance approval for the size previously requested, he had done some research to make sure the scaled down request was within the confines of other relevant variances and said the current request was consistent with other variances approved in the neighborhood, the most recent of which was a half mile away and was for a garage with a laundry room that was larger and closer to the lot line than the proposed addition. He said the other variances included a sunroom addition located five feet from a side lot line granted in 2002. He explained that although many houses in the neighborhood were built without garages, currently over 185 of the 230 homes had garages, and there would be no dramatic change to the character of the neighborhood.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support the application: Bill Pfunder, 12110 Wayland Street, Oakton, Virginia; Linda McKee, 12106 Wayland Street, Oakton, Virginia; Edward Holland, 12105 Wayland Street, Oakton, Virginia. All of the speakers indicated they had reviewed the plans, discussed them with the applicant, and were in favor of the request. Ms. McKee noted that the BZA had granted a request for her to add a carport and said changes to add carports or garages had become standard in older neighborhoods and were a plus to the neighborhood that increased values for all the community. Hr. Holland explained that Valewood Manor had been constructed in two phases, with 76 homes built in the mid-'60s with no garages and 40 homes with two-car garages built in the late-'70s. He said that 42 of the 76 homes built in the '60s had added garage or carport additions and the proposed request would be a positive benefit to the community.

Chairman DiGiulian noted that a letter in support had been received from Richard H. and Julia C. Ford, 12107 Wayland Street, Oakton, Virginia.

Chairman DiGiulian closed the public hearing.

Mr. Hart explained that an April 23, 2004, Virginia Supreme Court decision basically abolished variances or made it impossible for the BZA to grant a variance on a lot with an existing house and that the subject application fell into that category. He said the BZA was awaiting a response to their request for a rehearing.

Mr. Hart moved to defer decision on VC 2004-SU-043 to June 29, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. RENE F. RAMIREZ AND ANNA HERNANDEZ, SP 2004-LE-011 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 4.2 ft. from the rear lot line and 4.4 ft. with eave 3.4 ft. from the side lot line. Located at 6219 Hanover Ave. on approx. 8,400 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (72) 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. Rene Ramirez, 6219 Hanover Avenue, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in

~ ~ ~ June 1, 2004, RENE F. RAMIREZ AND ANNA HERNANDEZ, SP 2004-LE-011, continued from Page 681

building location to permit an accessory structure, consisting of a 13.2-foot-high shed and workshop, to remain 4.2 feet from the rear lot line and 4.4 feet with eave 3.4 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard. The rear yard requirement for accessory structures is equal to the height of the structure. Modifications of 6.7 feet and 5.6 feet for the side yard and 9.0 feet for the rear yard were requested.

Mr. Ramirez presented the special permit request as outlined in the statement of justification submitted with the application. He said the structure was needed to store his belongings and tools and to do woodworking inside. He stated that he was unaware that he needed to pull a permit prior to building the structure.

Mr. Ribble asked whether the shed could be moved, to which Mr. Ramirez answered no.

Ms. Gibb asked how the violation came to the BZA's attention. Ms. Stanfield replied that a complaint was filed with the Department of Public Works and Environmental Services, Residential Inspections, who conducted an inspection and issued the Notice of Violation. Ms. Gibb asked whether the complaint was about the shed and noted that something had been stricken from a document she had read, to which Ms. Stanfield replied affirmatively.

Mr. Ribble asked the applicant whether he had obtained any permits after the shed was built. Mr. Ramirez said he had not. He said he had applied for a permit, which was not approved, after the inspection was conducted and was told he needed to apply for a special permit.

Mr. Hammack asked how the shed would be used as a workshop and whether there were saws and electrical equipment in the workshop. Mr. Ramirez responded that he built shelves and doors with wood and that currently there was no equipment in the workshop.

Mr. Hammack asked how close the shed was to the nearest neighbors. Mr. Ramirez said the shed was approximately 45 feet from the neighbor's house, that he had spoken with them, and they had voiced no complaint.

Mr. Beard asked whether the workshop had electrical service and whether it was electrically inspected. Mr. Ramirez answered that the electric had been run, but he had to get an electrical permit.

Mr. Hart asked if there was plumbing in the shed. Mr. Ramirez said no.

Chairman DiGiulian called for speakers. There were no speakers. Chairman DiGiulian noted that a letter in opposition from Virginia Freid, 6710 Norview Court, Springfield, Virginia and a letter of support from Neill Darmstadter, 6220 Hanover Avenue, Springfield, Virginia, had been received by the BZA.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2004-LE-011 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Hart noted that one of the letters made reference to requiring siding and suggested an amendment to the development conditions regarding the exterior materials being architecturally compatible with the neighborhood, to which Mr. Ribble agreed.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RENE F. RAMIREZ AND ANNA HERNANDEZ, SP 2004-LE-011 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 4.2 ft. from the rear lot line and 4.4 ft. with eave 3.4 ft. from the side lot line. Located at 6219 Hanover Ave. on approx. 8,400 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2))

~ ~ ~ June 1, 2004, RENE F. RAMIREZ AND ANNA HERNANDEZ, SP 2004-LE-011, continued from Page 682

(72) 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 June 1, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The error does exceed 10 percent.
3. The noncompliance was done in good faith.
4. The applicants meet the other criteria under the mistake section form.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a shed/workshop, as shown on the plat prepared by Bryant L. Robinson, dated February 19, 2004, submitted with this application and is not transferable to other land.
2. Within 30 days of approval of this special permit, the applicant shall obtain a Building Permit and approval of final inspections for the shed/workshop, or this special permit shall be null and void.
3. The exterior materials of the accessory structure shall be architecturally compatible with other

~ ~ ~ June 1, 2004, RENE F. RAMIREZ AND ANNA HERNANDEZ, SP 2004-LE-011, continued from Page 683

surrounding residential dwellings in the neighborhood.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion which carried by a vote of 6-1. Mr. Hammack voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. JAMES REED, JR., VCA 93-P-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 93-P-160 to permit construction of second story addition 10.0 ft. with eave 9.5 ft. from rear lot line and 8.5 ft. from side lot line such that side yards total 35.8 ft. and deck 8.0 ft. from rear lot line and 7.8 ft. from side lot line. Located at 10506 Marbury Rd. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-2 ((16)) 29.  
(Moved from 4/13/04 for notices.)

Ms. Gibb moved to defer VCA 93-P-160 to September 14, 2004, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. SUSAN E. MILLER AND AARON A. SULESKE, SP 2004-MA-014 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit the construction of an accessory dwelling unit. Located at 4915 Bradford Dr. on approx. 6.48 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((1)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Miller, 4915 Bradford Drive, Annandale, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the construction of an accessory dwelling unit to be located in a two-story accessory structure, consisting of approximately 2,003 square feet of livable space, located in the rear yard of the existing dwelling. Staff recommended approval of SP 2004-MA-014, subject to the development conditions contained in Appendix 1.

Ms. Miller presented the special permit request as outlined in the statement of justification submitted with the application. She said she purchased an older home in 1999 and had it remodeled to look like an old farmhouse, which included the building of a ground floor master suite that was wheelchair accessible. She explained that she had sold her office condo, downsized her business, and had gotten a permit to operate a home business, which was currently operating out of the living room. Ms. Miller said the lower level of the proposed structure would provide space for an office for herself and a workshop for her husband. She explained that she had a large family with elderly relatives who had sold their homes and traveled around visiting family and they would stay in the two-bedroom apartment upstairs when they were visiting, but in the future it was planned to use the apartment for future caregivers of the applicants themselves. She said the lot was heavily wooded, but the area for the proposed structure was cleared, and no trees would have to be removed. Ms. Miller explained that the structure would look like a barn, similar to a farmhouse with a barn located approximately a half mile away on Ravensworth and would be in keeping with community. She stated that she had received an RPA exception and that the structure would be located 40 feet outside of the floodplain.

~ ~ ~ June 1, 2004, SUSAN E. MILLER AND AARON A. SULESKE, SP 2004-MA-014, continued from Page 684

Mr. Hammack asked if the structure would fit the definition of an accessory dwelling unit given the testimony of the applicant that the bottom of the structure would be used for a workshop incidental to the main dwelling. Mr. Sherman replied that the accessory dwelling unit would be specifically for the apartment upstairs where the bedrooms would be located and the workshop could be built by right.

Mr. Hart noted that there was language in the RPA exception approval referring to "no more land shall be disturbed than is necessary to provide for the accessory structure," and he said that although it was not quantified, when approvals were given for the construction of a new structure, there were limits given for clearing and grading on the plat. He commented that he did not see anything about that in the documents and asked, given staff was recommending approval, why the information was not in the documents to be addressed by the BZA or whether that was something that would be handled with DPWES. Mr. Sherman responded that because of the RPA exception, that would be reviewed by DPWES, and that because there was already a limitation in place to the extent of clearing and grading because of the RPA present on the site, staff did not ask for the limits of clearing and grading.

Ms. Miller stated that she was required to have a grading plan and understood that if an approval was given by the BZA, the grading plan would be done. She added that she was sensitive about not disturbing much earth and said she was willing to have the foundation hand dug if necessary.

Mr. Hart noted that the RPA exception referenced that the additional impervious surface could not exceed 1,000 square feet or two percent of the lot area and the footprint of the building was approximately 1,300 and he asked whether that was under two percent of the lot. Mr. Aaron Suleske replied that two percent of the lot size came out to approximately 6,000 square feet if it included the entire lot size of 6.48 acres.

Mr. Hart asked whether the square footage of the proposed structure plus all of the other additions constructed since July of 1993 was less than two percent and by how much. Ms. Miller replied affirmatively, and Mr. Suleske added that the previous addition was approximately 1,400 square feet.

Mr. Pammel commented that in his review of the documents, it did not appear that there would be plumbing facilities in the accessory structure, and he asked for clarification on that issue. Ms. Miller explained that the upstairs would be a two-bedroom apartment with plumbing and a kitchen. She asked if the BZA had a copy of the plans and was told they only had a site plan.

Mr. Hammack asked how the elderly or disabled persons would access the second floor. Ms. Miller replied that the relatives who would be visiting were not disabled. She explained that their future plan was to have caregivers live in the apartment so she and her husband would be able to continue to live in the ground floor master suite of the main dwelling that was totally accessible so they would not have to live in a nursing home in the future. She said based on being 55 or older, they met the Fairfax County definition of elderly and that the Code allowed those 55 or older to construct a freestanding dwelling as an accessory structure.

Chairman DiGiulian called for speakers.

Michael Ipsan, 7520 Greenfield Road, Annandale, Virginia, President of the Brook Hills Homeowners Association, came forward to speak to the application. He indicated he had spoken with the other officers of the HOA and they were in general agreement that the subject property was larger than the others in the neighborhood and were concerned about protecting the R-1 zoning. He said they did not want to discourage owners from improving their properties, but were concerned regarding the precedent an accessory dwelling would set. Mr. Ipsan commented that the proposed 2,000-square-foot accessory structure was larger than some of the existing homes in the neighborhood. He stated that the HOA had a scheduled meeting on June 9, 2004, at which they would like to poll the entire membership, and he requested the BZA delay their decision until the full membership was consulted. He also invited the applicants to attend the HOA meeting to discuss their plans.

Mr. Beard asked Mr. Ipsan when he became aware of the application. Mr. Ipsan stated that the letters came out on May 7, 2004, to the adjacent property owners.

Mr. Hart asked Ms. Susan Langdon, Chief, Special Permit and Variance Branch, to confirm that a property must be a minimum of two acres in size to have an accessory dwelling unit on the same lot, which she

~ ~ ~ June 1, 2004, SUSAN E. MILLER AND AARON A. SULESKE, SP 2004-MA-014, continued from Page 685

confirmed was the case for a separate structure.

Mr. Hart commented that in looking at the tax map, there did not appear to be any other two-acre lots on the page, and if there were, they would be reviewed individually, but he said he did not think any other lots in the vicinity would be large enough to apply for an accessory dwelling unit.

Mr. Hammack asked whether Number 6 in the Standards for Accessory Dwelling Units, which stated, "An accessory dwelling unit established for occupancy by disabled persons shall provide for reasonable access and mobility, including uninterrupted access to one entrance," was a provision under the statute that could be waived so that if someone wanted an accessory dwelling unit but not for a disabled person, it did not have to be complied with. Mr. Sherman explained that an accessory dwelling unit had to be either for an elderly person under the definition of elderly or for a disabled person, that the applicants were constructing it for an elderly person, and the standards for disabled persons would not apply for an accessory dwelling unit constructed for elderly people.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SP 2004-MA-014 for the reasons stated in the Resolution. Mr. Ribble seconded the motion.

Mr. Hammack stated that he was uncertain that the application qualified as an accessory dwelling unit because the additional standards read, "These are to be established but only in accordance with the following conditions," which he said included for disabled persons, and he stated he would oppose the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN E. MILLER AND AARON A. SULESKE, SP 2004-MA-014 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit the construction of an accessory dwelling unit. Located at 4915 Bradford Dr. on approx. 6.48 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((1)) 4. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 1, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4915 Bradford Drive (6.48 acres), and is not transferable to other land.

~ ~ ~ June 1, 2004, SUSAN E. MILLER AND AARON A. SULESKE, SP 2004-MA-014, continued from Page 686

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 G. Fry, dated August 8, 2003 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. Construction of the accessory structure shall be in conformance with the conditions established by Resource Protection Area Encroachment Exception #025777 (Attachment 1).
9. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance for accessory structures. If the property is sold, a Special Permit Amendment to permit a change in permittee may be applied for to permit the continued use of the structure as an accessory dwelling unit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-2. Mr. Hammack and Mr. Pammel voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 1, 2004, Scheduled case of:

- 9:00 A.M. CARL J. UNTERKOFER, SP 2004-SU-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 storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with VC 2004-SU-041).
- 9:00 A.M. CARL J. UNTERKOFER, VC 2004-SU-041 Appl. under Sect(s). 18-401 of the Zoning

~ ~ ~ June 1, 2004, CARL J. UNTERKOFER, SP 2004-SU-012 and CARL J. UNTERKOFER, VC 2004-SU-041, continued from Page 687

Ordinance to permit construction of accessory structure 4.0 ft. with eave 3.1 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with SP 2004-SU-012).

Chairman DiGiulian noted that a letter had been received from the applicant requesting a deferral.

Mr. Pammel moved to defer SP 2004-SU-012 and VC 2004-SU-041 to October 12, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32B pt. (Concurrent with VC 2004-HM-045).

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, VC 2004-HM-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line. Located at 2472 Centreville Road on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32B pt. (Concurrent with SP 2004-HM-013).

Chairman DiGiulian noted that SP 2004-HM-013 and VC 2004-HM-045 had been administratively moved to June 22, 2004, at 9:00 a.m.

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~ ~ ~ June 1, 2004, After Agenda Item:

Approval of September 16, 2003 Minutes for West Lewinsville Heights Citizens Association, Stephen L. Sulzer, Leonard N. Berman, Daniel J. Wolkensdorfer, Donald N. Huff, Robert Rosenbaum, A 2003-DR-030, for inclusion into the Return of Record

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, After Agenda Item:

Request for Additional Time  
Golf Park, Inc. and Hunter Mill East, LLC, SPA 91-C-070-4

Mr. Beard moved to approve 30 months of Additional Time. Ms. Gibb seconded the motion.

Mr. Hammack asked why so much additional time was required for implementation. Ms. Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the only information staff had available was the information the applicant submitted in their letter of request.

Mr. Hammack noted that the staff report indicated the applicant would like additional time to work with staff to determine how the use may be established, but he said he thought that had been decided. Ms. Langdon replied that it may have been decided in discussions with Zoning Administration, and she did not have knowledge of whether there was a contention by the applicant that it was not correct.

Mr. Pammel moved to defer decision on the request and ask the applicant to appear before the BZA to provide an explanation of why so much time was needed, in particular with respect to working with staff

~ ~ ~ June 1, 2004, AFTER AGENDA ITEMS, continued from Page 688

relative to possibly revising use. Mr. Beard withdrew his motion. Mr. Hammack seconded Mr. Mr. Pammel's motion.

Mr. Hart indicated that he thought Mr. Thoburn was in Texas. Mr. Hart commented that according to his reading of the letter, he did not understand that more time was needed to implement what was approved, but rather that the use was already established, notwithstanding the SPA, and that because there were no conditions requiring the replacement of dying trees and Mr. Thoburn did not replace them, that he had implemented it. Mr. Hart said the letter sounded more like Mr. Thoburn was taking issue with staff that anything was needed to be done rather than asking for more time; more of a debate of the question.

Mr. Hart asked who the staff member was who wrote the letter. Ms. Langdon replied that it was Mavis Stanfield who received the request. She noted that Ms. Stanfield was not present at the meeting, and she was unaware what her research showed. Ms. Langdon suggested taking up the item at the following meeting to discuss what the remaining issues were.

Mr. Hammack commented that given the content of the letter, he believed 30 months was too long a period of time.

Mr. Hart moved to defer decision on the additional time request to June 15, 2004, to have staff attend the meeting to explain the recommendation and answer questions and in the interval check on Mr. Thoburn's schedule. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 1, 2004, After Agenda Item:

Request for Additional Time  
All Dulles Area Muslim Society (ADAMS), SPA 96-D-038

Mr. Pammel moved to approve two years of Additional Time. Mr. Hart seconded the motion, which carried by a vote of 7-0. The new expiration date was April 10, 2006.

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~ ~ ~ June 1, 2004, After Agenda Item:

Approval of May 25, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: Kathleen A. Knoth

Approved on: November 9, 2004

*K.A. Knoth*

Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, June 8, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. SYED N. RAZA & SHEHNAZ RAZA, SP 2004-MV-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 storage structure to remain 1.9 ft. from rear lot line and 1.6 ft. with eave 0.2 ft. from side lot line, deck 2.5 ft. from rear lot line and addition 4.4 ft. from side lot line such that side yards total 16.8 ft. Located at 7910 Frye Rd. on approx. 8,791 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (19) 9.

Chairman DiGiulian noted that SP 2004-MV-015 had been administratively moved to August 3, 2004, at 9:00 a.m., at the applicants' request.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. JANET PATRICIA GRAY, SP 2004-LE-018 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 5804 Harvey Pl. on approx. 12,457 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5)) (B) 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. Janet Gray, 5804 Harvey Place, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the limitation on the keeping of animals to permit the keeping of three adult dogs. A lot of 12,500 square feet is required to permit the keeping of three or four dogs. The keeping of two dogs would be permitted by right on the applicant's property.

Ms. Gibb asked how the case came to be before the Board. Ms. Stanfield replied that there had been a complaint filed with the Zoning Enforcement Branch.

Mr. Hart asked whether the applicant could keep the three dogs by right if the property was 43 square feet larger. Ms. Stanfield said that was correct.

Ms. Gray presented the special permit request as outlined in the statement of justification submitted with the application. She said she had previously been unaware of the zoning regulations regarding the number of dogs, and the subject property was only 43 square feet short of the amount required to have four dogs by right. She said the dogs were all neutered or spayed and were well-behaved, good-natured, inside, family dogs that were never left unattended and were well cared for. Ms. Gray said her neighbors had never complained to her about the dogs. She said she had spoken to her neighbors and had a list of people who said the dogs had never bothered them with barking or any other problem.

Mr. Hart asked whether the dogs could jump over the fence that in the photographs appeared to be not quite four feet in height. Ms. Gray said they never had, and she did not believe they could.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2004-LE-018 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JANET PATRICIA GRAY, SP 2004-LE-018 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 5804 Harvey Pl. on approx. 12,457 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5)) (B) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant could keep a third and even a fourth dog as a matter of right if she had 43 square feet more in the yard.
3. Whoever complained did not appear at the hearing and give any reasons why they made the complaint.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Janet Patricia Gray, and is not transferable without further action of this Board, and is for the location indicated on the application, 5804 Harvey Place (12,457 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing three (3) dogs. If any of these specific animals die or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC. (WCRA), SPA 76-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis courts to permit additional tennis courts. Located at 4627 Holborn Ave. on approx. 6.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16. (Admin. moved from 5/4/04 at appl. req.)

Chairman DiGiulian noted that SPA 76-A-022-02 had been administratively moved to June 8, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. DAVID A. DISANO AND CAROL S. DISANO, VC 2004-SU-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.1 ft. from rear lot line. Located at 5856 Linden Creek Ct. on approx. 5,016 sq. ft. of land zoned PDH-4 and Sully District. Tax Map 53-2 ((7)) 14.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carol S. and David Disano, 5856 Linden Creek Court, Centreville, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition, specifically a screened porch, to be located 7.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 17.9 feet was requested.

Ms. Disano presented the variance request as outlined in the statement of justification submitted with the application. She said that when they bought the new house when the development was being created, they were offered the option of a screened in porch and elected to do it later on their own. The house had an existing deck that was 7.1 feet away from the County park line, and they requested that a portion of the existing deck be screened in.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Pammel said he would make a motion to defer the decision as the Board had done for prior variance applications over the previous several months based on the Supreme Court of Virginia decision, and until the Board received information from the Supreme Court with regard to the Board's request for rehearing, the Board would defer all variance applications. He said the final decision from the Supreme Court might result in the Board not being able to hear variances except in unusual circumstances in the future.

Ms. Disano asked whether the applicants would be required to present before the Supreme Court. Mr. Pammel replied that the applicants would not and went on to explain that the initial Supreme Court's decision was that the Board had no authority to grant variances where there was already a beneficial use of the property, such as an established single-family dwelling or some other type of dwelling on the property, which would not entitle the property owner to a variance. He said that if the initial decision was upheld, the Board would not be able to grant variances unless, as an example, the property was vacant and it met the requirements set forth in the Code.

Mr. Pammel moved to defer decision on VC 2004-SU-048 to July 20, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. THOMAS A. WILD, VC 2004-SU-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. with eave 12.0 ft. from rear lot line. Located at 12560 Lt. Nichols Rd. on approx. 9,494 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((6)) 322.

~ ~ ~ June 8, 2004, THOMAS A. WILD, VC 2004-SU-044, continued from Page 693

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brenda A. Wild and Thomas A. Wild, 12560 Lt. Nichols Road, Fairfax, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, specifically a sun porch, 13.3 feet with eave 12 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 11.7 feet and 9.0 feet, respectively, were requested.

Mr. Wild presented the variance request as outlined in the statement of justification submitted with the application. Mr. Wild said they had lived in their home for many years and wanted to have a screened porch on the back of their home like many of the neighbors had. He said they had saved for the addition for a long time, and the Fair Oaks Estates Association had approved the addition. Mr. Wild said they were requesting a 2.5 foot variation. He said there were no houses to the rear of the property. Mr. Wild provided a petition from his neighbors in support of the application.

Ms. Wild said she was preparing to retire after 30 years as a Fairfax County teacher, and her dream was to be able to sit out in the yard and enjoy the wildlife in the woods behind.

Mr. Hart asked staff about the 2.5 feet referenced by the applicant. Mr. Sherman said his interpretation had always been that it was considerably more than 2.5 feet for the variance. He said it was 11.7 feet for the actual structure itself and 9 feet for the eave.

Mr. Hart asked whether the deck itself would require a variance if the deck was not there and was being built. Mr. Sherman said it would not because it was open, and putting a room on it required a variance.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VC 2004-SU-044 to July 20, 2004, at 9:00 a.m. He explained that the Virginia Supreme Court had decided a case on April 23, 2004, which suggested that the Board was not allowed to grant variances on properties that already had an existing house, so in the subject case where there was already a house on the lot, the Board's hands would be tied. He said the Board had requested a rehearing, but until the situation was resolved, the Board was deferring decision on variances that fell in that category. Ms. Gibb seconded the motion.

Ms. Wild asked whether that meant that after July 20 they would be able to do it without a variance or would never be able to do it. Mr. Hart explained that the Board would not be rendering a decision until July 20, and hopefully they would have more information or guidance as to whether the Board could ever grant a variance on a lot that had a house on it.

Mr. Wild asked whether the applicants would be required to be at the hearing on July 20 or whether the decision would be made before then. Mr. Hart said the applicants did not have to come back if they did not want to. He suggested the applicants contact Mr. Sherman or Susan Langdon, Chief, Special Permit and Variance Branch, prior to July 20. He said the Board hoped to have the information before July 20, but might not. Mr. Hart said the applicants were welcome to come back on July 20, but there would be no public hearing, and it would be decision only.

Ms. Gibb said the Board did not have any indication that the Supreme Court would rehear the case, and if it was not reheard, it appeared the Board would not be able to grant the variance, so the applicants might plan accordingly.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. HENRY M. & SHEILA S. BARNUM, SP 2004-SU-016 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 9.0 ft. with eave 8.7 ft. from side lot line. Located at 4334 Silas Hutchinson Dr. on approx. 12,783 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 226.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry Barnum and Sheila Barnum, 4334 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to modify the minimum lot requirements for certain R-C lots to permit construction of an addition 9.0 feet with eave 8.7 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, reductions of 11 feet and 8.3 feet, respectively, were requested. The addition did meet the minimum yard requirements of the R-2 Cluster District which were applicable to the lot on July 25, 1982, and in the R-2 Cluster District, a minimum side yard of 8.0 feet is required.

Mr. Barnum presented the special permit request as outlined in the statement of justification submitted with the application. He said they purchased the property in 1981 and wanted to improve the kitchen and dining room for the expanding family. He stated that in 1982 the property had been rezoned, and under the original zoning, the area where the proposed kitchen and dining room were to be located had been built nine feet from the property line. Mr. Barnum said the addition would go where the existing deck was located.

Ms. Barnum said they wanted to build out from the dining room and kitchen to make a country kitchen for family gatherings, and the deck had been in its current location since 1981.

Mr. Hart asked whether the area underneath the addition would remain open as it was with the existing deck. Mr. Barnum said it would remain open.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2004-SU-016 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRY M. & SHEILA S. BARNUM, SP 2004-SU-016 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 9.0 ft. with eave 8.7 ft. from side lot line. Located at 4334 Silas Hutchinson Dr. on approx. 12,783 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 226. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicants have met the requirements on this form.

~ ~ ~ June 8, 2004, HENRY M. & SHEILA S. BARNUM, SP 2004-SU-016, continued from Page 695

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an addition, as shown on the plat prepared by George M. O'Quinn, dated January 29, 2004, revised by Henry Barnum dated March 17, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, VC 2004-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of canopy 35.0 ft. from front lot line. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 66. (Concurrent with SP 2004-DR-004). (Admin. moved from 4/6/04 and 5/18/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-013 had been withdrawn.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit construction of a new church. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 66. (Concurrent with VC 2004-DR-013). (Admin. moved from 4/6/04 and 5/18/04 at appl. 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. Hillary Zahm, the applicant's agent, Cooley Godward LLP, Reston Town Center, One Freedom Square, 11951 Freedom Drive, Reston, Virginia replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow construction of a new church on a lot occupied by an existing church. The proposal involved razing the existing church and constructing a two-story, 9,897-square-foot church with

~ ~ ~ June 8, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004,  
continued from Page 696

a 75-foot tall steeple and a 768-square-foot canopy, at a floor area ratio of 0.10. The sanctuary would provide seating for 200 people. A stormwater management dry pond would be provided in the northwest portion of the property. Due to the scattered location of gravesites throughout the property, many would be relocated according to the gravesite relocation plan on page 7 of the special permit plat to accommodate the proposed construction. Fifty-five (55) parking spaces would be provided on-site, which raised staff's concern that it was an insufficient number of on-site spaces to adequately accommodate the proposed size of the church. Staff recommended approval of SP 2004-DR-004 subject to the proposed development conditions. Mr. Shriber said he understood the applicant was prepared to provide nine additional parking spaces on-site, for a total of 64 spaces, and with a revision of the development conditions and plat, staff felt the issue had been resolved.

Mr. Hart asked whether staff was agreeable with the revised Development Condition 5, which was handed out at the hearing, and whether the parking issue had been resolved between staff and the applicant. Mr. Shriber responded affirmatively to the first question and said that with the adoption of the revised Condition 5, the parking issue would be resolved.

Mr. Hart referred to Development Condition 10 and the moving of graves, and he asked what kinds of approvals were needed to move graves and would the approvals come from the Department of Public Works and Environmental Services (DPWES) and the Urban Forester or was there some other requirement. Mr. Shriber said Condition 10 related to the limits of clearing and grading and the preservation of as many trees as possible, but the State of Virginia would have to approve any gravesite relocations. He said it would not be DPWES or the Health Department with Fairfax County. Mr. Shriber said the applicant would be able to speak to that issue more clearly.

Ms. Zahm presented the special permit request as outlined in the statement of justification submitted with the application. She said the First Baptist Chesterbrook congregation was formed in 1866, and the church that was originally located on the site had been lost in a fire and later rebuilt around 1929. There were major renovations and additions completed in the 1940s and 1970s, but the existing structure no longer adequately accommodated the church and was an impediment to the expansion and growth of the congregation. The building had significant heating and cooling problems which were costly to remedy. It was not ADA accessible, and improvements to bring the structure into compliance were cost prohibitive to the congregation, which posed a problem for elderly members of the church who were unable to attend services or church functions due to accessibility problems. The choir loft was too small to permit visiting choirs from utilizing the space, and inadequate facilities were available for Sunday school, church events, choir practice, and bible study classes. The special permit was requested to permit construction of a new facility that would better accommodate the congregation and would provide a larger sanctuary and choir loft, needed classrooms, an improved kitchen and fellowship space, and would be ADA accessible.

Ms. Zahm said they had worked with staff to eliminate the request for a variance for an encroachment into the front yard setback, and they provided a circulation road behind the building to permit a circular route around the site and the building. They provided additional engineering of the pond to ensure the stormwater management facilities could be adequately accommodated on the property, and they increased the parking by 10 percent, added spaces to the site, and had added nine additional parking spaces the morning of the hearing. Ms. Zahm said they obtained a letter from the church's neighbor, Vinson Hall, to permit overflow parking onto the Vinson Hall lot during times of events or special services, and they had agreed to a condition that would require historical documentation of the building and site prior to construction of the new building. They had met with the neighbors most affected by the church, the residents along East Avenue, and in addition to the notification required by the County, the church had reached out to the neighbors again to provide them with copies of the plans and an overview of the application. She said the neighbors had expressed their support for the church, which had over time established an excellent relationship with the neighbors which they intended to maintain. The church also met with the Franklin Area Citizens' Association to brief their board regarding the special permit application, and the association was supportive, with the President, Jim Meehan, sending a letter of support to the Board.

Mr. Hammack said it was his impression graves could not be removed without a court order. Ms. Zahm said the issue had been researched, and they had obtained permission from the State to relocate the graves because it was a privately owned cemetery. She said the church would have to work with the families of the deceased and had already begun doing so. Mr. Hammack asked whether the applicant had a copy of the

~ ~ ~ June 8, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004,  
continued from Page 697

letter regarding the permission obtained from the State. Ms. Zahm replied that they had a letter, but did not have it at the hearing.

Mr. Beard asked whether the cemetery had been part of the church and the families involved were church families. Ms. Zahm replied affirmatively. She said the congregation had been involved in the project since the beginning and was well aware that the graves would be relocated with the construction of the new building.

Mr. Hart said that with respect to the graves and Condition 10 and whether there was some other layer of approval over and above DPWES and the Urban Forestry Division, he understood Ms. Zahm to say that no one else needed to approve the moving of the graves because it was a private cemetery. Ms. Zahm said that was correct. Mr. Hart said that if DPWES or the Urban Forestry Division said no, the applicant would be back to the drawing board. Ms. Zahm said that because the applicant would have an approved plan showing the relocation of the graves, she would hope they would not say no. Mr. Hart asked who the plan had been approved by. Ms. Zahm said what she was referring to was if the BZA approved the application. She said she thought DPWES would be more concerned with the grading in terms of the site work as opposed to the grave relocation.

In response to Mr. Hammack's question regarding whether the families of the decedents whose graves were to be removed had been specifically notified and their consent obtained, Ms. Zahm said the families had been notified. She said she was not sure all the families had given their consent, but the church would make sure the families were comfortable with the relocation of the graves prior to relocating them.

Chairman DiGiulian called for speakers.

Reverend Robert E. Newman, 1740 Kirby Road, McLean, Virginia, came forward to speak in support of the application. He said the new church building was configured to house the current congregation, address the physical needs of the members, would be architecturally compatible with the surrounding community, and would have a front drive approach area with a canopy to provide easier access to the building for the elder members. Rev. Newman said that the gravesites would remain in the current cemetery, but would be repositioned.

Donna Sharp, 6323 Old Dominion Drive, McLean, Virginia, came forward to speak in support of the application. She said she was a third generation member of the church and was a member of the trustee board and several church auxiliaries. The current building did not serve the needs and requirements of the entire congregation. Because the building did not meet ADA requirements and it would not be cost effective to gain compliance through a renovation, the church had decided to build a new building. The current condition of the structure did not allow the opportunity to expand the existing building without making significant and expensive improvements. There was water entering the building in the basement and through the roof and windows which compounded the problem of the deteriorating condition of the building. Ms. Sharp said the current church did not meet the church's spiritual needs because elderly members were unable to attend services due to narrow stairs and the location of the restroom, there was insufficient room which required several Sunday school classes to meet in the same room and prohibited multiple groups to concurrently hold meetings, the choir loft was too small, and the dining room was too small to allow fellowship after the services and community outreach.

Susie Hall, 6228 Cottonwood Street, McLean, Virginia, came forward to speak in support of the application. She said she was the oldest serving member of the church after 73 years of service and had been through many changes with the church, which were progressively better, but the church was currently in need of a new building. She thanked the members of the Board of Supervisors, the BZA, and others who had cooperated with the church in its past projects.

Ms. Gibb asked whether Ms. Hall was related to Christopher Columbus Hall on Cottonwood Street. Ms. Hall said he was her grandfather, and Christopher Columbus Hall, Jr., was in the audience and was her brother. Ms. Gibb disclosed that she may have represented some of Ms. Hall's family members regarding Cottonwood Street a number of years prior, but said there was no current financial relationship.

James King, 1740 Kirby Street, McLean, Virginia, came forward to speak in support of the application. He

~ ~ ~ June 8, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004,  
continued from Page 698

asked that the members of the First Baptist Church Chesterbrook who were in attendance would stand, and they complied. Mr. King said he was the chairman of the building committee and a deacon for the church. He explained that the church had contacted the Board of Cemeteries in Richmond, who did not actually send a letter regarding what was required with respect to the gravesites, but instead referred the church to the Codes which stated that private cemeteries and church cemeteries were not regulated by the State, therefore, had permission to reinter any graves within the cemetery. He said the church wanted to make sure that during the construction process, it was respectful to the graves and did not trample on them, so they would be relocated from the front part next to Kirby Road to back within the cemetery. Mr. King said the church had been in the process of evaluating several renditions of the option to renovate to attempt to expand the current structure and planning for 10 years and had been informed by their consultants that the church would not be able to make use of the current building, so the church came to the conclusion that it would be to its advantage to rebuild.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2004-DR-004 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit construction of a new church. Located at 1740 Kirby Rd. on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 66. (Concurrent with VC 2004-DR-013 **WITHDRAWN**). (Admin. moved from 4/6/04 and 5/18/04 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Parking has never been a problem; the congregation has never parked in the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, First Baptist Church Chesterbrook Trustees, only and is not transferable without further action of this Board, and is for the location indicated on the application, 1740 Kirby Road (2.26 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit plat (SP Plat) prepared by VIKA, Inc. (John F. Amatetti) dated March 7, 2003 with revisions through May 7, 2004, and approved with this application, as qualified by these development conditions.

~ ~ ~ June 8, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004,  
continued from Page 699

3. A copy of this Special Permit and the Non-Residential Use Permit (non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 165 seats in the sanctuary of the church. The maximum number of seats in the sanctuary may be increased to 200 if the Applicant executes a formal shared parking agreement with Vinson Hall as approved by DPWES or provides a minimum of nine additional parking spaces on the site.
6. Parking shall be provided as shown on the SP Plat. All parking shall be on-site except as qualified by Condition 5.
7. Transitional screening shall be provided as shown on the SP Plat, in conformance with the requirements of Article 13, as approved by the Urban Forestry Division (UFD) of DPWES. Notwithstanding that which is shown or noted on the SP Plat, the species size, location and number of trees shall satisfy the requirements of transitional screening as determined in consultation with the UFD.
8. Notwithstanding the 6 foot solid wood fence shown on the SP Plat, the barrier shall be provided on the interior of the transitional screening yard or shall be deleted.
9. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as shown on the SP Plat as approved by DPWES. Notwithstanding what is shown on the plat, the applicant may provide Low Impact Development (LID) techniques as determined appropriate by DPWES to complement and/or replace the SWM pond.
10. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements on site, including the relocation of gravesites, shall be submitted to DPWES, including the Urban Forestry Division (UFD), for review and approval. The Applicant shall work with UFD to determine any trees worthy of preservation. All tree preservation areas shall be indicated on the grading plan and appropriate tree protection methods, as prescribed by UFD, shall be provided by the Applicant during all phases of construction.
11. No land disturbing permits shall be granted until the gravesite relocation plan is executed in substantial conformance with that shown on Page 7 of the SP Plat.
12. All lighting proposed on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
13. Signage shall be provided in accordance with Article 12 of the Zoning Ordinance.
14. Subject to the approval of the Virginia Department of Transportation (VDOT), an eight (8) foot wide asphalt trail shall be provided on the east side of the property as shown on the SP Plat. The trail shall be constructed by the Applicant prior to issuance of the non-RUP.
15. Prior to issuance of the non-RUP, the Applicant shall construct curb and gutter improvements 19 (nineteen) feet from the centerline of Kirby Road.
16. Prior to demolition of the existing church and relocation of gravesites, the Applicant shall provide photographic recordation and documentation of the church and site to a standard as required for determination of National Register eligibility, Virginia Department of Historic Resources (VDHR) Preliminary Information Form (PIF). The number and angle of views shall be coordinated with the

~ ~ ~ June 8, 2004, FIRST BAPTIST CHURCH CHESTERBROOK, TRUSTEES, SP 2004-DR-004,  
continued from Page 700

Department of Planning and Zoning (DPZ) prior to taking of the photographs. The negatives and a copy of the photographs shall be submitted to the Virginia Room of the Fairfax County Public Library and DPZ. Written documentation shall include the completed Fairfax County Landmarks Inventory Form and supplemental historic information, if available. The written documentation shall be submitted to the Virginia Room and DPZ. DPZ shall be provided with written notice a minimum of 30 (thirty) days prior to the date that the church will be demolished.

17. The exterior appearance of the church shall be in substantial conformance with the illustration as an attachment to these conditions (Appendix 1A), subject to the approval of DPWES.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outline above, and this Special Permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Ribble and Mr. Beard seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:30 A.M. CG (TEXAS), INC./THE CONTAINER STORE, A 2004-PR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have installed or allowed the installation of a shipping container in the parking lot of the site without site plan approval nor a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 8508 Leesburg Pi. on approx. 1.87 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-3 ((1)) 47.

Chairman DiGiulian informed the Board members that the notices for this case were not in order.

Diane Johnson-Quinn, Zoning Administration Division, said that while preparing the staff report, it had come to staff's attention that the notice information had not been received. She reported that the appellant's agent was contacted, who confirmed the notices had not been sent, said the appellant wanted to clear the violation by getting the appropriate site plan approval and building permits, and had requested a six-month deferral. Staff's research with the Department of Public Works and Environmental Services indicated it would not take that long, and staff recommended a deferral date of September 14, 2004.

Mary Theresa Flynn, the appellant's agent, Holland and Knight LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, said the appellant was requesting a deferral in order to come into compliance. She explained that the appeal had been originally filed on behalf of the property owner, CG Texas, Inc., and CG Texas, Inc., subsequently asked The Container Store to take over the appeal and deal with the notice of violation because The Container Store was the party that placed the containers on the lot. The Container Store agreed to take over the violation. Because of the shift from one client to the next, Ms. Flynn said that until she had authorization to send the notices, she had been without the authority to do so. She said The Container Store was dismayed to discover they had committed a violation, wanted to come into compliance by filing an amendment to the site plan, and had already started the process.

Chairman DiGiulian called for speakers to address the question of a deferral; there was no response.

~ ~ ~ June 8, 2004, CG (TEXAS), INC./THE CONTAINER STORE, A 2004-PR-008, continued from Page 701

Mr. Hart noted that the agenda indicated the appeal had been administratively moved to September 14, 2004, and he asked whether that had happened. Ms. Johnson-Quinn explained that because the notices were not sent, the hearing could not be held, and there had been a conflict in the terminology for the description on the agenda, but the appellant was requesting a deferral because the notices were not sent and the appellant wanted to comply.

Mr. Beard moved to defer A 2004-PR-008 to September 14, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 8, 2004, Scheduled case of:

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure is located in the front yard and closer than a distance equal to the minimum required side yard to the side lot line of the property in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Admin. moved from 3/2/04, 3/30/04, and 4/20/04 at appl. req.) (Deferred from 4/27/04 at appl. req.)

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2004-LE-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants use and own an accessory structure which is not located on the same lot as the principal use, in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Deferred from 4/27/04 at appl. req.)

Mr. Hart made a disclosure that his firm currently had two cases where there were attorneys from the appellants' agent's firm on the opposing side unrelated to the subject applications, but indicated he did not believe his ability to participate in the case would be affected.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated April 16, 2004. A 2003 LE-053 involved a notice of violation issued to the owners of Lot 16 regarding a carport structure located in the front yard in violation of the location requirements for accessory structures. Paragraph 12C of Section 10-104 of the Zoning Ordinance provides that no accessory structure or use shall be located in any front yard on any lot containing less than 36,000 square feet. Ms. Stehman stated that accessory structures had not been allowed in the front yard since the 1941 Zoning Ordinance which provided that accessory structures shall be placed in the side and rear yards only.

A 2004-LE-005 involved a second notice of violation relative to the same carport which had been issued because the carport was located on the lot adjacent to the lot on which the principal use was located in violation of the Zoning Ordinance. Ms. Stehman stated that Section 10-101, which authorizes accessory structures and uses, provides that accessory structures shall be permitted only in connection with, incidental to, and on the same lot as the principal use or structure. The 1941 Zoning Ordinance provided that an accessory building was a subordinate building on the same lot as the main building.

Regarding A 2003-LE-053, Mr. Hammack said he thought he had read that the property owners had not appealed the violation. Ms. Stehman said that was correct, that the adjacent property owners, who were the users of the carport, had appealed the violation. Mr. Hammack asked why the notice of violation was not a valid notice if the property owners had not appealed the violation. Ms. Stehman said the appeal was accepted based on a recognition that the neighboring property owners were the aggrieved party since they were using the carport, and because there was an issue, that was the reason the second notice was issued. Mr. Hammack said the issue he had was that the easement did not refer to the carport, and nothing in the land records referred to the carport, only an easement. Ms. Stehman said that was correct, and the easement could not supersede the provisions of the Zoning Ordinance.

Mr. Beard asked whether it was accurate that the owners of the lot where the carport was located who were

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 702

issued the initial notice had not appealed the notice and were accepting it. Ms. Stehman replied that was correct, and the owners would be happy to have the carport removed.

Mr. Hammack asked why the owners could not remove the carport since it was their property. He said that if they owned it, they could take it down. Ms. Stehman said that would be her understanding as a zoning person and not a lawyer, and she could not speak to that question. Mr. Hammack asked whether the owners had let their appeal rights expire, to which Ms. Stehman replied affirmatively. Mr. Hammack asked whether that had occurred before the County had accepted the appeal from the appellants. Ms. Stehman said the notice had been issued on November 7, 2003, and the appeal had been submitted on December 4, 2003, and accepted on January 8, 2004, so the owners' appeal rights had lapsed.

Mr. Beard asked whether the County Attorney had reviewed the matter or taken a position on it. Sheila Costin, County Attorney's Office, said her office had looked at it and assisted staff in preparing the staff report. Mr. Beard asked whether it was correct that the property owners took the property subject to the easement, and the Board would hear the County Attorney's position on that. Ms. Costin stated that the County Attorney's Office did not have a position as to the rights between the property owners and the appellants, and the only position that staff took was whether the carport itself was a violation of the Zoning Ordinance.

Mr. Hammack asked why staff had not filed suit against the property owners since they had not appealed and why was it before the Board. He said whether it was correct that staff could file notices and have the owners remove the offending structure. Ms. Stehman said that since staff had accepted the appeal, they had not moved forward, just as they do not move forward on any violation while there was an appeal pending.

Mr. Hart asked whether it would be more or less than 36,000 square feet if, before the lots were divided, the areas of Lots 16, 17, 18, and 19, which were under common ownership, were added together with half of vacated Lenclair Street. Ms. Stehman said it was less than 36,000 square feet. She said the original Lots 16 and 17 totaled 11,750; adding Lots 18 and 19 would bring it to approximately 23,500; and half of the easement that was then connected to Lot 16 from the vacation would add another 2,000 or 3,000.

Mr. Hart said Lot 16 seemed larger than Lots 17 or 18. Ms. Stehman said that was because there had been a vacation of part of a road earlier on. Mr. Hart said he understood the total was smaller than 36,000 square feet currently, but he said there was a reference to a total area of 27,634 square feet, but he did not know of what that was the total area. Ms. Stehman replied that it was the total area of Lots 16 through 19 and half of the street.

The appellants' agent, Grayson Hanes, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He stated that Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, also represented the appellants. He explained that the violation complaint had been made by the neighbors who owned Lots 16 and 17, which was why they did not appeal it. He said there was a parking easement which was a matter of record, and through adverse possession, the appellants claimed they had the rights in that property, so they were the Servient estate by law of a part of Lot 17. He said the complainants had bought the property subject to the easement, knew what they were getting because the carport went back before the Zoning Ordinance, and now they wanted the carport to go away. Mr. Hanes stated that the appellants had an interest in the property, so they had appealed what they could, which was what was before the Board, who could do nothing to change the status of the easement.

Mr. Hanes stated that the adoption of the first Zoning Ordinance in Fairfax County occurred on June 18, 1941. He said that to establish that the use was nonconforming, the burden was to prove that the use was there prior to the 1941 Zoning Ordinance and had not been interrupted for a continuous period of two years. He said the appellants bought the property in the 1980s and subsequently sold lots 16 and 17 and retained Lots 18 and 19. Mr. Hanes stated that the carport existed prior to 1941, and Ms. Kelsey had gotten statements from people who said the carport existed in 1964, 1948, and the 1930s. He said materials from the supporting retaining wall were examined and showed it had been constructed prior to the 1941 Zoning Ordinance. He said the subdivision dated back to 1927, and the house was built in 1936. Mr. Hanes said the case was unusual because a property owner was trying to use the process for civil issues and had filed a zoning violation against themselves, but the appellants had found out about it and were able to protect their interest.

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 703

Mr. Hammack asked why the doctrine of collateral estoppel did not apply in the matter and prevent the appellants from making the appeal when the owners had chosen not to appeal and had lost their rights to appeal. Mr. Hanes said whether it applied to the owners or not, under the circumstances where they created the issue and then chose to take advantage of the issue, he thought that would raise a clean hands argument. Mr. Hammack said that would be raised in court rather than before the Board. Mr. Hanes said he did not understand collateral estoppel to be an issue before the Board, but if a legal issue was raised by the Board, he would respond to it.

Mr. Beard asked whether his understanding was correct that an adverse possession was over a period of 20 years. Mr. Hanes said that was right. Mr. Beard asked how someone could adversely possess if they owned both properties and over what time period Mr. Hanes was asserting adverse possession. Mr. Hanes replied that you would tack prior ownership and use onto the carport, and the carport had been in use since before 1941, more than 40 years. Then subsequently there was the parking easement that did not show the carport, but Mr. Hanes said he thought the use in and of itself would establish the appellants had that ownership right. Mr. Beard asked whether the appellants' position was that the fact that the property was owned by one individual at one point did nothing to affect the timeline of adverse possession. Mr. Hanes replied that it did not make any difference who the owners were as long as continuous use could be shown. In response to Mr. Beard's question regarding whether the appellants could prove that, Mr. Hanes said they could and may be heading to court to do so.

Chairman DiGiulian noted that a plat prepared by Dove & Associates in the staff report for A 2004-LE-005 dated May 14, 1976, did not show the carport. Ms. Kelsey said the plat was prepared in 1994 and was not for the purpose of a full survey on the lot and was for the purpose of the parking easement. She said the plat was done because the appellants had asked their attorney to draw up something that would give them the right to continue to use the carport in the location it was in then because they were selling property. The attorney prepared the parking easement, and because it was for the purpose of parking, the appellants did not question the fact that it did not include the word "carport," but the carport was there and had been there prior to that time. Ms. Kelsey said that why Mr. Dove failed to note that there was a carport there, she could not say, but the appellants could prove that the carport was there even if not shown on the plat. She said there were photographs in the staff report that showed how the carport looked when the appellants purchased the property in 1986, and the affidavits and statements from other people who were aware of the carport further showed how long the carport had been there. She said she had checked aerial photography, and the cartographer felt he could see an object in the location that could have been a carport, but a blowup of the aerial was fuzzy, and staff believed it was not sufficient, so she proceeded to get statements from people and researched the retaining wall material. Ms. Kelsey said the National Concrete Block Association was able to give some history, which she provided to the Board, and the concrete blocks further added credence to the appellants' position that the carport existed prior to the effective date of the Zoning Ordinance in 1941.

At Mr. Beard's request, Ms. Kelsey explained that her husband, Don Lucas, had spoken with two gentlemen at the National Concrete Block Association, and based on the notes he had taken, typed the information and provided it to the gentlemen to read and verify the accuracy, at which time Mr. Greenwald (phonetic) from the Association verified the information was correct and added the note about the handmade blocks.

In response to Mr. Hammack's question regarding whether one of the masonry blocks had actually been analyzed, Ms. Kelsey said no, because the integrity of the retaining wall might have been damaged by taking part out. Mr. Hammack asked whether the appellants had attempted to determine who had constructed the original house and where the materials had been obtained. Ms. Kelsey said she was unable to get the name of whoever had built the house.

Mr. Hart said that even if assuming that the carport existed prior to 1941, there was still the issue of the use by the owners on one lot of an accessory structure on a different lot, and he asked why that was not allowed and whether the Zoning Ordinance addressed who was allowed to use a structure. He asked why someone could not allow a neighbor to permissibly use a shed in a backyard to store the neighbor's property. Ms. Stehman said the Ordinance did not address who was allowed to use a structure, but did provide that an accessory structure must be on the same lot as the principal structure. Since the principal structure was the appellants' house at 3134 Clayborne Avenue and they were using a carport on a different lot, Lot 16, that would preclude their use of the structure.

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 704

Mr. Hart referenced a prior case near Little Hunting Creek where he recalled an applicant wanted to put a patio on a separate lot which he thought was similar to the subject case. Ms. Stehman said she did not specifically recall the case, but one of the ways it might have been resolved would be by consolidating the lots on either side of the street under one building permit so that for zoning purposes it would become one lot.

Mr. Hart asked whether it would be illegal if there was a boundary line adjustment so that the carport was on one lot and there was an easement over the driveway. Ms. Stehman said it would not be illegal from the standpoint of the accessory structure having to be on the same lot as the principal structure, but the only way the structure could be in the front yard was if it was truly nonconforming, having been constructed prior to the Zoning Ordinance.

Chairman DiGiulian asked whether the carport was an accessory structure to the dwelling that was currently on the same lot as the carport. Ms. Stehman replied that it was. Chairman DiGiulian asked whether the only problem was the location in the front yard. Ms. Stehman said that was correct. She said staff issued two notices because it was clearly an accessory use in the front yard of Lots 16 and 17 of the original subdivision, and the second notice recognized that the owners of the adjacent Lots 18 and 19 were using the accessory structure on the lot that they did not own. She said that originally Lots 16 through 19 had all been the same lot for zoning purposes. The house that was currently the principal structure at 3138 Clayborne Avenue was the original house, and the second house that was set back at 3134 Clayborne Avenue had likely been the garage to the other house. Ms. Stehman said they were both constructed in approximately 1936, but even when it had been all one lot, the carport would have always been in violation of the Zoning Ordinance if it had been constructed after 1941.

Mr. Hart said that assuming the carport existed prior to 1941, if the appellants currently parked their car in the carport, it was a violation because they were using an accessory structure not on their lot, and he asked whether it would be okay if the people who lived in the house on Lots 16 and 17 parked their car in it. Ms. Stehman replied affirmatively. Mr. Hart asked whether it would be a violation if, instead of an easement agreement, there was some other type of parking arrangement where someone who did not live on the property was making use of the carport. Ms. Stehman said she thought it would depend on the length of time, and if someone was parking there consistently for years, it would probably be a violation because the words of the Zoning Ordinance said an accessory structure that was located on a different lot than the principal use. Mr. Hart asked whether he could let a neighbor use a structure or sign away rights to a neighbor. Ms. Stehman replied that technically under the Ordinance, that would be what the words of the Ordinance said, but it would be unlikely anyone would proceed with a violation.

Mr. Hammack asked whether the owner of a property could lease a room and allow the tenant to use the garage when the tenant was not the owner of the property. Ms. Stehman said the Ordinance allowed two roomers or boarders to live in the same house, and as long as that part was legal and the tenant was living in the house that was the principal structure on the property, the boarder could put their car in the garage. Mr. Hammack stated that shared parking agreements were condoned. Ms. Stehman stated that shared parking agreements were approved by the Board of Supervisors.

Mr. Hammack asked why the Board did not have a copy of the deed between the parties. He said he had some questions regarding the adverse possession claim and thought there should be a general warranty deed. Ms. Stehman said the deed had not been included in the staff report, but she would check through her materials. Later in the proceedings she advised Mr. Hammack that she had copies of the deeds. In response to Mr. Hammack's question regarding whether it was a warranty deed, Ms. Stehman said there was an original deed from the appellants to another party in 1997, which resulted in a foreclosure, and then a deed between Valdez and HUD. She said both of them just said "deed," not "general warranty." She provided copies to the Board.

Ms. Gibb asked if it had always been the case that an accessory use could not be used by an adjoining lot owner. She said it used to be that a septic field could be on an adjacent property. Ms. Stehman said she could check the old Ordinance, but going a fair distance back, she thought it was one of the things that were not specifically stated. Ms. Gibb asked why it would not become nonconforming if it was not illegal when it was established. Ms. Stehman said she thought Ms. Gibb was correct, but in the subject case, staff was saying the carport had never been legally established. Ms. Stehman said that at the time the carport was

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 705

built, the four lots were then one lot, so it would have just been an accessory structure in the front yard of the four lots and would not be a case of the current dual ownership. Ms. Gibb said it was not until the lots were divided that it became an issue. Ms. Stehman said that would be assuming that it was a nonconforming use, but if it was constructed subsequent to 1941, it would have always been a violation because accessory structures had never been allowed in the front yard.

Mr. Hanes said that with respect to the date of the survey which had been raised earlier by Chairman DiGiulian, it looked like 1988, but Ms. Kelsey had looked at the aerials all the way back before 1941, and the carport had always been there. He said as to why it had not been shown on the survey, since it was not a garage, maybe the surveyor thought he did not have to show a carport.

Chairman DiGiulian called for speakers.

Ytxaropena and Nicacio Valdez, 3138 Clayborne Avenue, Alexandria, Virginia, came forward to speak. Ms. Valdez said when they purchased the property from HUD in May of 1998, the property had been a foreclosure, and they encountered many problems. She said that they had public records showing that all the utilities had been connected, but when they tried to connect the utilities, they were told there had never been a sewer or water and the address did not appear in the records. They later found out there had been sewer and water in the house previously owned by the appellants when they sold it, but the water was connected to the house the appellants had previously sold by a hose which ran from the back of the house the appellants still owned, and the sewer was connected in the same manner through a pipe between the two structures. Ms. Valdez explained that they had originally bought the property in order to build a house on it, but had been unable to do so because of the problem with the easement. She said she had a copy of the private easement document from 1995, but it was for gravel and did not mention a carport. She said the description regarding the concrete said 1999. Ms. Valdez said the carport was preventing them from getting into their property and being able to build their house, and she distributed photographs of the carport to the Board members. Ms. Valdez said her husband had been told by Mr. Grypeos that the purpose of the fence was to prevent the appellants' pets from running around.

Mr. Hammack asked staff whether the shared parking agreement would be legal under the zoning laws if there was no carport. Ms. Stehman said she believed it would be, but driveways were not really regulated.

Ms. Valdez said they were aware of the easement for the gravel, but not for any structures, and that was how it was clearly stated on the private easement agreement dated March 7, 1995.

Ms. Valdez answered questions for Ms. Gibb's questions regarding the chain-link fence, gates, and picket fence shown in the photographs, and she indicated where in the photographs the entrance to her house was located. Ms. Valdez said she had been informed by a friend who was an architect that with the existing carport structure, an occupational permit would never be granted because of the easement and the structure being in front of the house they were trying to build.

Ms. Gibb said that on the plat attached to the deed of easement, it showed a little walkway from Valdez house to the walkway on the appellants' house, and she asked Ms. Valdez whether that currently existed and she could walk through the parking easement. Ms. Valdez said the path was there, but because of the fence, you could not get through.

Chairman DiGiulian asked Ms. Valdez to identify what he said looked like a driveway to the left side of the fence and the carport in a photograph Ms. Valdez had provided, and she said it was the driveway to her house.

Ms. Stehman said that the matter turned on when the carport had been constructed, and the appellants had made a case that the carport had been constructed prior to 1936, but staff had not been convinced of that during the time staff had prepared the staff report. She said that in terms of the appellants' presentation at the hearing, some of the most cogent evidence was the National Concrete Block Association, but at the end of the information, it mentioned that there was a high likelihood the bricks had been custom made for some other application, and leftovers were used for the wall, so it would be difficult to know exactly when the wall had been constructed. She said staff would maintain that if the carport had been constructed subsequent to the Zoning Ordinance, it was in violation of the front yard requirement, and if the carport was being used by

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 706

someone on an adjoining property, it would also be in violation of the Zoning Ordinance.

Mr. Hanes said the Valdezes' difficulty was that they wanted to renovate or tear down their house, but could not because on Lot 17 there was a carport which was in violation of the Zoning Ordinance, so they filed a complaint indicating there was a violation. He said that even though they were the complainants, they would benefit by a ruling in favor of the appellants that the carport was there legally because the violation would be gone, and the complainants would be able to get their building permit. Mr. Hanes said his understanding of the title situation was that on the same date the parking easement was created, his clients had sold Lots 17 and 18, the purchaser later defaulted on the loan, the property was sold at foreclosure, and the complainants bought it "as is." Mr. Hammack said the warranty deed in the first sale was a general warranty deed to a third party. Mr. Hanes said there had been no evidence to the contrary, so the issue was whether the appellants had proven to the Board's satisfaction that the carport existed prior to June of 1941 and was nonconforming, in which case, besides solving the complainants' problem, the appellants could continue to use the carport.

Anastasios Grypeos, 3134 Clayborne Avenue, Alexandria, Virginia, came forward to speak. He said he purchased the house in 1986 and received the photographs he had submitted with the appeal from the realtor who sold him the property at the time he received all the other information regarding the sale, and they reflected how the property had been when he bought it. He later sold Lots 16 and 17, but prior to selling them, he discussed with an attorney the fact that if the two lots were sold, he would not have a driveway because the County had built one apron on Lot 16 and another apron on Lot 17 for the two driveways because of the carport prior to his purchase of the property, and the County built another one for the other two lots because of the downward drop of the two lots that were his land. Mr. Grypeos said he got the easement because there was no parking at his house. He said he believed the County did the work in 1982.

In response to Ms. Gibb's question regarding when the chain-link fence that fenced in the easement was put up, Mr. Grypeos said Long Fence installed it right when he sold the two lots because he had three dogs at the time.

Chairman DiGiulian closed the public hearing.

Mr. Beard said that he understood that if it was determined that the accessory structure located in the front yard of 3138 Clayborne Avenue was not in conformance, then the second violation would be moot, and he asked whether that was staff's understanding. Ms. Stehman replied that if the Board determined that the carport was nonconforming, it would make the first violation that stated an accessory structure was not allowed in the front yard moot, but it would not moot the other violation.

Mr. Beard moved to uphold the determination of the Zoning Administrator on A 2004-LE-053.

Mr. Hammack seconded the motion for purposes of discussion and said that it was his feeling that the appellants had some right to use the easement, but there was nothing in the deeds that he had seen that dealt with the structure itself. He said he thought the structure conveyed when the appellants conveyed Lots 16 and 17 to the party who defaulted, and the deeds presented by staff showed that the default on the note went through HUD, and the Valdez parties bought it from HUD and bought the land with whatever improvements were on it. Mr. Hammack said he did not see anything in the deed of easement that referred to the right to use a parking structure. It was the right to use or park in a driveway or shared driveway. Mr. Hammack said he thought the entire thing was moot because although the Valdezes cited themselves for a violation, they were the only parties that had a right to appeal whether it was a structure. He said that was the way a court would look at it and not look into all the other issues that might exist between the two parties. He stated that he would oppose the motion in its present form.

Mr. Hart stated that he would not support the motion. He said the situation presented to the Board raised a lot of questions, some of which were beyond the scope of the Board's review. There were some obvious unresolved issues between the two neighbors as to their rights and obligations flowing from the parking easement, such as what were the rights and obligations of the parties with respect to the carport structure, the wall, its maintenance, the fencing, and access through the easement. He said it appeared there was an exclusive easement for parking and that the dominant tenant had to maintain the gravel, but it seemed confusing to him why the gravel would be addressed, but not the retaining wall, the structure, the roof, or

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 707

gating it off. Mr. Hart said he did not think the resolution or some adjudication of the terms of the easement and what it meant to the parties involved were questions the Board needed to resolve. He said the narrow question for the Board in dealing with A 2004-LE-053 was the history of the structure itself, and staying out of the obvious questions about the carport structure itself as between the neighbors and focusing only on the Zoning Ordinance, the question was whether or not it was there in 1941. Mr. Hart said he thought the Board had enough in the record before it, that there was an instrument of record, and the easement agreement was recorded first in the sequence before the deeds out, and the appellants had a recorded interest in a portion of the lot in question, and the area that is encompassed with their interest of record included the area of the carport, so they would have standing to appeal irrespective of the owners' contrivance or default or however it came about. He said someone who had an easement that might affect this area of the structure would have standing to appeal a determination of the Zoning Administrator arguably affecting that structure or the use of that area, so the Board was procedurally okay and could sort that out.

Mr. Hart said that on the next level, there had been fumbling for months with aerial photographs that could not be read, and where it had finally settled out was the Board had a few affidavits from old-timers who were not seriously rebutted, some indication that the concrete blocks in the wall were unusual and old and pre-war, and no one was contesting any of that, but it was difficult to reconstruct what exactly was where after 60-some years. He said he had been persuaded, and perhaps staff would have been if some of the information had been available six months prior, that the carport was quite old, and the Board had enough information to conclude that it was there before 1941, so on A 2004-LE-053, the Board did not have to sort out who owned the carport, who had to fix it, or could the Valdezes tear it down because those were not the Zoning Ordinance question. Mr. Hart stated that he would oppose Mr. Beard's motion, concluding that the structure preexisted at the time of the adoption of the Zoning Ordinance and the carport was nonconforming.

Mr. Beard stated that if the carport went away, the appellants would retain their parking and their rights under the terms of the easement, the violation would be gone, and the County would no longer be concerned because it would not be a structure, so he thought his motion was the simplest way to resolve a thorny issue.

Mr. Hammack said that notwithstanding Ms. Kelsey's good legwork, on the issue of proof he was not convinced that the carport in its present form was there before 1941. There was some indication that something was there, but no one could identify it as a carport. Regarding the fact that the concrete block could have been constructed pre-war, he said there could have been plenty of stockpiles of that available during the war. A lot of things were in short supply during the war, and people used what they had. He said he was not convinced the general statements regarding the construction materials were persuasive because it was too close to the time of the actual Zoning Ordinance.

Chairman DiGiulian said the Board had three affidavits that indicated there had been a carport there before 1941, and in the absence of any other evidence, he would oppose the motion.

Chairman DiGiulian called for the vote. The motion failed by a vote of 1-5-1. Ms. Gibb, Mr. Ribble, Mr. Hart, Mr. Pammel, and Chairman DiGiulian voted against the motion. Mr. Hammack abstained from the vote.

Mr. Hart moved to reverse the determination of the Zoning Administrator on A 2004-LE-053. Mr. Ribble seconded the motion.

Mr. Hammack stated that he would abstain from the vote because he thought that the only interest the appellants had in the property was an easement, which did not give them the right to appeal a decision concerning a structure in the front yard.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-1-1. Mr. Beard voted against the motion. Mr. Hammack abstained from the vote.

Mr. Beard moved to uphold the determination of the Zoning Administrator on A 2004-LE-005. Mr. Pammel seconded the motion.

Mr. Beard said that if it was a gravel driveway as seen in the plats, it was not an issue. Otherwise, it was an issue, and it was clearly evidenced that it was a violation.

~ ~ ~ June 8, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2003-LE-053 and A 2004-LE-005, continued from Page 708

Chairman DiGiulian said that because it was a nonconforming use, which the Board had said in A 2004-LE-053, he would not support the motion. It was a legally existing nonconforming use, and the appellants had an easement to use it and park in it.

Mr. Pammel said he did not think it was quite so clear. Lots 16 and 17 had been clearly conveyed to the current owners, and there was no record of there being any lease arrangement for the improvements thereon. He said the appellants could have simply retained the ownership of the carport if they wanted it, but instead had entered into a parking agreement.

In response to Chairman DiGiulian's question regarding whether the carport was within the boundaries of the parking easement, Mr. Hanes said it was.

Chairman DiGiulian called for the vote. The motion failed by a vote of 2-3-1. Mr. Ribble, Mr. Hart, and Chairman DiGiulian voted against the motion. Mr. Hammack abstained from the vote. Ms. Gibb was not present for the vote.

Mr. Hammack said there was nothing in the record that tied the carport structure into the use of the parking easement.

Mr. Hart said that Sect. 20-300 was clear that the accessory use had to be on the same lot as the principal use, which it was not in the subject case, and the Zoning Administrator might be correct that even if the structure was grandfathered, there was a problem with the relationship to the principal use if the use was the house on the right rather than the house in the back.

Mr. Beard moved to defer decision on A 2004-LE-005 to June 15, 2005, at 9:30 a.m. Mr. Hart seconded the motion and said it would be helpful to him if either side could address Sect. 20-300, Subsection 4.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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~ ~ ~ June 8, 2004, After Agenda Item:

Approval of February 11, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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~ ~ ~ June 8, 2004, After Agenda Item:

Approval of June 1, 2004 Resolutions

Mr. Beard moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Pammel were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: October 21, 2008

K.A. Knoth  
Kathleen A. Knoth, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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, June 15, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and John F. Ribble III; Paul W. Hammack Jr. was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. JAMES P. & CECILIA BANHOLZER, VC 2004-BR-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. with eave 15.7 ft. from rear lot line. Located at 10434 Stallworth Ct. on approx. 9,489 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 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. James P. Banholzer, 10434 Stallworth Court, Fairfax, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit the construction of a screened porch addition to be located 17 feet with eave 15.7 feet from the rear lot line, and variances of 8.0 feet and 6.3 feet were requested.

Mr. Banholzer presented the variance request as outlined in the statement of justification submitted with the application. He said the porch had been built in the mid-1980s, and they hoped to enclose it for the enjoyment of his elderly mother utilizing the same footprint. He pointed out that his family was unable to enjoy the present deck because of a serious mosquito problem from the park land floodplain bordering his property. He noted that there was nowhere else to put the porch due to the lot's irregular shape and a steep slope, adding that his homeowners association supported the proposal.

Chairman DiGiulian called for speakers.

Cecilia Banholzer, 10434 Stallworth Court, Fairfax, Virginia, came forward to speak in support of the application. She said there were no objections from the neighbors, who all supported the porch.

Chairman DiGiulian closed the public hearing.

Mr. Pammel explained to the Banholzers that a Supreme Court decision dictated to the Board of Zoning Appeals that if there was an existing beneficial use to a property, the property owner was not entitled to a variance to the Ordinance provisions. He said the Board had requested a reconsideration of the matter, but had not received a response. Mr. Pammel moved to defer decision on VC 204-BR-051 to September 21, 2004, at 9:00 a.m.

Mr. Hart seconded the motion, which carried by a 6-0 vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. SEYMOUR SCHNEIDER, VC 2004-SP-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. with eave 19.5 ft. from front lot line of a corner lot. Located at 9325 Walking Horse Ct. on approx. 10,990 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((5)) 198.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Seymour Schneider, 9325 Walking Horse Court, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to permit the construction of a garage addition to be located 20.5 feet with eave 19.5 feet from the front lot line of a corner lot, and variances of 4.5 feet and 2.5 feet were requested.

~ ~ ~ June 15, 2004, SEYMOUR SCHNEIDER, VC 2004-SP-047, continued from Page 711

Mr. Schneider presented the variance request as outlined in the statement of justification submitted with the application. He said he and his wife had lived in the house for 30 years, since its initial construction. He said the garage would provide them safety and comfort from the elements, as they each were in their 70s.

Chairman DiGiulian called for speakers.

Robert Depuy, 9323 Walking Horse Court, Springfield, Virginia, came forward to speak in opposition to the application. He opposed the garage as it would be obtrusive, decrease his property value, and obstructed the view from his house. Mr. Depuy said he liked and respected his neighbors and understood their reason for wanting the garage, but he and his family could not support the request.

In his rebuttal, Mr. Schneider said he understood Mr. Depuy's objection, but believed it was more a mindset rather than there being an actual problem. He disagreed with the contention that anyone's property value would be decreased. He pointed out his and his wife's very real discomfort last winter while sitting in their cars waiting for them to warm up. Mr. Schneider responded to Ms. Gibb's questions concerning the driveway's measurements, and to stay within the setback, he explained how the garage's design and entranceway would be compromised.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VC 2004-SP-047 to September 21, 2004, at 9:00 a.m. Mr. Pammel seconded the motion.

Mr. Hart explained that the Board was deferring decisions on variances until clarity was received regarding the April 23, 2004 Supreme Court ruling that restricted the Board from granting variances for properties with an existing house.

Ms. Gibb pointed out that there was neither a guarantee of a rehearing nor a time frame to expect one. She said the Board had no way of knowing whether or not at any time in the future they would get any news.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. GAYLON L. SMITH AND KAREN L. MARSHALL, VC 2004-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6006 Grove Dr. on approx. 8,640 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 32. (Decision deferred from 5/4/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Lewis, Merrifield Garden Center, 8132 Lee Highway, Merrifield, Virginia, the applicants' agent, replied that it was.

Chairman DiGiulian pointed out that the application had been deferred for decision only.

Mr. Ribble referenced Mr. Hart's and Mr. Pammel's previous statements concerning the Supreme Court ruling affecting the Board's ability to grant variances. Mr. Ribble moved to defer decision on VC 2004-MV-026 to September 21, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. FABIAN RIVELIS, VC 2004-PR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. with eave 13.7 ft. from rear lot line. Located at 9314

~ ~ ~ June 15, 2004, FABIAN RIVELIS, VC 2004-PR-049, continued from Page 712

Christopher St. on approx. 20,066 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 61.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fabian Rivelis, 9314 Christopher Street, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant requested a variance to permit construction of a sunroom addition to be located 14.7 feet with eave 13.7 feet from the rear lot line. Variances of 10.3 feet and 8.3 feet were requested.

Mr. Rivelis presented the variance request as outlined in the statement of justification submitted with the application. He said the sunroom would provide additional living space for his family of five. Due to the position of the house on the lot, he said there was no other place to build the sunroom. Mr. Rivelis said his neighbors had no objection, pointing out that numerous homes had already added sunrooms.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on VC 2004-PR-049 to September 21, 2004, at 9:00 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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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21.

Chairman DiGiulian noted that VCA 2002-MA-176 had been administratively moved to October 19, 2004, at the applicant's request.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at 3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273.

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 Market, 2104 Elliott Avenue, McLean, Virginia, the applicants' agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to construct a roofed deck, specifically a porch, that required a 2.7-foot variance with an eave that required a 1.1-foot variance, and to permit construction of a garage requiring a 0.1-foot variance.

Mr. Market said his daughter and son-in-law bought the circa 1950s house for its proximity to their jobs and they intended to renovate it to accommodate their growing family. He said the design of the proposed construction was architecturally compatible with the neighborhood and pointed out that the entire neighborhood was being upgraded. Mr. Market noted that the porch needed only an additional two feet, and the two-car garage required less than a foot variance. Responding to Mr. Hart's suggestion of repositioning the garage, Mr. Market explained that it was placed as far forward as possible to preserve the rear yard for the children's safe play area. He submitted that the requested variance, being only inches, was minimal. In

~ ~ ~ June 15, 2004, KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059, continued from Page 713

response to Mr. Beard, Mr. Market agreed to consult the architect on repositioning the garage.

Michelle Healy, 3807 Foxwood Nook, Falls Church, Virginia, came forward to speak. She said the house was inadequate for her growing family, and the porch and garage would afford a nicer place in which to live.

Chairman DiGiulian closed the public hearing.

Stating that for the reasons mentioned previously concerning a Supreme Court case, Mr. Beard moved to defer decision on VC 2004-MA-059 to September 21, 2004, at 9:00 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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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 8.4 ft. with eave 6.9 ft. from side lot line. Located at 2913 Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A. (Decision deferred from 5/11/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, 14368 Nandina Court, Centreville, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. He noted that the case had been deferred for decision on May 11, 2004. He said the applicant sought permission to construct a dwelling 25 feet with eave 23.5 feet and with a stoop 21 feet from the front lot line and 8.4 feet with eave 6.9 feet from the side lot line. Mr. Sherman stated that variances of 15 feet, 13.5 feet, and 14 feet from the front lot line and variances of 11.6 feet and 10.1 feet from the side lot line were requested.

Chairman DiGiulian noted that the case had been deferred for decision only and asked for a motion.

Mr. Pammel pointed out that there was opposition from the Briarwood Citizens Association for the requested variance. He said he thought more time was necessary to better understand and apply the recent Supreme Court decision. Mr. Pammel moved to defer decision on VC 2004-PR-027 to September 21, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M. KEVIN E. DRISCOLL, VC 2004-MA-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 4.5 ft. from side lot line. Located at 3714 Rose La. on approx. 15,248 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((4)) (E) 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. Kevin Driscoll, 3714 Rose Lane, Annandale, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant requested a variance to permit construction of an addition 5.0 feet with eave 4.5 feet from the side lot line. Variances of 7.0 and 4.5 feet were requested.

Mr. Driscoll presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to extend his existing garage into the side yard. He pointed out that his

~ ~ ~ June 15, 2004, KEVIN E. DRISCOLL, VC 2004-MA-050, continued from Page 714

property had several constraints being a corner lot that cut into a steep hillside on two sides. Quoting a section of the Zoning Ordinance, he pointed out that he could develop a carport by right, but he believed the garage was more aesthetically pleasing and in character with the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VC 2004-MA-050 to September 21, 2004, at 9:00 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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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M.        ROBERT AND CYNTHIA MCELROY, VC 2004-MA-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.6 ft. with eave 17.1 ft. from the rear lot line, fence greater than 7.0 ft. in height to remain in the side and rear yards and to permit minimum rear yard coverage greater than 30 percent. Located at 3911 Sandalwood Ct. on approx. 15,893 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-3 ((18)) 26.

Chairman DiGiulian noted that VC 2004-MA-053 had been administratively moved to September 28, 2004, at the applicants' request.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M.        MARK AND CLAIRE TANENBAUM, VC 2004-PR-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 35.1 ft. with steps 33.8 ft. from front lot line. Located at 3124 Windsong Dr. on approx. 36,025 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((13)) 14. (Decision deferred from 5/4/04)

Chairman DiGiulian noted that VC 2004-PR-029 had been withdrawn.

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~ ~ ~ June 15, 2004, Scheduled case of:

9:00 A.M.        RONALD W. STANGE AND EVE I. CUDDIHY, SP 2004-MV-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirement based on error in building location to permit accessory structure to remain 1.7 ft. from side lot line. Located at 1200 Essex Manor Ct. on approx. 23,628 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((22)) 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. Ronald Stange, 1200 Essex Manor Court, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure consisting of a playhouse to remain 1.7 feet from the side lot line. A variance of 13.3 feet was requested.

Mr. Stange presented the special permit request as outlined in the statement of justification submitted with the application. He noted that the free-standing play-set was constructed of redwood and had slides and a swing. He stated that they had paid to move it to their new home and had placed it in the only area that could accommodate it. He said it was well screened among trees. Mr. Stange admitted it was placed in error, as they were unaware of the Code. In response to Mr. Beard, he explained that his lot was all slopes with the only flat area being the driveway. He said the play-set was accessible by other properties. Responding to Ms. Gibb, he acknowledged the Rousos' opposition and said he suggested putting a fence

~ ~ ~ June 15, 2004, RONALD W. STANGE AND EVE I. CUDDIHY, SP 2004-MV-017, continued from Page 715

up, but Mr. Rouso had not been receptive. In response to Mr. Hart, he pointed out the extreme steepness of the slope and that the play-set would be very difficult to move, but if required to move it in order to keep it, he would have it moved.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2004-MV-017 for the reasons stated in the Resolution.

Ms. Gibb pointed out the Fenwick Estates Homeowner's Association letter of support of the special permit application.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD W. STANGE AND EVE I. CUDDIHY, SP 2004-MV-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirement based on error in building location to permit accessory structure to remain 1.7 ft. from side lot line. Located at 1200 Essex Manor Ct. on approx. 23,628 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((22)) 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 June 15, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The play-structure's placement was done in good faith, and exceeds ten (10) percent of the measurement involved.
3. It meets the other standards.
4. The neighboring property is quite far away.
5. The property slopes severely.
6. It would require some engineering to move the play set to another location.

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

~ ~ ~ June 15, 2004, RONALD W. STANGE AND EVE I. CUDDIHY, SP 2004-MV-017, continued from Page 716

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of a playhouse, as shown on the plat prepared by Bryant L. Robinson, dated January 12, 2004, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard 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 23, 2004. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 15, 2004, Scheduled Appeal case of:

9:30 A.M. ANASTASIOS AND ANNA GRYPEOS, A 2004-LE-005 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants use and own an accessory structure which is not located on the same lot as the principal use, in violation of Zoning Ordinance provisions. Located at 3138 Clayborne Ave. on approx. 11,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 16. (Deferred from 4/27/04at appl. req.) (Decision deferred from 6/8/04)

Chairman DiGiulian announced that the appeal was deferred for decision from the previous week for receipt of additional information from the County and from the applicants' representative, Grayson Hanes.

Margaret Stehman, Assistant to the Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal was of a determination that an accessory use, a carport, was not located on the same lot as the principal use, a residential dwelling, but the Board had determined the carport was a nonconforming use and allowed it to remain at its current location. She stated that it was staff's position that the second appeal under consideration today, A 2004-LE-005, remained a violation given that the lots were separated from an original subdivision in 1995. Ms. Stehman stated that since 1995 when the current Ordinance was in effect, the carport was not located on the same lot as the principal structure and had been used only by the people who resided in the principal structure.

Grayson P. Hanes, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, the appellants' agent, said he disagreed with staff's position regarding the 1995 Ordinance, as his determination was that the structure pre-existed the County's first Zoning Ordinance in 1941. Mr. Hanes maintained that if it was a legal nonconforming use as to subsequent Zoning Ordinances, it was a nonconforming use as to all provisions of the Zoning Ordinance. Mr. Hanes submitted the theory that the carport was an accessory structure located on an adjoining lot from that of the home of the landowners. He said that under the assumption that the Zoning Ordinance applied, it was a zoning violation, but he believed it did not apply

~ ~ ~ June 15, 2004, ANASTASIOS AND ANNA GRYPEOS, A 2004-LE-005, continued from Page 717

since the accessory use was a legal nonconforming use.

Mr. Hanes responded to questions from Ms. Gibb regarding applicability of a Subdivision Ordinance as opposed to a Zoning Ordinance. Ms. Gibb commented that she had trouble with the position that a nonconforming use continued even after a portion of the property changed ownership.

Mr. Pammel pointed out that the requested information staff provided indicated the carport was assessed to Lots 18 and 19, which he interpreted as the County viewed it as one entity.

Mr. Hanes responded to Mr. Hart's questions concerning the structure's location being legal, the fact that it predated 1941, the owner's 1995 conveyance, retaining of the parking easement, and the creation of a separate lot with the carport no longer on the lot that the owner retained. Mr. Hanes maintained that a nonconforming use was not affected by the Zoning Ordinance's accessory use provision.

In closing comments, Ms. Stehman said staff's position was that the parties changed when the property was separated in 1995, and that changed the status of the property with the carport being on a separate lot. She said staff viewed the property as a consolidated lot with the four lots together, and she pointed out that there were building permits on file evidencing portions of the house that encroached on the lot line and had since been removed because the property was divided.

In his rebuttal, Mr. Hanes maintained that staff was trying to apply a Zoning Ordinance that could not apply.

Chairman DiGiulian called for speakers.

Mrs. Valdez, came forward to speak. She identified herself as a real estate agent and one of the owners of 3138 Clayborne Avenue. She said her document research evidenced that the structure existed for a very long time and contended that some of the information presented was incorrect. In response to Mr. Beard, she said she spoke with Ms. Stehman about being present at the hearing, but she had not received any staff documents.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to reverse the determination of the Zoning Administrator. He said he initially voted against the use as nonconforming, but following today's presentation, he had accepted Mr. Hanes' argument.

Ms. Gibb seconded the motion. She commented that she agreed with the appellants' position that this was a Zoning Ordinance matter. She noted that if the Board determined the structure was nonconforming, that it was built prior to 1941, whatever happened subsequent to 1941 with respect to the Zoning Ordinance did not apply, that ownership of the lot on which the carport was built was not a factor. Ms. Gibb stated that she would support the motion.

Mr. Ribble concurred with the comments of Mr. Beard and Ms. Gibb and said he would support the motion.

Because he believed the County was treating the property as a single entity, Mr. Pammel said he also would support the motion.

Chairman DiGiulian called for the vote. The motion to overturn the Zoning Administrator carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, After Agenda Item:

Request for Additional Time  
Murray and Virginia Seltzer, VC 00-B-107

Mr. Ribble moved to approve 19 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote. The new expiration date was April 18, 2005.

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~ ~ ~ June 15, 2004, After Agenda Item:

Request for Additional Time  
St. Mary of Sorrows Catholic Church, SPA 77-A-041-3

Mr. Pammel moved to approve 18 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The new expiration date was December 18, 2005.

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~ ~ ~ June 15, 2004, After Agenda Item:

Request for Additional Time  
Golf Park, Inc., and Hunter Mill East, LLC, SPA 91-C-070-4

Pointing out that the clubhouse was the only project not yet complete, Mr. Pammel moved to approve 30 months of Additional Time.

With regard to approving additional time, Mr. Hart said he interpreted the applicants' letter as the applicant taking issue with whether he was required to do anything further to implement his special permit amendment. Mr. Hart said the resolution of the applicants' issue could be reached within a matter of days, and a 30-month extension only delayed the determination of what, if anything, needed to be done. Mr. Hart said the applicant had made it clear that he believed he needed to do nothing else, and Mr. Hart saw no nexus between 30 months to build the clubhouse and what the request was about.

Mr. Pammel noted that the applicant had met all the required standards and a non-residential use permit would be issued shortly. He said that 30 months might be too long to complete a clubhouse, but that was the applicants' request.

In response to a question by Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that a non-residential use permit would be issued shortly, and the time extension was for things existing on the site. She said construction had not started on the clubhouse, and staff supported the applicants' request for the additional time, recognizing that vested his right to construct the clubhouse or to start within the next 30 months.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The new expiration date was October 24, 2006.

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~ ~ ~ June 15, 2004, After Agenda Item:

Request for Intent to Defer  
Antioch Baptist Church, SPA 90-S-057-2

Mr. Pammel moved to approve the request for an intent to defer SPA 90-S-057-2 to July 13, 2004. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting

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~ ~ ~ June 15, 2004, After Agenda Item:

Dismissal/Reschedule Request  
Marec Corp., VC 2004-0182 and A 2004-DR-002

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the variance number was a temporary number because the application had not yet been officially accepted.

Margaret Stehman, Assistant to the Zoning Administrator for Appeals, Zoning Administration Division, clarified that the packet distributed that morning was an application for the special permit, and the applicant had indicated his plat would be submitted within the next few days.

~ ~ ~ June 15, 2004, AFTER AGENDA ITEMS, continued from Page 719

Responding to Mr. Hart's question, Ms. Langdon said staff was simply passing on to the Board the Gibsons' request to dismiss or defer the Marec application. She explained that the appeal would be deferred upon acceptance of the applicant's variance application as the variance was to address the issues.

Frederick R. Taylor, Esquire, Bean, Kinney & Korman, 2000 North 14<sup>th</sup> Street, Suite 100, Arlington, Virginia, representing the Marec Corporation, gave a brief history of the property noting that there were three issues: 1) the steel fence; 2) lights on top of the stone wall; and, 3) the stone wall being higher than seven feet in places. He pointed out that issues 1 and 2 had been resolved, and he was in the process of doing a boundary line adjustment or a subdivision to make the lot two acres. He noted that to address the gatehouse issue, as requested by Virginia Ruffner, Applications Acceptance Branch, a special permit plat and a variance plat had been submitted.

Joseph Gibson, 966 Towson Road, McLean, Virginia, came forward to speak. He had submitted a letter dated May 25, 2004, requesting the Board dismiss and bar the variance application by Marec Corporation. He stated that he and his neighbors continued to be concerned about the proposed configuration that was not consistent with their R-E zoning area. Mr. Gibson said he believed the applicant was "foot-dragging" with providing staff the required documents. He stated that the appeal was scheduled for July, and he opposed granting a deferral as the issues should be addressed and the matter resolved expeditiously. Mr. Gibson requested the Board schedule the appeal for early July.

Discussions ensued between Ms. Gibb, Ms. Stehman, Mr. Taylor, and Ms. Langdon concerning the lot's size, accessory structure height restrictions for parcels less than two acres as opposed to parcels over two acres, the wall height, the lighting fixtures, issues resolved by a variance, required advertising, and justification for the requested deferral.

Mr. Pammel moved to schedule A 2004-DR-002 on August 10, 2004, at 9:30 a.m. Ms. Gibb seconded the motion.

Mr. Taylor said he opposed an August date because several principal people, the architect and engineers, were unavailable. He requested a date in September to allow time to resolve issues.

Mr. Hart pointed out that the Board did not have the procedural authority to dismiss or bar someone from filing an application and suggested the Board deny the request to defer or dismiss the variance and then address the issue of the appeal.

Chairman DiGiulian called for the vote. The motion failed for the lack of four votes.

Mr. Hart moved that the Board not dismiss the application that had not yet been accepted and not bar the applicant from filing an application.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 15, 2004, After Agenda Item:

Approval of June 8, 2004 Resolutions

Mr. Pammel moved to approve the June 8, 2004 Resolutions. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

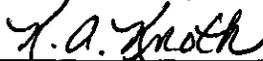
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--- June 15, 2004, continued from Page 720

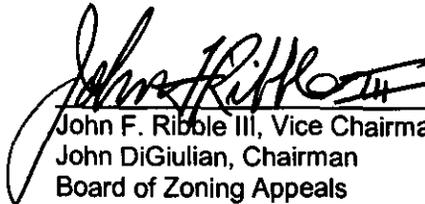
As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Paula A. McFarland

Approved on: September 20, 2005



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
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, June 22, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board.

Chairman DiGiulian noted that the majority of the cases on the agenda were variances and advised that there was a Virginia Supreme Court decision that included the Cochran case that severely limited the Board's ability to grant variances. He said the Board had requested through counsel that the Court reconsider a portion of that decision; however, the Board was informed on Friday, June 18, 2004, that the Court had refused to do so. He said the cases would be heard; however, a decision would be deferred until 10:30 this morning, after the Board met with counsel.

Chairman DiGiulian called for the first scheduled case.

~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. JERRY L. WINCHESTER, VC 2004-MV-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.3 ft. with eave 10.3 ft. from both side lot lines and stoop 6.0 ft. with stairs 3.0 ft. from one side lot line and stoop with stairs 6.0 ft. from other side lot line. Located at 6430 Fourteenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (10) 31 and 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. Rick Winchester, son of the applicant, stated that he would be speaking on his behalf and reaffirmed the affidavit.

Cathy Belgin, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a replacement dwelling 11.3 feet with eave 10.3 feet from both side lot lines, a stoop 6.0 feet with stairs 3.0 feet from the southern side lot line, and a stoop with stairs 6.0 feet from the northern side lot line. A minimum side yard of 12 feet is required; however, stoops and stairs are permitted to extend 5.0 feet into the side rear yard, but be located no closer than 5.0 feet to the lot line; therefore, variances of 0.7 foot, 0.7 foot, 1.0 foot, 4.0 feet, and 1.0 foot, respectively, were requested. Ms. Belgin advised that as noted in the staff report the applicant had proposed a smaller dwelling than was on the property previously, with a reduction in the distance from the closest adjacent neighbor to the north. A special exception to permit the construction of the home in a floodplain was approved by the Board of Supervisors on June 21, 2004.

Mr. Pammel asked if there was a habitable dwelling on the property at this time. Ms. Belgin said that to her knowledge the home was not habitable and the applicant had not been residing in the dwelling since the damage from the hurricane had occurred. She suggested that the applicant address the question.

Mr. Winchester stated that it had not been condemned; however, the Fire Marshall had deemed it inhabitable.

Mr. Hart asked Ms. Belgin if the construction could be done by right if the stairs were reconfigured, the walls were pulled in 7/10 of a foot, and the stoops were reconfigured. Ms. Belgin responded that the proposed house was a modular home that would fit the current footprint, to include the stoops. She stated that if the dwelling was located 12 feet from each lot line a variance would not be required.

Mr. Hammack asked if the applicant could reconstruct what was on the property by right. Ms. Belgin said the applicant could repair the house by right, but she did not know the extent of reconstruction that would be required. She explained that the existing home on the property would require a variance if it was demolished and reconstructed in the same footprint. Mr. Hammack indicated that as he understood the Court's decision, that was not one of the criteria the Board was supposed to consider.

Mr. Winchester presented the variance request as outlined in the statement of justification submitted with the application. He said a hurricane had destroyed the house and the cost to repair it was prohibitive. He said his parents had builders look at the damage and their recommendations were to tear the house down and rebuild. He said the setbacks had been changed years after his parents had purchased the home and the

~ ~ ~ June 22, 2004, JERRY L. WINCHESTER, VC 2004-MV-055, continued from Page 723

issue today was that they were requesting 9 inches of setback on each side. He asked the Board to approve the variance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision on VC 2004-MV-055, associated with application SE 2004-MV-010, until later in the meeting. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Ms. Gibb noted that this was the kind of case that the Board routinely would have granted a variance for and it was the type of case that they considered to be within the purview for granting variances. However, she said the Board was hampered by the Court's decision and that as the Board understood it, if a house could be built on the lot without a variance, then the Board could not grant one. Ms. Gibb said the Board routinely granted variances of this type before the Court's decision and they had been sued. She indicated that the Board of Supervisors was one of the entities that had joined in the suit to sue the Board of Zoning Appeals. She said she would like to be able to grant the variance but could not make that decision until after the Board had spoken to counsel.

Mr. Hart stated that this was the type of case where historically the Board would have granted a variance, however, they had to abide by the Court's decision. He said the decision implied that with respect to the Zoning Ordinance, one size fits all, but that was not the case. He acknowledged that there were unusual situations that warranted a variance and a case by case approach was sometimes a more equitable way to administer the Ordinance. Mr. Hart said that no matter what the BZA did, there may be a legislative way out of the situation that would allow approval of an application that required minor adjustments and not necessarily a variance. He stated that it was his opinion that this case, as well as others, would pose difficult situations for property owners if there was no relief found or no way out.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. JOSEPH FRANCO AND SARA FRANCO, VC 2004-MA-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.3 ft. with eave 30.6 ft. from front lot line and 10.0 ft. with eave 9.6 ft. from side lot line. Located at 6201 Beachway Dr. on approx. 15,034 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 936.

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 Franco, 6201 Beachway Drive, Falls Church, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 31.3 feet with eave 30.6 feet from the front lot line and 10 feet with eave 9.6 feet from the side lot line. A minimum front yard of 35 feet and minimum side yard of 15 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum front and side yards; therefore, variances of 3.7 feet, 1.4 feet, 5.0 feet, and 2.4 feet, respectively, were requested.

Mr. Franco presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because his family was growing and they needed more living space. He stated that he wanted to add a playroom, office, bathroom and pantry on the first level. Mr. Franco stated that the design was compatible with other homes in the neighborhood and requested approval by the Board.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision on VC 2004-MA-052 until later in the meeting. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. PETER M. LONGDEN, VC 2004-BR-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.7 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with SP 2004-BR-019).

9:00 A.M. PETER M. LONGDEN, SP 2004-BR-019 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 an accessory storage structure to remain 4.8 ft. from rear lot line and 18.6 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with VC 2004-BR-057).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Longden, 9000 Littleton Street, Fairfax, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 2.7 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 17.3 feet was requested. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on error in building location to permit a shed, as accessory storage structure, 11.1 feet in height, to remain 4.8 feet from rear lot line and 18.6 feet from side lot line. A minimum rear yard equal to the height of the shed and minimum side yard of 20 feet are required; therefore, reductions of 6.3 feet and 1.4 feet, respectively, were requested.

Mr. Longden presented the variance and special permit requests as outlined in the statement of justification submitted with the applications. He said that the staff report did not mention that the addition was intended to be a garage and therefore the configuration and the close proximity to the side lot line. He stated that he had no choice because of limited space. Insofar as the shed was concerned, he said it had been placed there without knowledge of the County's requirements; however, it had been placed with a great deal of attention to the many old trees surrounding it.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2004-BR-019 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER M. LONGDEN, SP 2004-BR-019 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 an accessory storage structure to remain 4.8 ft. from rear lot line and 18.6 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with VC 2004-BR-057). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with Section 8-006, General Standards for Special Permit Uses, and Section 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.
3. Based on the record before the Board, the shed will have no negative impact on anyone.
4. The shed has been located in its current position for a while.

--- June 22, 2004, PETER M. LONGDEN, VC 2004-BR-057 and SP 2004-BR-019, continued from Page 725

5. There were no speakers in opposition.
6. The applicant has presented evidence showing compliance with the standards.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a shed as shown on the plat prepared by Bryant L. Robinson, dated July 8, 2003, revised through January 9, 2004, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to defer decision on VC 2004-BR-057 until later in the meeting. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. BRADLEY W. AND NANCY L. JOHNSON, VC 2004-DR-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. with eave 20.8 ft. from rear lot line. Located at 2122 Natahoa Ct. on approx. 10,111 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((25)) 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bradley Johnson, 2122 Natahoa Court, Falls Church, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 22.9 feet with eave 20.8 feet from rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 2.1 feet and 1.2 feet, respectively, were requested.

Mr. Johnson presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to add a dining room off the kitchen which would replace a concrete stoop they had to tear down because it had separated from the house. He said the proposed addition would not intrude on the 10-foot side setback. He indicated that it would not be practical to build the dining room off the back of the house because the house was built into the side of a hill and the proposed first floor dining area would be located three stories off the ground.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on VC 2004-DR-060 until later in the meeting. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. LAURENCE L. ELFES, VC 2004-PR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9762 Oleander Ave. on approx. 12,105 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1 ((16)) 8. (Decision deferred from 5/11/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Laurence Elfes, 9762 Oleander Avenue, Vienna, Virginia, replied that it was.

Mr. Beard moved to defer decision on VC 2004-PR-025 until later in the meeting. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. MYRNA Z. KROH, VC 2004-PR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. with eave 3 ft. 6 in. from side lot line. Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 6. (Decision deferred from 5/11/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Myrna Kroh, 9110 Arlington Boulevard, Alexandria, Virginia, replied that it was.

Mr. Hammack moved to defer decision on VC 2004-PR-035 until later in the meeting. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. VINCENT D. GIBSON, VC 2004-SU-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. with eave 10.0 ft. from rear lot line and deck 8.4 ft. from rear lot line. Located at 15153 Stratton Major Ct. on approx. 13,622 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 186.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vincent Gibson, 15153 Stratton Major Court, Centreville, Virginia, replied that it was

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition to be located 11.0 feet with eave 10.0 feet from the rear lot line and a deck to be located 8.4 from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet and decks are permitted to extend 12 feet into the minimum rear yard; therefore, variances of 14 feet, 12 feet, and 4.6 feet, respectively, were requested.

Mr. Hart indicated that he lived in the applicant's neighborhood and that many of his neighbors had made modifications on their homes. He said they were all grandfathered R-C lots and the size predated the downzoning. He said he and many of his neighbors had to get special permits to construct any additions. He asked staff if there was a technical reason why the applicant couldn't apply for a special permit to do the work.

Ms. Stanfield stated that in this situation the previous zoning, before the downzoning and the current Zoning District for an R-2 Cluster and an R-C, both had minimum rear yards of 25 feet, so it would not meet the previous Ordinance and it did not meet this one either.

Mr. Gibson presented the variance request as outlined in the statement of justification submitted with the application. He said he was aware of the Cochran case and submitted that the threshold issue had been met in that a Zoning Ordinance, while broadly acceptable on its face, would interfere with and violate all beneficial uses of his property. He noted that his subdivision had been built with two types of houses and everyone had the same square footage. He said his lot, unlike his neighbors', was irregularly shaped because it had to contribute to a 180 degree turn. He said the developer had built a pipestem to squeeze five more houses in, rather than build a full size court that would require a 30-foot wide road. Mr. Gibson said his structure was the same as his neighbors' and was exactly at the minimum yard distances. He noted that any impact on his neighbors would be controlled by the Architectural Review Board.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision on VC 2004-SU-056 until later in the meeting. Ms. Gibb seconded the motion.

Mr. Pammel said this application brought to point the liability of the pipestem cluster provisions. He said that with few exceptions he could not remember when the Board hadn't encountered a rear yard variance for a deck or other additions, when a pipestem lot was designed with no back yard. He stated that it was the nature of pipestem lots because a developer would squeeze the maximum amount of density out of the land that would leave a parcel of land that met the lot size requirements but didn't give anyone the yards that would normally be associated with most regularly sized lots. Mr. Pammel said he suspected that developers were using the common open space as the back yard provisions, assuming that any variance requested would be granted because the property abutted a common open space and therefore there was no impact. He said he was firmly convinced that the viability of the pipestem cluster lot options that were being used now no longer existed. He said it was his thought that any future pipestem cluster concept would not provide the rear yards that were needed by the Code to people like Mr. Gibson so they could do what they wanted to do with their lots in the future. He suggested that this was a matter that needed to be looked at in a very urgent fashion by the Planning Commission and the Board of Supervisors to make whatever adjustments that may be necessary so that the Board of Zoning Appeals and the County would not be confronted with applications such as this in the future. He said this application did not meet the requirements of the Cochran case because there were designer problems that were created by what the County approved in the subdivision process. He said it would never meet the Cochran standard.

The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

~ ~ ~ June 22, 2004, VINCENT D. GIBSON, VC 2004-SU-056, continued from Page 728

Mr. Hammack moved that the County, in looking at the Zoning Ordinance standards, look at a minimum ratio provision of lot width to lot depth that was not currently in existence.

The motion failed for lack of a second.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. JAMES V. PATTAN, VCA 2002-PR-061-02 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-PR-061 to permit construction of accessory structure in the minimum required front yard of a lot containing 36,000 sq. ft. or less. Located at 2354 Central Ave. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 039-3 ((11)) (A) 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. James Pattan, 2354 Central Avenue, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to permit construction of an accessory structure, specifically a garage, in the minimum required front yard. Per Section 10-104 of the Zoning Ordinance, no accessory structure may be constructed in any minimum required front yard on any lot. The minimum required front yard of a lot zoned R-1 is 40 feet. The garage was proposed to be located 20 feet from the lot's Central Avenue lot line.

Mr. Pattan presented the variance amendment request as outlined in the statement of justification submitted with the application. He said his case was one of hardship because he had a corner lot bordered by a state maintained road and a private road. He said his issue was the lack of parking on his lot since he had only two spaces and no garage. He noted that his neighbor Mansour Mahbanoozadeh, owner of the property across Central Avenue, rented the house to the Italian Embassy and because of all the parties they had, their guests parked on Central Avenue as well as Idylwood Road. Therefore, when he had guests, they had to park in the culverts on Central or Idylwood, which posed a potential falling hazard. Mr. Patton stated that he worked for the Department of Homeland Security and was subject to being called into the office at all hours of the night and that was one of the hardships he had referred to. He said he was aware of the letter Mr. Mahbanoozadeh had written and noted that he had accepted the initial structure which was for a 3-car garage. Mr. Pattan stated that he had reduced the size of the garage and increased the setback 20 feet from Central Avenue which was even with the house setback. He said the only variance he was requesting was 10 feet to the side yard line and asked for a favorable decision by the Board.

In response to Mr. Hammack's question, Susan Langdon, Chief, Special Permit and Variance Branch, said Mr. Patton could not build a garage by right and could not attach it to the existing house without a variance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VCA 2002-PR-061-02 until later in the meeting. Mr. Hammack seconded the motion.

Mr. Hammack noted that this was a classic case where the Board had an R-1 Zoning District and a lot that was 9,050 square feet, which was a completely substandard lot. He said that in reading the decision on the Cochran case there was no analysis of how to apply their one rule fits all. He said this Board heard many cases every week where the lots had been rezoned since they were originally constructed, and now the people had a substandard lot with very strict setback lines, which precluded doing many things on the property. He said he was sympathetic to Mr. Pattan's problem but he was not sure that his application would be permitted under the Cochran decision. Mr. Hammack said that once the Board made a decision, if Mr. Pattan felt that he had been aggrieved, he could appeal the decision or talk to one of his elected representatives and explain how he felt about the Cochran decision.

The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. BRAD CZIKA, VC 2004-BR-063, concurrent with SP 2004-BR-020

Chairman DiGiulian noted that VC 2004-BR-063 and SP 2004-BR-020 had been administratively moved to June 29, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATION FOUNDATION, INC., VC 2004-MA-061

Chairman DiGiulian noted that VC 2004-MA-061 had been administratively moved to June 29, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, VC 2004-HM-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a new church 32.0 ft. from front lot line. Located at 2472 Centreville Road on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32B pt. (Concurrent with SP 2004-HM-013). (Admin. moved from 6/1/04 at appl. req.)

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s). 3-103 and 6-105 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32B pt. (Concurrent with VC 2004-HM-045). (Admin. moved from 6/1/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-HM-045 and SP 2004-HM-013 had been administratively moved to July 6, 2004, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit an increase in seats and land area, building additions and site modifications. Located at 6531 and 6525 Little Ox Rd., 10915 Olm Dr., 6400 Stoney Rd. and 6340 Sydney Rd. on approx. 18.7 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 34 and 87-1 ((1)) 2, 2A, 5 and 6. (Admin. moved from 2/10/04 and 5/4/04 at appl. req.)

Chairman DiGiulian noted that the Board had previously approved an intent to defer SPA 90-S-057-2 to July 13, 2004.

Ms. Gibb moved to defer SPA 90-S-057-2 to July 13, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:30 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8)) (2) 2A. (Admin. moved from 3/16/04, 4/27/04, and 5/11/04 at appl. req.)

~ ~ ~ June 22, 2004, GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055, continued from Page 730

Chairman DiGiulian noted that A 2003-SP-055 had been administratively moved to October 5, 2004, at 9:30 a.m., at the applicants' request.

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~ ~ ~ June 22, 2004, After Agenda Item:

Approval of May 11, 2004 Minutes

Mr. Pammel moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, After Agenda Item:

Request for Additional Time  
Murray and Virginia Seltzer, VC 00-B-107

Mr. Pammel moved to approve 12 months of additional time. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was April 18, 2005.

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~ ~ ~ June 22, 2004, After Agenda Item:

Request for Reconsideration  
from Nicacio Valdez regarding  
Anastasios and Anna Grypeos, A 2004-LE-005

Mr. Pammel stated that Mr. Valdez' submission had raised some questions. He said the applicant had submitted additional information which the Board was not privy to at the time of the hearing and he had basically said there was no question in his mind that the pad had been poured in 1999 and was an integral part of the carport at that time. Mr. Pammel stated that Mr. Valdez had submitted photographs to that effect. He noted that the structure had been weathered within the past five years. He said he wanted to hear more testimony on this case, to include a deeding test that would have to be performed by the appellants, similar to those shown in previous applications submitted to the Board, where grandfathering had been the issue. He said he wanted to prove once and for all that the pad was either in existence prior to the Zoning Ordinance or that there was nothing that had occurred in recent times with respect to the pad.

Ms. Gibb asked if it would be alright if anything had been built before 1941 and subsequently replaced with something newer. Mr. Pammel stated that it would not be alright because it would require a building permit anytime after 1941 if a structure was placed in the front yard or if a structure was replaced because the Ordinance specifically precluded accessory structures from front yards, which was the testimony presented to the Board by the Zoning Administrator. He stated that if there had been any rebuilding at any point in time after 1941, unless it was done in error, it would not meet the Code requirement.

Ms. Gibb then asked if a building permit would be required for a nonconforming use. Mr. Pammel said it would because a nonconforming use ceased to be a nonconforming use if 50% or more of it was destroyed.

Chairman DiGiulian said it appeared to him that the action that the Board took when they overruled the Zoning Administrator on the question of nonconforming use was a different appeal number. He said he thought this was a case of use by somebody other than the owner of the principal lot.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that there had been two appeals with the first one being 2003-LE-053 which was the one in which the Grypeos, the appellants, had claimed that the carport had been nonconforming since it had been constructed prior to 1936. She said the issue on appeal was that it was an accessory structure located in the front yard. She said that appeal had been decided on June 8, 2004, so the decision would have become effective eight days

~ ~ ~ June 22, 2004, AFTER AGENDA ITEMS, continued from Page 731

later. The second appeal, she said, was 2004-LE-005 which was the appeal that also involved the carport and the same appellants. She said the appeal was that the accessory structure was located on a lot that was not the same lot as the principal structure. She said that was the carport that had been legitimized by the determination the previous week indicating that the carport was a nonconforming use, having been constructed prior to 1936.

Mr. Hart said that if the appellant's letter concerned the second case, he had voted to uphold the Zoning Administrator on it but the letter concerned the earlier issue. He said he believed that the carport was very old and that the concrete slab had been poured recently. However, the letters in the staff report concerning the violation had to do with the carport and not necessarily the slab or whether the gravel had been maintained. He said he recalled that there had been a photograph taken in 1986 of a party that clearly showed the carport in the background. He said there were affidavits from people about the carport being there forever. Mr. Hart stated that the evidence to the contrary pertained to the fencing and was vague and the slab was new. He said the violation that was issued had to do with the old carport and that even if the slab had been poured in 1999 there was no violation there, if the letter that had been submitted pertained to that issue. He asked Ms. Stehman if the letter had been submitted too late for reconsideration. Ms. Stehman replied that was correct.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ June 22, 2004, After Agenda Item:

#### Approval of June 15, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The meeting recessed at 10:06 a.m. and reconvened at 11:55 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M.      JERRY L. WINCHESTER, VC 2004-MV-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.3 ft. with eave 10.3 ft. from both side lot lines and stoop 6.0 ft. with stairs 3.0 ft. from one side lot line and stoop with stairs 6.0 ft. from other side lot line. Located at 6430 Fourteenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (10) 31 and 32.

Mr. Hammack moved to deny VC 2004-MV-055, because under the Cochran decision that is applied, the applicant had not satisfied the standards for a variance to be granted. Ms. Gibb seconded the motion.

Mr. Pammel indicated that he could not support the motion because he believed the applicant had presented testimony showing hardship because the structure had been rendered useless as a result of the hurricane

~ ~ ~ June 22, 2004, JERRY L. WINCHESTER, VC 2004-MV-055, continued from Page 732

last fall. He said they had been able to acquire a modular unit to locate in place of the original structure. He stated that the size was less than the original structure, although there was a minor encroachment on the side lot lines with respect to the building walls. He said it was his opinion that the applicant had met the definition of hardship and they would be deprived of all reasonable use of their property without the variances sought.

Ms. Gibb said it was her understanding that under the Cochran case, the Board was not to look at hardship, only that the applicant would be deprived of all reasonable beneficial use of the property unless the variance was granted. She said there was a building envelope into which he could build a house and as advised by counsel, unless the applicant could show that all reasonable beneficial use of the property was being denied, then the Board could not do that. She said this case did not present those facts.

Mr. Hart agreed with Ms. Gibb's comments and stated that after the Court's decision on April 23, 2004, concerning the Cochran case, the statute was not what the Board was looking at. He said the threshold question was whether the Zoning Ordinance interfered with all reasonable beneficial use of the property, absent a variance. He said the word "all" was problematic because it did not appear in the statute, it was a word that crept in at the local level whether it was in the Ordinance or the preprinted variance motion forms that the Board of Zoning Appeals had modified or didn't use in that manner. Mr. Hart stated that in a situation such as this, as much as the Board wanted to grant the variance, they had to obey the Virginia Supreme Court decision. He said that if there was a reasonable beneficial use of the property absent a variance in this case it would be a house slightly narrower by inches and a new house would be more expensive to construct. He said there was some beneficial use at the core of this application and under the new analysis, if there was some reasonable beneficial use of the property in the absence of a variance a smaller house or an existing house would be the most typical one. He stated that the Board was not allowed to reach the other issues. Mr. Hart said the Board could not reach the question of hardship or the question of expense. He said he would have concluded that the variance, using the test under the statute or the Nutrella (phonetic) case or everything that was done up until April 23, 2004, was an appropriate case and there was no significant negative impact on the neighbors. He said he would also conclude that under the analysis the Board was required to follow after the Cochran decision, the Board was not allowed to reach that question and because there was some potential for constructing a smaller house on this lot, the Board was powerless to grant a variance. Mr. Hart stated that it was his hope that there would be some type of legislative relief for such dilemmas, whether it was at the Ordinance level with special permits or with the General Assembly. He said as much as the Board wanted to grant the requested variance the Court had told them that they were not allowed to do so.

Mr. Hammack said that at the presentation by the applicant he had stated that he proposed to construct a modular home that was prefabricated which did not lend itself to any change in its size. He indicated that that was part of the problem because, as he understood the case, the applicant could construct on the foundation as it existed and the house could be reconstructed without requiring the variances that the applicant was seeking in this application. He said it was regrettable that under the Cochran decision the Board could not take considerations like cost or modular homes into consideration in making its decision. However, he said, that since the applicant could reconstruct on the foundations that were there and not require a variance, it was his opinion that they could not get to the issue of hardship. Mr. Hammack stated that while he had a great deal of sympathy for Mr. Winchester's plight, the variance could not be granted under the existing standards. He said that although he had not included these comments in his original motion, he thought that the idea of putting a modular house on the property was a convenience for the applicant and that if they could place it on the existing foundation, a variance would not be needed.

The motion carried by a vote of 5-1. Mr. Pammel voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Mr. Hammack moved that the Board request the County Attorney to prepare a new variance resolution consistent with the decision in the Cochran case so that the Board could make its motions properly. Mr. Pammel seconded the motion.

Mr. Hart amended the motion to ask that the County Attorney provide the Board with a draft for their review. Mr. Hammack accepted the amendment, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

~ ~ ~ June 22, 2004, JERRY L. WINCHESTER, VC 2004-MV-055, continued from Page 733

**THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE-REFERENCED APPLICATION ON JUNE 29, 2004. A NEW PUBLIC HEARING WAS SCHEDULED FOR SEPTEMBER 21, 2004, AT 9:00 A.M.**

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. JOSEPH FRANCO AND SARA FRANCO, VC 2004-MA-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.3 ft. with eave 30.6 ft. from front lot line and 10.0 ft. with eave 9.6 ft. from side lot line. Located at 6201 Beachway Dr. on approx. 15,034 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 936.

Mr. Pammel moved to deny VC 2004-MA-052 for the reasons stated in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH FRANCO AND SARA FRANCO, VC 2004-MA-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.3 ft. with eave 30.6 ft. from front lot line and 10.0 ft. with eave 9.6 ft. from side lot line. Located at 6201 Beachway Dr. on approx. 15,034 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 936. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have not met the prescribed standards for a variance as set forth in the Cochran decision dated April 23, 2004.

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.

~ ~ ~ June 22, 2004, JOSEPH FRANCO AND SARA FRANCO, VC 2004-MA-052, continued from Page 734

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. PETER M. LONGDEN, VC 2004-BR-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.7 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with SP 2004-BR-019).

9:00 A.M. PETER M. LONGDEN, SP 2004-BR-019 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 an accessory storage structure to remain 4.8 ft. from rear lot line and 18.6 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with VC 2004-BR-057).

Mr. Hart moved to deny VC 2004-BR-057 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER M. LONGDEN, VC 2004-BR-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.7 ft. from side lot line. Located at 9000 Littleton St. on approx. 25,797 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) Y. (Concurrent with SP 2004-BR-019). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not presented testimony showing compliance with the required standards for a variance.
3. With a garage of the proposed length located 2.7 feet from the side lot line, under the old standards, the garage would have been too close.
4. Under the old standards, there might have been opportunities for a 1-car garage or a 1-car garage that is two cars long.
5. Under the Cochran decision, the subject lot consists of almost 26,000 square feet, there are areas in the back for a garage, and there is an existing house.

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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. BRADLEY W. AND NANCY L. JOHNSON, VC 2004-DR-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. with eave 20.8 ft. from rear lot line. Located at 2122 Natahoa Ct. on approx. 10,111 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((25)) 13.

Ms. Gibb moved to deny VC 2004-DR-060 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRADLEY W. AND NANCY L. JOHNSON, VC 2004-DR-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. with eave 20.8 ft. from rear lot line. Located at 2122 Natahoa Ct. on approx. 10,111 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((25)) 13. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have not met the required standards under the new standards set forth in the Cochran decision.
3. There is an existing house on the property.
4. Under the old standards, this was a modest request of only 2.1 feet into the side yard, with the applicants having made a very serious and concerted attempt to get the addition inside the setback lines with an odd-shaped addition.

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.

~ ~ ~ June 22, 2004, BRADLEY W. AND NANCY L. JOHNSON, VC 2004-DR-060, continued from Page 737

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. LAURENCE L. ELFES, VC 2004-PR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9762 Oleander Ave. on approx. 12,105 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1 ((16)) 8. (Decision deferred from 5/11/04)

Mr. Beard moved to deny VC 2004-PR-025 for the reasons stated in the Resolution. Mr. Hart seconded the motion.

Mr. Hammack noted that the fence in question was pulled in from the property line and it was an unfortunate situation. Mr. Hart noted that as he understood the Cochran decision there was no such thing as a fence variance any more under our Ordinance because, in order to have a fence which would be an accessory structure, some sort of principal use would have to be established to begin with. However, if an applicant had the principal use, he would not be eligible for the variance.

Mr. Beard stated that normally this would have been an application that the Board of Zoning Appeals would have approved. He said the BZA should act as a buffer between the government and private citizens in the use of their property and, as a prime example, he indicated that as long as there was conformity in general, he thought there should be reasonableness in matters of a citizen's use of their property. He said that in his opinion this was virtually a taking of property or at the least a governmental easement that had been created.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAURENCE L. ELFES, VC 2004-PR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9762 Oleander Ave. on approx. 12,105 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1 ((16)) 8. (Decision deferred from 5/11/04) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

~ ~ ~ June 22, 2004, LAURENCE L. ELFES, VC 2004-PR-025, continued from Page 738

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not satisfied the Board that the physical conditions as listed above exist under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or building involved.
3. This is a variance asking for a foot and a half increase on a four-foot fence, which the Board would have been inclined to grant.

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 building involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard moved to waive the 12-month waiting period for refiling an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. MYRNA Z. KROH, VC 2004-PR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. with eave 3 ft. 6 in. from side lot line.

~ ~ ~ June 22, 2004, MYRNA Z. KROH, VC 2004-PR-035, continued from Page 739

Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 6. (Decision deferred from 5/11/04)

Mr. Hammack moved to deny VC 2004-PR-035 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MYRNA Z. KROH, VC 2004-PR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. with eave 3 ft. 6 in. from side lot line. Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 6. (Decision deferred from 5/11/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not met the required standards set forth in the Cochran case for a variance to be granted.
3. In particular, this is to permit construction of an accessory structure five feet with an eave three feet, six inches from the side lot line.
4. Under the old standards, the Board would have had a difficult time supporting the application because it is a two-story structure 27 feet long.
5. There is an existing dwelling on the property.
6. The owner has reasonable use 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
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

~ ~ ~ June 22, 2004, MYRNA Z. KROH, VC 2004-PR-035, continued from Page 740

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack moved to waive the 12-month waiting period for refiling an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. VINCENT D. GIBSON, VC 2004-SU-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. with eave 10.0 ft. from rear lot line and deck 8.4 ft. from rear lot line. Located at 15153 Stratton Major Ct. on approx. 13,622 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 186.

Mr. Pammel moved to deny VC 2004-SU-056 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VINCENT D. GIBSON, VC 2004-SU-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. with eave 10.0 ft. from rear lot line and deck 8.4 ft. from rear lot line. Located at 15153 Stratton Major Ct. on approx. 13,622 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 186. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not complied with the standards for a variance application as set out by the Virginia Supreme Court decision on Cochran.
3. The applicant currently has a beneficial use of the property involved.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

~ ~ ~ June 22, 2004, VINCENT D. GIBSON, VC 2004-SU-056, continued from Page 741

2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hammack moved to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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~ ~ ~ June 22, 2004, Scheduled case of:

9:00 A.M. JAMES V. PATTAN, VCA 2002-PR-061-02 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-PR-061 to perm construction of accessory structure in the minimum required front yard of a lot containing 36,000 sq. ft. or less. Located at 2354 Central Ave. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 039-3 ((11)) (A) 44.

Mr. Hart moved to deny VCA 2002-PR-061-02 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES V. PATTAN, VCA 2002-PR-061-02 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend

~ ~ ~ June 22, 2004, JAMES V. PATTAN, VCA 2002-PR-061-02, continued from Page 742

VC 2002-PR-061 to permit construction of accessory structure in the minimum required front yard. Located at 2354 Central Ave. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 039-3 ((11)) (A) 44. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 2004; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not satisfied the Board that physical conditions exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.
3. This case will be typical of a lot of situations where there is no longer relief.
4. This is a substandard lot.
5. This is three little railroad lots together with a total area of just over 9,000 square feet.
6. The property is zoned R-1 with R-1 setbacks of 40 feet from each of the two streets or two double front yards.
7. With the front and side yard setbacks in R-1, there is no place on a lot like this to build anything by right.
8. Because we granted an earlier variance and the special permit to leave it where it was, there is an existing dwelling on the property.
9. The owner has reasonable use of the property absent the variance; therefore, a variance cannot be granted for the garage.
10. This will unfortunately be typical of substandard lots in the R-1 or other categories where there are severe setbacks under the Ordinance, but the Board can do nothing.

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.

~ ~ ~ June 22, 2004, JAMES V. PATTAN, VCA 2002-PR-061-02, continued from Page 743

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 reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 2004.

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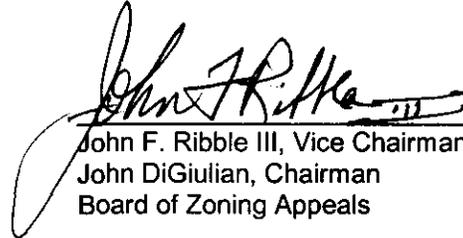
As there was no other business to come before the Board, the meeting was adjourned at 12:24 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 1, 2008



Kathleen A. Knoth, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals