

2010 BOARD OF ZONING APPEALS MEETING MINUTES

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 6, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr. and Nancy E. Gibb were absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. RAIVO VEST AND NORMA A. VEST, TRUSTEES, SP 2009-LE-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 5801 Lane Dr. on approx. 15,423 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((6)) (9) 37.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard L. Wewerka, the applicants' agent, 9103 Industry Drive, Manassas Park, Virginia, reaffirmed the affidavit.

Shannon Caffee made staff's presentation as contained in the staff report. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions, and recommended approval.

Mr. Wewerka presented the special permit request as outlined in the statement of justification submitted with the application. He said the owners requested to build a screened porch on the back of his house where there already was a deck that was 10 feet off of the house, and 9 feet off the property line. To enable one to walk around the porch, it would have to be built out three more feet. There was nothing else on the property that would be disturbed, and none of the vegetation removed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-LE-120 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAIVO VEST AND NORMA A. VEST, TRUSTEES, SP 2009-LE-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 5801 Lane Dr. on approx. 15,423 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((6)) (9) 37. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2010; and

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

1. The applicants are the owners of the property.
2. This application meets all the submission requirements set forth in 8-922.
3. Staff recommends approval.
4. The Board adopts the staff's rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by Larry N. Scartz, Scartz Surveys, dated September 9, 2009, revised and signed through October 14, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,938 square feet existing + 2,907 (150%) = 4,845 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed addition and the dripline of the significant trees outlined in the memo from the Forest Conservation Branch, DPWES along the eastern side property line. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading.

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

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

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. JONATHAN B. & ELISABETH R. MORSE, SP 2009-DR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirement to permit construction of addition 20.6 ft. from front lot line. Located at 2220 Casemont Dr. on approx. 12,147 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((8)) 16. (Admin moved from 12/15/09)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jonathan and Elisabeth Morse, 2220 Casemont Drive, Falls Church, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial to SP 2009-DR-099.

Ms. Caffee responded to Mr. Hart's questions concerning the garage and the side yard setbacks.

Mr. Morse presented the special permit request as outlined in the statement of justification submitted with the application. He said their growing family had begun to crowd their house, and he was requesting to expand the kitchen into what was then the family room. The proposed addition would replace the lost family room. Mr. Morse listed the reasons why the area off of the family room was the only usable space to expand.

Scott Brody (address unintelligible), architect for the Morse's who assisted them with their garage, came forward to speak. He said he and the applicants thought the garage's configuration was not a very good choice in location, especially in proportion to the rest of the house. He said they sought to meet the needs of the family for interior living space, but addressing the architectural nightmare was difficult because the garage was placed off of a corner of the house. Mr. Brody said they were seeking to tie three additions together. He proceeded to explain the few construction options, the considerable expense to do so, and the architectural faults.

Discussion ensued with staff and the applicants, and Mr. Hart's regarding other suggested locations, design problems, and proposed layouts.

As there were no speakers, Mr. Morse informed the Board that there were several letters and e-mails in support, to which Chairman Ribble noted that they already in the record.

Chairman Ribble closed the public hearing.

Mr. Hart moved to deny SP 2009-DR-099. Mr. Byers seconded the motion.

Discussion ensued regarding the motion regarding the Board's explanation for denial; a brief discussion with the applicants concerning their willingness for a potential redesign of the proposed addition to be further away from the front lot line; and, the acceptance of a date of a deferral of decision.

Mr. Hart withdrew his initial motion to deny, and then moved to defer decision on SP 2009-DR-099 to March 10, 2010. The motion was seconded by Mr. Byers, and carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. IFTIKHAR KHAN, SP 2009-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3321 Wilkins Dr. on approx. 13,274 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 24.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Iftikhar Khan, 3321 Wilkins Drive, Falls Church, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. With adoption of the proposed development conditions, staff recommended approval of SP 2009-MA-097.

Susan Epstein, Property Maintenance Supervisor, in the stead of Zoning Enforcement Inspector, Danny Forshee, who made the site visit and was unable to attend the meeting, responded to Mr. Hart's question concerning the accessory dwelling's compliance with the limitation of occupants, and the deck's condition and stability.

Mr. Khan presented the special permit request as outlined in the statement of justification submitted with the application. He clarified that he only had two cars, and the cars which the neighbors had registered their complaints about belonged to the residents from a nearby apartment complex. His one attempt at complaining resulted in vandalism, with two of his car windows broken out.

Mr. Khan responded to Mr. Smith's question concerning the number of family members living in the residence. He agreed to a development condition stipulating only one person would reside in the accessory structure. In response to Mr. Smith's question, he acknowledged that he cleaned up the excessive storage material that Mr. Forshee cited, and the balcony mentioned by Mr. Hart as appearing unstable was not used except for storing some outdoor furniture.

Mr. Smith pointed out that there were five of the neighbors who registered their complaints and concerns about Mr. Khan's proposal. Mr. Khan repeated that the vehicles were not his; that his one complaint resulted in vandalism; that he had a police report evidencing the incident; and, it was the apartment residents who parked on his street.

In response to Mr. Hart's question, Mr. Khan acknowledged he had no permit for the kitchen he installed in 2009; that the handyman who was contracted to build it assured him that it was not required. He added that he obtained permits for all other renovations.

Discussion ensued regarding an application and permit for the kitchen.

Chairman Ribble called for speakers.

Ted Haddad, 3329 Wilkins Drive, Falls Church, Virginia, came forward to speak in opposition. His issues were that other houses in the neighborhood, if approved for multiple kitchens, would become multiple family residences; and he was concerned about precedence. He did acknowledge the importance of caring for an elderly family member, but making the living quarters a separate residence, he said, bothered him for the neighborhood as a whole.

Chairman Ribble then closed the public hearing.

Mr. Smith moved to approve SP 2009-MA-097 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IFTIKHAR KHAN, SP 2009-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3321 Wilkins Dr. on approx. 13,274 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 24. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2010; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-3.
3. The area of the lot is 13,275 square feet.
4. The applicant has presented testimony indicating compliance with the standards for an accessory dwelling unit under Sect. 8-918 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 the Zoning Ordinance.

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

1. This approval for the accessory dwelling unit is granted to the applicant only, Iftikhar Khan, and is not transferable without further action of this Board, and is for the location indicated on the application, 3321 Wilkins Drive (13,275 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 house location survey plat prepared by Paul A. Garcia, Land Surveyor, dated October 11, 2003, signed September 3, 2009, as qualified by these development conditions.
3. A copy of this special 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. The occupant of the accessory dwelling unit shall be limited to the applicant's father, Mr. Abdul Khan.
5. All applicable permits and final inspections for the accessory dwelling unit, including the kitchen and the wood balcony shall be approved prior to occupancy of the unit.
6. The accessory dwelling unit shall contain a maximum of 696 square feet with a maximum of one bedroom as depicted on the floor plan included as Attachment 1 to these conditions.
7. Outside access to the accessory dwelling unit shall be provided through the rear entrance. Within 60 days of approval of this special permit, the existing front entrance shall be removed and the door replaced with materials consistent with the existing unit's exterior. The applicant may provide an entrance on the north side of the accessory dwelling unit.
8. As soon as reasonable based on weather conditions, foundation plantings consisting of evergreen shrubs and evergreen and/or deciduous trees shall be installed along the front foundation of the house, including the accessory unit.
9. Within 60 days of approval of this special permit, the outdoor storage shall be brought into compliance with the Zoning Ordinance as determined by the Zoning Inspector.
10. 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.
11. 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.

12. If the use of the accessory dwelling unit ceases for the applicant's father and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

13. Parking shall be provided on site as shown on the special permit plat.

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.

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 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. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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~ ~ ~ January 6, 2010, Scheduled case of:

9 :00 A.M. MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09.) (Decision deferred from 10/6/09.)

Chairman Ribble noted that there was a request to move the decision for SPA 81-A-022-09 by the applicant.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said that was correct, and that staff was still working on the issues.

Mr. Hart then moved to defer decision on SPA 81-A-022-09 to February 24, 2010, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. BURT LEVENSON, SP 2009-HM-056 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 2024 Upper Lake Dr. on approx. 12,407 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((4)) (4) 5. (Reconsideration granted on 9/29/09.)

Chairman Ribble noted that SP 2009-HM-056 had been withdrawn.

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~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. WENDY ARNOLD, SP 2009-LE-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.3 ft. from side lot line and 5.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 27.1 ft. from front lot line. Located at 5811 Larpin La. on approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3 (Concurrent with VC 2009-LE-005.) (Admin. moved from 12/1/09 for ads.)

9:00 A.M. WENDY ARNOLD, VC 2009-LE-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure which exceeds 200 sq. ft. in gross floor area. Located at 5811 Larpin La. on approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3 (Concurrent with SP 2009-LE-093).

Chairman Ribble called the applicant to the podium.

As a matter of clarification for Mr. Beard, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the procedure and reason for hearing the special permit concurrent with the variance. Mr. Beard verified that he would then make the two motions concurrently.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Wendy Arnold, 5811 Larpin Lane, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff believed the subject applications were in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval.

Ms. Arnold presented the special permit and variance request as outlined in the statement of justification submitted with the application. She explained how the storage of the kayaks best utilized the space in the shed, and that the shed was built to house them and protect against vandalism. Because of their property's topography, placing a shed on either side of the house was impossible, due to the severe slope. Ms. Arnold said they spoke with their neighbors about the project, and received their support.

Mr. Beard noted that relocating the shed would or could adversely impact existing vegetation and mature trees. Ms. Arnold concurred that the trees and its inhabitants were greatly enjoyed and would not want to encroach on the root area or cause any damage to them. In response to Mr. Beard's question, she said they were comfortable with all the development conditions.

Ms. Langdon responded to Mr. Hart's questions concerning the Ordinance's definition of an accessory structure, a structure, and a garage.

In response to Mr. Hart's question, Ms. Arnold said a narrower shed to house the kayaks would not work, because they wanted the additional space for a work area.

Mr. Hart proceeded to explain the restrictions upon the Board for a variance determination of approval, and noted several standards.

Ms. Arnold attempted to explain the reasons of how their application met the standards.

Discussion ensued regarding Variance standards, specifically Standard A and B concerning reasonable use.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve VC 2009-LE-005. The motion was seconded by Mr. Smith.

There was discussion among the Board members regarding whether to support the motion. Mr. Beard then withdrew his motion, and moved to defer the decision to allow the applicant to work with staff to look at some alternatives.

Ms. Langdon explained the necessity to defer the special permit along with the variance.

Mr. Beard then moved to defer VC 2009-LE-005 and SP 2009-LE-093 to February 3, 2010, at 9:00 a.m. The motion was seconded by Mr. Smith, and carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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~ ~ ~ January 6, 2010, Scheduled case of:

9:00 A.M. ST. BERNADETTE'S CATHOLIC PARISH, SPA 78-S-276 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP S-278 previously approved for a church and private school of general education to permit addition of nursery school and child care center. Located at 7600 Old Keene Mill Rd. on approx. 24.73 ac. of land zoned R-2 and PDH-3. Braddock District. Tax Map 90-1 ((1)) 1. (Admin. moved from 10/20/09 at appl. req.)

Chairman Ribble noted that SPA 78-S-276 had been administratively moved to February 14, 2010 at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 6, 2010, 2010, Scheduled case of:

9:30 A.M. CONSTANTINE SARAkinis, A 2009-MA-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12. (Admin. moved from 5/19/09) (Admin. moved from 6/2/09 and 9/22/09 at appl. req.)

Chairman Ribble called the appeal application.

William B. Lawson, Jr., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, agent for the appellant, informed the Board that his client had taken ill that morning, and was requesting a deferral to January 27, 2010.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said she spoke with Mr. Lawson about the deferral request but was unaware that the appellant, Mr. Sarakinis, was not present. She said there were speakers present to testify to the application.

Chairman Ribble said he would open the case and then consider the deferral request.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. William B. Lawson identified himself as the agent for the appellant.

There was no one who wished to speak to the issue of deferral. Chairman Ribble then asked Mr. Lawson if he would speak.

Mr. Lawson requested that his client, Constantine Sarakinis, be allowed to submit written testimony of his comments, and then asked that the Board indulge the request to defer the public hearing to January 27th.

Chairman Ribble called for a motion.

Mr. Beard moved to continue A 2009-MA-010 to January 27, 2010, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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~ ~ ~ January 6, 2010, 2010, Scheduled case of:

9:30 A.M. HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall without a Special Permit and has expanded the use limitations and conditions of Non-Residential Use Permit #A-2004-1013 and Special Permit Amendment SPA 95-Y-069-2 in violation of Zoning Ordinance provisions. Located at 14114 Lee Hy. on approx. 9.32 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C. (Admin. moved from 9/9/08 and 7/14/09 at appl. req.) (Deferred from 11/4/08 and 12/9/08 at appl. req.) (Moved from 3/3/09, inclement weather.) (Continued from 11/3/09 at appl. req.)

Chairman Ribble noted that A 2008-SU-028 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. The appellant's special permit amendment application had been approved.

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~ ~ ~ January 6, 2010, After Agenda Item:

Request for Reconsideration
James Baker, SP 2009-BR-094

Chairman Ribble called the Board's attention to the December 15, 2009, request of James Baker for reconsideration.

There being no motion for reconsideration, the request was denied.

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As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Minutes by: Paula A. McFarland

Approved on: June 7, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, January 13, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Mr. Byers was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ January 13, 2010, Scheduled case of:

9:00 A.M. THE CHURCH FOR ALL NATIONS, INC., SPA 83-P-057-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a place of worship to permit change in permittee and deletion of land area. Located at 2535 Cedar La. and 8506, 8526 and 8529 Amanda Pl. on approx. 12.38 of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A,37, 38 and 38A. (Admin. moved from 12/15/09 at appl. req.)

Chairman Ribble noted that the applicant had requested a deferral.

Mr. Hammack moved to defer SPA 83-P-057-05 to February 24, 2010, at 9:00 a.m., at the applicant's request. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ January 13, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for place of worship, private school of general education and telecommunications facilities to permit increase in enrollment and site modifications including columbarium. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (Admin. moved from 10/20/09 and 12/8/09 at appl. req.)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sara Mariska, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 83-D-022-04, subject to the revised proposed development conditions.

Mr. Hart referenced a letter the Board had received from neighbors of the church regarding trees previously planted at the church as a buffer that had died and were not replaced. He asked if the trees would be addressed. Ms. Hedrick stated that the Urban Forestry Office had also commented on the dead trees on the church property, and Condition 10 included language which required dead trees be replaced.

Ms. Mariska presented the special permit amendment request as outlined in the statement of justification submitted with the application. She noted that there would be no site modifications associated with the proposed enrollment increase. Ms. Mariska said the columbarium would be a place for contemplation and would enhance the cemetery's appearance, pointing out that the landscaping around it would further buffer the surrounding property.

In response to a question from Mr. Hammack, Ms. Mariska said she would like to amend Condition 16 from 120 to 150 days due to the unpredictability of the weather.

Chairman Ribble called for speakers.

Merrell Renaud, 11708 Sugarland Road, Herndon, Virginia, came forward to speak and identified herself as the author of the letter regarding the dead trees. She thanked the applicant for committing to replace the trees, and asked that the other recommendations from the Urban Forestry Office be added to the plan.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 83-D-022-04 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 DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for place of worship, private school of general education and telecommunications facilities to permit increase in enrollment and site modifications including columbarium. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (Admin. moved from 10/20/09 and 12/8/09 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 January 13, 2010; and

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

1. The applicant is the owner of the property.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 the Dranesville United Methodist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 1089 Liberty Meeting Court (8.11 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Dewberry & Davis LLC, dated April 16, 2009, as revised through November 10, 2009, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Upon issuance of a new Non-Residential Use Permit (Non-RUP), the maximum daily enrollment for the private school of general education shall not exceed 99 children.
6. The number of employees associated with the private school of general education shall be limited to a maximum of fifteen (15) at any one time.
7. Seating in the church sanctuary shall be limited to a maximum of 400 seats.
8. All parking shall be on site, as shown on the special permit plat.
9. The hours of operation for the private school of general education shall be limited to Monday – Friday, 8:30 a.m. to 3:30 p.m.
10. Barrier requirements shall be waived along all lot lines. The transitional screening requirement shall be modified along the northern lot line as depicted on the special permit amendment plat. To the extent feasible, given the location of existing graves, Transitional Screening 1 shall be provided along the eastern portion of the cemetery to screen the dwelling on Tax Maps 6-4 ((1)) 69A and 69B from the proposed Phase III addition to the church and from the columbarium and along the western portion of the site to screen the dwellings on Tax Maps 6-4 ((14)) 2 and 3 from the telecommunication equipment building prior to approval of final building inspections for the addition or columbarium, whichever occurs first. Screening shall be provided along the southern lot lines of Lots 66B and 70A if determined necessary by the Forest Conservation Branch. The transitional screening plantings shall include large evergreen trees with an ultimate height of 40 feet and a minimum height of 10-12 feet tall at the time of planting and medium evergreen trees with an ultimate height of 20-40 feet and a minimum of 6-8 feet tall at the time of planting. The minimum height of the trees at the time of planting shall apply only to the landscaping to be installed. The exact number, size and species of landscaping materials shall be determined by the Forest Conservation Branch, Department of Public Works and Environmental Services (DPWES). All dead, dying or diseased plantings in the transitional screening yards shall be replaced in consultation with the Forest Conservation Branch.

Existing vegetation shall be preserved and maintained along the lot line and shall satisfy the requirements of transitional screening.

11. A Tree Preservation Plan and Narrative shall be submitted as part of the first and all subsequent plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved located within 25 feet to either side of the limits of disturbance. The tree preservation plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the erosion and sediment control sheets, as may be modified by the "Root Pruning" development condition below. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

Root pruning shall take place as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the plan submission. The details for these treatments shall

be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
12. 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.
 13. The existing structure utilized as an equipment building for the telecommunication facility shall be limited to the storage of telecommunication and carillon equipment only.
 14. If a speaker system is utilized to broadcast the sound of bells, the system must comply with the noise regulation of Chapter 108 of the Code of Virginia. The playing of music shall be prohibited between the hours of 6:00 p.m. and 7:00 a.m.
 15. The existing residential dwelling unit shall be used only for the storage of the telecommunication and carillon equipment, and shall meet all applicable County, State and Federal building, structural and fire codes regulations as determined by DPWES. Access to the building shall be permitted only from within the fenced area located to the east of the building. The interior of the building shall be designed to include a wall that will prohibit access from the doors and windows located on the western façade of the building. The equipment building doors located on the eastern façade, within the fenced area, shall be locked at all times. The gate for the fence shall be locked at all times. The telecommunication equipment shall be located within secured metal cabinets or enclosures inside the equipment building and shall be locked at all times. The equipment cabinets may be unlocked only to perform maintenance and only in the presence of a maintenance worker. Signs shall be posted on the individual equipment cabinets, the doors to the equipment building and the fence that clearly states that they shall be locked at all times.
 16. Notwithstanding what is shown on the special permit amendment plat, the two (2) sheds adjacent to the northeastern lot line shall be removed or relocated from the minimum required front yard to comply with applicable Zoning Ordinance provisions within 150 days of this special permit approval.

These development conditions incorporate and supersede all previous development conditions.

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

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

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

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~ ~ ~ January 13, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF LORD OF LIFE LUTHERAN CHURCH, SPA 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-050 previously approved for church to permit addition of nursery school. Located at 13421 Twin Lakes Dr. on approx. 3.76 ac. of

land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A. (Admin. moved from 10/27/09 at appl. req.) (Deferred from 12/1/09 at appl. req.)

Chairman Ribble noted that the Board had previously approved an intent to defer SPA 95-S-050.

Mr. Hart moved to defer SPA 95-S-050 to January 27, 2010, at 9:00 a.m., at the applicant's request. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ January 13, 2010, Scheduled cases of:

9:30 A.M. LANDSCAPE CONSTRUCTION SERVICES, INC., A 2009-MV-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a storage yard and has erected structures on property in the C-8 District without the approval of a site plan, Building Permits, or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hwy. on approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (Admin. moved from 9/15/09 at appl. req.)

9:30 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hwy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (Admin. moved from 9/15/09 at appl. req.)

Chairman Ribble noted that A 2009-MV-024 and A 2009-MV-025 had been administratively moved to March 31, 2010, at 9:30 a.m., at the appellants' request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said Manuel S. Espina was the property owner, and Landscape Construction Services, Inc. was the tenant.

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~ ~ ~ January 13, 2010, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, and 7/14/09 at appl. req.)

Chairman Ribble noted that appeal A 2007-MA-011 had been administratively moved to March 31, 2010, at 9:30 a.m., at the appellant's request.

In response to a question from Mr. Beard, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that although the appeal had been deferred numerous times over the course of two and a half years, the issues with the condominium association were being worked out.

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Consideration of Acceptance
Application for Appeal filed by Kenneth R. Anderson

In response to a question from Mr. Beard, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had not paid the filing fee for the appeal.

Kenneth Anderson, 2183 Cabots Point Lane, Reston, Virginia, said the fee was a lot of money for an average citizen to pay. He said he had met with Supervisor Catherine Hudgins and asked her to waive the fee. Mr. Anderson explained the appeal, that some common open space in Reston near Lake Thoreau had been denuded without approval from the Director of the Department of Public Works and Environmental Services (DPWES), in direct contradiction to the Code.

Mr. Hart explained that absent some persuasive prior case law, the Board did not have the authority to hear an appeal which had not been timely filed. He noted that in order to file a timely appeal, all components of the appeal had to be filed, including the filing fee. Mr. Hart said the appellant's letter of appeal had been date stamped by the County on December 21, 2009, which was four days after the filing deadline.

In response to a question from Chairman Ribble, Mr. Anderson said he began the process on January 23, 2009, with DPWES. After four months, he was referred to the Department of Planning and Zoning, and it was another four months to get the determination from the Zoning Administration Division.

In response to a question from Chairman Ribble, Ms. Stanfield said the fee to file an appeal changed from \$375 to \$2455 on July 1, 2009.

Mr. Beard agreed that the fee was extremely high, but that it did not change fact that the fee had not been paid.

Ms. Gibb suggested that the appellant enlist the services of an attorney who was familiar with the Zoning Ordinance to assist him.

In response to a question from Mr. Hart, Ms. Stanfield said they thought Supervisor Hudgins might have waived the fee requirement at the Board of Supervisors meeting on January 12, 2010, but she had not.

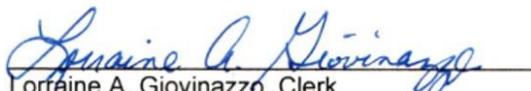
Mr. Hart moved to not accept the appeal application filed by Kenneth R. Anderson. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:55 a.m.

Minutes by: Suzanne L. Frazier

Approved on: October 8, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, January 27, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Norman P. Byers; Nancy E. Gibb; Paul W. Hammack, Jr.; James R. Hart; and Thomas Smith.

Chairman Ribble called the meeting to order at 9:01 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ January 27, 2010, Scheduled case of:

9:00 A.M. KARL & CAROL STILLER, SP 2009-BR-103 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.9 ft. from rear lot line. Located at 10714 John Turley Pl. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-1 ((6)) 365.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Carol Stiller, 10714 John Turley Place, Fairfax, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. She said staff recommended approval of the application subject to adoption of the proposed development conditions.

Ms. Stiller presented the special permit request as outlined in the statement of justification submitted with the application. She wanted to replace the current deck, which was very old and falling apart, and extend it out four feet further.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-BR-103 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KARL & CAROL STILLER, SP 2009-BR-103 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.9 ft. from rear lot line. Located at 10714 John Turley Pl. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-1 ((6)) 365. 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 27, 2010; and

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

1. The applicants are the owners of the property.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by Larry N. Scartz, Scartz Surveys, dated August 21, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,590 square feet existing + 3,885 (150%) = 6,475 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ January 27, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF THE VIENNA CONGREGATION OF JEHOVAH'S WITNESSES AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 84-D-064 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-D-064 previously approved for a church to permit the addition of a telecommunications facility. Located at 1580 Beulah Rd. on approx. 1.94 ac. of land zoned R-1. Dranesville District. Tax Map 28-1 ((1)) 3A.

Chairman Ribble noted that SPA 84-D-064 had been administratively moved to March 10, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 27, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF LORD OF LIFE LUTHERAN CHURCH, SPA 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-050 previously approved for church to permit addition of nursery school. Located at 13421 Twin Lakes Dr. on approx. 3.76 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A. (Admin. moved from 10/27/09 at appl. req.) (Deferred from 12/1/09 and 1/13/10 at appl. req.)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that one of the trustees listed on the affidavit represents the adverse parties in two cases that Mr. Hart's firm is engaged in, but indicated he did not believe his ability to participate in the case would be affected.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Sarah E. Hall, the applicant's agent, 4020 University Drive, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. She said staff recommended approval of the application, subject to adoption of the proposed development conditions.

Ms. Hall presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that she had met with the Little Rocky Run Community Association, and received their endorsement of the nursery school addition.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 95-S-050 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 LORD OF LIFE LUTHERAN CHURCH, SPA 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-050 previously approved for church to permit addition of nursery school. Located at 13421 Twin Lakes Dr. on approx. 3.76 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A. (Admin. moved from 10/27/09 at appl. req.) (Deferred from 12/1/09 and 1/13/10 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2010; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-C and W-S.
3. The area of the lot is 3.76 acres.
4. The only construction that is contemplated is the 2,499 square feet for the playground; other interior modifications only.
5. The applicant has done a good job with regard to traffic mitigation.
6. The hours are 9:00 a.m. to 2:00 p.m., with children under 5 being dismissed at 1:00 p.m.
7. The staff recommends 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 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 Lord of Life Lutheran Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 13421 Twin Lakes Drive, 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 amendment plat prepared by Matthew K. Koirtyohann, P.E., Urban, Ltd., dated May 29, 2009 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 the approved special permit amendment (SPA) plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main area of worship shall not exceed 300.
6. The total maximum daily enrollment of children in the nursery school shall not exceed 118.
7. The maximum number of employees on site at any one time for the nursery school shall be limited to 15.
8. Prior to the issuance of a Non-RUP for the nursery school, a play area as depicted on the SPA Plat shall be constructed.
9. The maximum hours of operation for the nursery school shall be limited to 9:00 a.m. – 2:00 p.m., Monday through Friday.
10. Parking shall be provided as depicted on the special permit amendment plat, and shall consist of a minimum of 94 parking spaces. All parking shall be on site.
11. To the maximum extent possible, twenty-five feet of existing vegetation shall be maintained and supplemented along the Twin Lakes Drive frontage of the site and shall satisfy Transitional Screening 1. To the maximum extent possible, existing vegetation shall be used in order to satisfy the transitional screening requirement (Transitional Screening 1) along the southern property line.

A landscape plan shall be submitted for approval to the Urban Forest Management Division (UFMD) at the time of site plan review detailing the size and type of plantings to be provided.

Interior parking lot landscaping shall be provided as shown on the special permit plat. Tree species with large canopy coverage should be provided in the parking lot in order to increase shade. UFMD may require substitutions of suitable plant materials instead of those shown on the plant list.

All vegetation shall be maintained in good condition and any dead or dying vegetation shall be replaced as determined by UFMD.

12. The barrier requirement shall be waived along all lot lines.
13. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be substantially in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with DPWES. These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DPWES, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DPWES.

14. Limits of clearing and grading shall be as shown on the special permit amendment plat and shall be subject to review and approval by UFMD. Best efforts shall be used to design the SWM/BMP facility so as to minimize its size and to preserve to the maximum extent possible tree save area along in addition to that shown by the limits of clearing and grading on the plat.
15. A tree preservation/tree replacement plan shall be reviewed and approved by UFMD prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of existing mature trees. If it is determined by UFMD to be necessary to remove any trees previously designated to be preserved in order to relocate utility lines, trails, etc, that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by UFMD may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on the site by UFMD, then the applicant may elect to replace such trees according to the directions of UFMD, pursuant to the PFM.
16. A geotechnical engineering study shall be provided, if deemed necessary by DPWES and the recommendations of DPWES shall be implemented.
17. Stormwater Best Management Practices (BMPs) shall be provided as determined by DPWES at time of site plan approval in accordance with the provisions of the Water Supply Overlay District (WSPOD) of the Zoning Ordinance.

The applicant shall construct the proposed stormwater management pond during the initial land-disturbing phase to provide for runoff and sediment discharge.

18. Right-of-way to 26 feet from the centerline of Twin Lakes Drive shall be dedicated for public street purposes. The applicant shall provide all ancillary easements, including a sidewalk easement, which may be necessary to facilitate the future (re)construction of Twin Lakes Drive at the time of such (re)construction.
19. A right turn deceleration lane shall be provided on Twin Lakes Drive and shall be designed and constructed to a standard as deemed acceptable by DPWES and the Virginia Department of Transportation (VDOT).
20. Ancillary easements along Union Mill Road shall be provided in order to facilitate future road improvements at the time such improvements are undertaken.
21. Adequate sight distance shall be provided as determined by DPWES and VDOT.
22. Prior to issuance of a Non-RUP for the nursery school, the applicant shall restripe Union Mill Road within the existing pavement for the extension of the existing southbound left turn lane to a length as determined by VDOT.
23. The small triangular portion of the subject property located on the north side of Twin Lakes Road shall be used for open space only; however, it may be transferred to the Fairfax County Park Authority without amendment to this special permit.
24. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
25. All signs on the property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance. Signs shall be located as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.
26. The applicant shall implement any drainage control measures to prevent exacerbation of the existing drainage and siltation problems as required by DPWES.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ January 27, 2010, Scheduled case of:

9:30 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09 and 10/27/09 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to May 26, 2010, at 9:30 a.m., at the applicant's request.

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~ ~ ~ January 27, 2010, Scheduled case of:

9:30 A.M. GARY G. SLACK, A 2009-HM-041 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the PRC District in violation of Zoning Ordinance provisions. Located at 11082 Thrush Ridge Rd. on approx. 6,640 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-3 ((16)) 7. (Admin. Moved from 1/27/10 at appl. req.)

Chairman Ribble noted that A 2009-HM-041 had been administratively moved to March 3, 2010, at 9:30 a.m., at the applicant's request.

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~ ~ ~ January 27, 2010, Scheduled case of:

9:30 A.M. CONSTANTINE SARAkinis, A 2009-MA-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12. (Admin. moved from 5/19/09) (Admin. moved from 6/2/09 and 9/22/09 at appl. req.) (Continued from 1/6/10)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

William B. Lawson, Jr., identified himself as counsel representing the appellant.

Cathy Belgin, Senior Assistant to the Zoning Administrator, presented staff's position as set forth in a memorandum, dated January 15, 2010. She provided a brief history of the property, noting that a complaint had been filed in early 2007, alleging at least two separate apartment units in the dwelling. Upon inspection, the house was under construction for an approved addition, and only one tenant occupied the home. Ms. Belgin said the complaint was closed in March 2007, after a second inspection revealed that a stove and oven exhaust fan had been removed. In September 2008, Zoning Enforcement received another complaint of multiple dwelling units in the residence, resulting in another inspection. Upon examination in December 2008, substantial construction was identified that was not in accordance with the previously approved building permits and floor plans for the proposed addition, with each living area containing its own kitchen facilities and separate exterior entrances. Ms. Belgin stated that a Notice of Violation (NOV) was subsequently issued in January 2009, for maintaining three complete and separate dwelling units in a single-family property, and the appellant was instructed to remove all facilities which served to establish more than one dwelling unit, and also to maintain only one kitchen in the residence.

Ms. Belgin said staff had discussed with the appellant two options to remedy the violation; either removing two of the three kitchens and the partitions and locked doors which separate the units, or to remove one of the kitchens and obtain a special permit for an accessory dwelling unit (ADU). She pointed out that the appellant did apply for a special permit, and this application had been denied on November 17, 2009.

In conclusion, Ms. Belgin said it had been clearly demonstrated through zoning inspections that the appellant was maintaining two separate dwelling units on the property, and asked that the Board uphold the determination of the Zoning Administrator.

Mr. Hart noted that the appeal stated the second kitchen was present during the zoning inspector's 2007 inspection, and was not cited for any violations. He asked if there was a definitive timeline for when the kitchens were installed.

Peggy Delean, Property Maintenance and Zoning Inspector, said that Rebecca Collingsworth, who performed that inspection, was not currently available, but noted that the Board had been given a copy of her inspection report. She said that at the time of the inspection, the house was not totally occupied, and a lot of the rooms were void of furniture. In contrast, Ms. Delean said that when the house was inspected in 2009, the entire house was occupied, there were three separate dwelling units with sleeping, bathing, and living areas in each unit, and there were microwave ovens in both kitchens, which were totally complete.

In response to a question from Mr. Hart, Ms. Belgin stated that the question before the Board was whether on January 30, 2009, the appellant's residence contained three separate dwelling units.

William B. Lawson, Jr., the appellant's agent, 6045 Wilson Boulevard, Arlington, Virginia, presented the arguments forming the basis for the appeal. He said there was no presumption of guilt when an NOV is issued, and the Board's job was to determine if the County was correct in issuing the NOV. Mr. Lawson stated there were two reasons to reverse the Zoning Administrator. First, an inspector had already examined the property and deemed it to be acceptable. Second, the County staff cannot, by interpretation, extend the Ordinance beyond its plain meaning.

Mr. Lawson disagreed with Ms. Belgin, stating that when the house was inspected by Ms. Collingsworth on February 1 and February 28, 2007, it was not under construction, and the ADU was occupied by a tenant who had been there for many years. He stated that Ms. Collingsworth saw the entire house, including the kitchen areas, took pictures of the residence, and said she needed to consult with others. He handed out copies of the pictures to the Board, noting that the pictures clearly showed the kitchens, which were approved in 2007, and were issued an NOV in 2008. In summary, Mr. Lawson said there was no violation of the Zoning Ordinance, reading the definition of an ADU into the record, and asked the Board to overturn the determination of the Zoning Administrator.

In response to a question from Mr. Hart, Mr. Lawson stated that the 2007 determination made by Ms. Collingsworth was not made in writing, i.e., there was no documentation, as per the County's policy. He also noted that the appellant had received a telephone call from Ms. Collingsworth stating that the current two kitchen configuration was fine.

Mr. Hart and Mr. Lawson discussed the building permit application and architectural drawings previous submitted. Mr. Lawson said the storage area shown on page two of the drawings was a mistake by the architect, noting that it was actually the second kitchen. He continued that it was approved by Ms. Collingsworth when she did her inspection as the construction was finishing up.

Mr. Hart and Mr. Lawson then reviewed the layout of the residence, including the two kitchens, a kitchen-like area, three bedrooms, five closets, and the location of the outside doors.

In response to a question from Mr. Smith, Mr. Lawson stated that the way the Zoning Ordinance was administered in 2007, this layout was perfectly acceptable and consistent with the plain meaning of the Ordinance. He said staff had reinterpreted the Ordinance since then.

In response to a question from Mr. Beard, Mr. Lawson said the County now wanted the appellant to remove the cabinets, sinks, countertops, refrigerator, and freezer.

Board members, Mr. Lawson, and Ms. Stanfield discussed the history of the ADU requirement to have an illegal accessory kitchen removed.

Chairman Ribble called for speakers.

Louann Wheeler, 3217 Hallran Road, Falls Church, Virginia, said she lived next door to the appellant, and spoke in opposition to the appeal. She complained about the off-street parking problems caused by the numerous people living at the house, and said there had been several loud late night parties there.

Constantine Sarakinis, the appellant, 3215 Hallran Road, Falls Church, Virginia, said he bought the property in October 2006, and applied for building permits to have the home renovated, noting that there was already a tenant living in an ADU in the residence. He said all construction was completed by February 28, 2007, and final inspection had been obtained and approved. On this same day, pictures were taken by Ms. Collingsworth, with her only comment being that a closet needed to be altered to an interior door for better access to the area. Mr. Sarakinis said Ms. Collingsworth visited two weeks later, again took pictures, and deemed the residence to be up to Code, although it was only a verbal affirmation. He said one year later, Ms. Delean visited the residence and, where no changes had been made, deemed it to be in violation of the Code. In conclusion, he asked that the Board overturn the determination of the Zoning Administrator.

Irene Sarakinis, mother of the appellant, spoke in support of the appeal. She said the accusations regarding loud parties were totally false, noting that her son and the residents of the house were always respectful.

Ms. Stanfield said that regardless of when the house was under construction, the ADU was not shown on the building plans. She asked the Board to uphold the Zoning Administrator's determination.

In rebuttal, Mr. Lawson said that during 2007, he had numerous clients who had been issued NOVs for illegal ADUs, where he had gone with County staff out to these residences to have only the stoves or ovens removed. He said that was all his clients were instructed to do.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He mentioned the following findings of fact and conclusions of law: The issues were extremely difficult for the Board to decide. He did not think this dilemma would end that day, or that the proceedings for this particular situation would that day, even if the Board was done with it. Mr. Hart felt the complexity of the discussion, and the confusion about the history confirms that a Zoning Ordinance amendment on some of the definitions to clarify more objectively what someone can and cannot do might be helpful. He continued that there were many homes which had a kitchen-like area, places in a house where someone could sleep and eat and take a shower with maybe a wet bar and microwave, and these would be very fact-specific situations, i.e., what is a wet bar in Great Falls may look more like a rooming house in Annandale or Springfield. Mr. Hart was not sure where the County would draw those lines, but said the Board had to go by the Ordinance that they have. In his view, this case, at least for the purposes of the appeal that day, turned on the wording in Sect. 20-300, the definition of dwelling unit. The first sentence of that definition stated that a dwelling unit was one or more rooms in a residential building or residential portion of a building, which were arranged, designed, used, or intended for use as a complete independent living facility, which included permanent provisions for living, sleeping,

eating, cooking, and sanitation. He said on the record before them, at least as of January 30, 2009, which he felt was the operative date, which was the date of the violation letter, it appeared that the downstairs of the house had been arranged in such a way that there were separate dwelling units at either end of the downstairs. Each of them had a bedroom, kitchen, bathroom, and a door to the outside. Mr. Hart said there may not have been a tenant at that moment, and there may not have been a lock on the door between the apartment and the rest of the house, but to the extent that those spaces were built and arranged that way, he felt they fell within the definition of a dwelling unit.

Mr. Hart felt there were some other tricky issues, which were suggested in passing by the violation letter, but which the Board need not discuss that morning, regarding at what point the violation cleared. He said counsel suggested, with respect to the apartment that was going to be the special permit apartment, where the Board denied the special permit, that the issue had gone away, because that kitchen had been removed. Mr. Hart did not think that was necessarily the case, because the appeal before the Board was about whether there were three dwelling units on January 30, 2009, not whether something had happened since. He said if there was not some agreement between Enforcement and the County Attorney on the one side and the appellant on the other, there may be a court proceeding about whether the appellant had complied or not with the letter or what else needed to be done. Mr. Hart stated that whether that had resulted in another appeal to the Board or another court case, he did not know, but he thought it was really up to a judge to decide whether the violations had been cleared or not, or at what stage along the way a violation was cleared. He questioned whether you have to have all of these things, i.e., living, eating, sleeping, cooking, and sanitation, and then if the stove was removed, does that defeat the second dwelling unit. Under this definition, Mr. Hart believed it did.

Mr. Hart said that up until a few years ago, that was more or less consistent with his understanding of how ADU cases happened. He said there has been a more aggressive approach to them since then, but he did not believe this case “tees up” for the Board the question of, is the removal of the stove enough, or do you have to pull the cabinets out. Mr. Hart noted that there are cabinets in many rooms in many houses, so that you have to look at this as a package. It was not just the question of whether someone had a cabinet, but whether there was a space arranged for living, cooking, and sleeping, with a door, and could function as independent apartments within the house.

Mr. Hart felt at least for the purpose of the question before the Board, they had to deal with the issue of the 2007 events, noting that the record was a little sketchy. He said there was really not a written determination in 2007 as to exactly what happened or what the inspector looked at. The inspector was not present today and, unfortunately, he did not feel it helped the appellant, at least for the purposes of showing the Board that the Zoning Administrator was plainly wrong. Mr. Hart said the Board did have the building permits and accompanying drawings in the staff report, and from what was before the Board, there did not appear to have been an approval for a kitchen, or even the configuration of the rooms on either end of the residence. He noted there had been some testimony about the architect who did not provide the right information, but said both of the building permit applications stated near the bottom, and he quoted, “I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, Zoning Ordinance, and other applicable laws and regulations which relate to the property.” Mr. Hart wondered if that statement was satisfied considering the plans showed an existing bathroom or kitchen in a store room and a different configuration of the rooms at the left end of the first floor. He said that based on the record before the Board, he was satisfied that what was there on January 2009 was not the same as what was on the approved drawings. Mr. Hart did not feel the appellant met the burden of showing exactly what was approved in 2007 and whether it included the second or third kitchens. He agreed that it was not necessary for one to have a document with a written determination to begin an appeal, noting that in one Virginia Supreme Court case, the Zoning Administrator answered a question during the public hearing, and the Court subsequently concluded that the 30-day time clock started with that question and answer. Mr. Hart said the Supreme Court had recognized that an unwritten determination, under the right circumstances, could be appealable. He reiterated, though, based on the record before the Board, the record was not specific enough to document exactly what Ms. Collingsworth looked at, approved, or determined was in compliance. Mr. Hart said the paperwork appeared to include Department of Public Works and Environmental Services building inspections, an e-mail to Ms. Collingsworth, and a note from Ms. Collingsworth on a card asking to please call her, but he did not feel that it rose to the level of an affirmative determination that the house may have two or three kitchens, or that what was shown on the plans had to be built, or that the other events that happened somehow were not subsumed within previous approvals.

In summary, Mr. Hart felt the events that occurred after January 30, 2009 were not necessarily dispositive of what the question was before the Board, i.e., was the Zoning Administrator correct that there were three dwelling units on January 30, 2009. Going by the plain language of the Ordinance and the documentation presented, the rooms had been laid out to be separate dwelling units within this definition. Mr. Hart said for those reasons, the January 30, 2009 determination should be upheld.

Mr. Beard seconded the motion. He said that while he was sympathetic to the neighbors, he thought they should understand that even with upholding the Zoning Administrator, it will not necessarily change the situation there. Mr. Beard stated that the appellant might lose his current tenants, because he is no longer able to avail them of the conveniences which were in place, but he could replace them, noting that the residence is entitled to have four unrelated individuals living there. He felt the Board's objective was to define the narrow issue of the appellant maintaining separate dwelling units, and how that came into play on January 30, 2009.

The motion carried by a vote of 7-0.

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~ ~ ~ January 27, 2010, Scheduled case of:

9:30 A.M. KEVIN M. FERGUSON AND C. NICOLE FERGUSON, A 2009-MV-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard on property in the R-E District in violation of Zoning Ordinance provisions. Located at 7408 Old Spring Dr. on approx. 1.29 ac. of land zoned R-E. Mount Vernon District. Tax Map 118-1 ((2)) 37. (Admin. moved from 10/6/09 at appl. req.) (Continued from 12/8/09)

Chairman Ribble called the appellants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Dominic A. Pilli identified himself as counsel representing the appellants.

Brian Parsons, Senior Assistant to the Zoning Administrator, presented staff's position as set forth in a memorandum dated January 15, 2010. He gave a brief history of the property, noting that it had been the subject of two previous zoning violation complaints, one in 2004 and 2005, each for operating a business in a residential district and parking commercial vehicles on the property. Both had been resolved by the property owner through voluntary compliance. Mr. Parsons said the current violation was the result of an inspection conducted on May 19, 2009, in response to a neighbor's complaint about the large number of cars parked on the appellants' property. He said the inspector noted six nonoperational vehicles parked in the front, rear, and side yards of the appeal property, resulting in a Notice of Violation (NOV) which was on June 1, 2009, for establishing a junkyard and storage yard on residential property. Mr. Parsons said the appellants filed an appeal of the NOV on July 1, 2009. He noted that staff received a letter from the appellants' attorney on September 8, 2009, requesting a deferral of the appeal hearing because the appellants needed additional time to resolve the zoning violations. The hearing was moved to December 8, 2009, based on the attorney's assurance that the violation would be resolved, and no further postponement would be requested.

Mr. Parsons stated that a zoning inspector visited the site on November 18, 2009, and determined that some progress had been made, but that the property still contained inoperable vehicles, including two new vehicles parked in the woods behind the dwelling. He said that No Trespassing signs had been posted on the property, since the inspector's last visit so that he could not cross onto the property to take pictures of the new vehicles. Mr. Parsons stated that Zoning Administration staff inspected the property on January 14, 2010, and noted four of the same inoperable vehicles on the property from the November 18, 2009, inspection. He said that an inspector visited the property the day before this hearing, took photographs, and ran license plates, but that they would let the inspector address the Board on that matter.

Mr. Parsons said it was the Zoning Administrator's position that a junkyard and storage yard had been established on the property, which was not allowed by right, special permit, or special exception. He asked

that the Board uphold the Zoning Administrator's determination, and direct the appellant to remove the inoperative vehicles immediately.

In response to a question from Mr. Beard, Charles Cohenaur, Senior Zoning Inspector, stated he could not determine whether some of the vehicles had valid license plates or a valid inspection stickers, because they were beyond his range of view.

Ms. Gibb and Mr. Parsons discussed the definition of an automobile graveyard, with Mr. Parsons noting that there was no specific definition for it in the Zoning Ordinance, but that it was covered under junkyard. However, Ms. Gibb said she could not find the definition of an inoperable vehicle in the automobile graveyard provisions. Mr. Cohenaur explained that vehicles which cannot be operated on the street, i.e., they do not have a valid license plate or inspection sticker, are considered inoperable under the Code. Ms. Stanfield directed Ms. Gibb's attention to Article 10, where it states that an inoperable vehicle is permissible, provided it is kept within a fully-enclosed building or structure or kept completely screened or shielded from view.

Mr. Hart questioned the definition of an abandoned vehicle, asking if there was anything other than dead tags that staff was relying on to determine that the cars were abandoned. Mr. Cohenaur stated that the length of time a vehicle is left with dead tags was a factor, noting that one of the vehicles had been in the woods for over six months with dead tags.

Mr. Hart and Mr. Cohenaur discussed the definition of a storage yard, with Mr. Cohenaur explaining that if the vehicle tags had expired, the vehicles would have to be sheltered from view. He also said that the length of time the tags were expired was a deciding factor, i.e., one week versus one year. However, Mr. Hart stated that the Board had to go by what the Ordinance says, and he saw no such time limit reference in the Ordinance.

In response to a question from Mr. Hammack, Mr. Cohenaur said the definition of an inoperative vehicle was located in Section 110-3-3 of the County Code.

Mr. Pilli presented the arguments forming the basis for the appeal. He did not believe the County had met the burden of proof in showing that the appellants had a storage yard and junkyard on their property. Mr. Pilli gave a brief history of the appeal, noting that it began with a neighbor's complaint, who has since moved from the neighborhood. He discussed the vehicles listed in the staff report as being inoperable, stating that only two vehicles on the property from the original complaint last June were still at issue today. Mr. Pilli said the white Buick was recently given to Mr. Ferguson by his mother upon her death, and was still unlicensed on the property, because he was waiting for probate papers from the Court to get it tagged. He said the computer coded key to the black Honda Civic had been lost, and the appellants were awaiting notification from Honda to get keys made for it, but pointed out that it is an operable vehicle. Since the County had not met the burden of proof, Mr. Pilli respectfully requested that the Board overturn the determination of the Zoning Administrator.

In response to a question from Ms. Gibb, Mr. Pilli said the two vehicles he mentioned previously did not have current inspection stickers because the one had no keys, so it could not be moved, and the second was awaiting transfer of ownership from the probate court.

Staff, the appellant, and his agent discussed the status of the six vehicles, which were cited in the staff report, one by one. Mr. Pilli noted that the sixth vehicle, a Nissan, was under a tarp, and regardless of its condition, by Ordinance definition, was considered legal.

Mr. Hart and Mr. Cohenaur discussed the County's lack of access to the backyard of the appellants' property. Mr. Cohenaur said, while on an adjoining property, he saw a box truck and two trailers in the backyard. He continued that the initial violation was not with the box truck or trailers.

In response to Ms. Gibb's question concerning how long it would take to bring the remaining vehicles into compliance, Mr. Pilli suggested sixty days.

Mr. Smith, Mr. Pilli, and Mr. Ferguson revisited the issue of inoperable vehicles currently on the property. Mr. Ferguson stated that there were only three, and that one of those was under a tarp.

In response to questions from Mr. Beard and Mr. Hammack, Mr. Cohenaur said that a custom car cover was necessary to conceal a vehicle. When asked by Mr. Hammack whether that requirement was in the Code, Mr. Cohenaur said it was not.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to overturn the determination of the Zoning Administrator, with the following comments and reasons. Staff had worked hard on this case, and had been out to the site numerous times, but was stuck with the Zoning Ordinance and its definitions, which were difficult to work with. The problem was having vehicles on a property did not really fit in the definition of a storage yard or junkyard. She said this had come up with a lot of people living on one property. While it does not look good to have all those cars there, the Ordinance provisions do not fit very well. When Ms. Gibb initially read the staff report, she did not have the definition of an automobile graveyard in front of her, and hoped a definition would make sense of all this. The definition of a junkyard alone did not really seem to apply, and she read the definition. She also noted that a junkyard was inclusive of an automobile graveyard, which was defined as any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind incapable of being operated were placed, located, or found. Ms. Gibb stated that the staff report provided the list of vehicles, as of June 1, 2009, the date of the NOV, and which the County says were incapable of being operated. According to the zoning inspector, incapable of being operated means without a license, registration, or a valid inspection. She said although there was conflicting and/or confusing testimony, it appeared there were five vehicles, plus one under a tarp. Ms. Gibb said the tarp element was relevant, because under the Zoning Ordinance, you are allowed to have inoperable motor vehicles, provided such vehicles are kept within a fully-enclosed building or structure, or are kept completely screened or shielded from view, which means under a cover. Therefore, Ms. Gibb found that there were only five inoperative vehicles on the property.

Regarding the appellants having a storage yard on their property, Ms. Gibb did not think the storage yard came into play. She referenced testimony about vehicles currently being in the backyard, but not when the NOV was issued.

Mr. Beard seconded the motion.

Mr. Hart said he agreed with some of Ms. Gibb's motion, but had reached a different conclusion on part of it. He did not think the appellants were housing a junkyard, but for other reasons. His reading of the definition of an automobile graveyard dictated that five vehicles would not qualify, and that you would need more than five. He said he was not persuaded that there were six. Mr. Hart stated that it could still be a junkyard with five vehicles under other circumstances, but to his way of thinking, the operative term was abandonment, which he felt was a tricky concept. He was not sure that standing alone, the absence of current tags or registration on a car constituted abandonment. Mr. Hart reiterated the reasons why some of the vehicles were not current with their tags, i.e., awaiting documentation from the probate court and the computer key issue, which he felt were plausible and reasonable. He said based on the record before the Board, he did not believe the terms inoperable and abandoned were necessarily equivalent, stating that abandonment had an element of intent. But going on the plain words of the Ordinance, Mr. Hart said he was not sure any of the vehicles had been abandoned, even if the owner had procrastinated or delayed to a point where former neighbors were complaining. He continued that if they were not abandoned, it was not a junkyard.

Mr. Hart felt it qualified as a storage yard because the definition in the Zoning Ordinance was quite broad, and not limited to a specific number of vehicles. As a threshold matter, he said it fit the definition of a storage yard in that it was a space outside a building for the storage or keeping of vehicles. Mr. Hart said it would be a permitted accessory use under Subsection 13, if it was within a fully-enclosed building or structure, or kept completely screened or shielded from view in accordance with Chapter 110 of the Code, which it was not. Therefore, since it did meet the definition of a storage yard, he said he would not support the motion.

Mr. Smith stated his agreement with Mr. Hart's assessment, noting that he would not support the motion.

Chairman Ribble called for the vote. The motion carried by a vote of 4-3. Mr. Byers, Mr. Smith, and Mr. Hart voted against the motion.

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As there was no other business to come before the Board, the meeting was adjourned at 12:34 p.m.

Minutes by: Suzanne L. Frazier

Approved on: September 21, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, February 24, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH & NEW CINGULAR WIRELESS PCS, LLC d.b.a. AT&T MOBILITY, SPA 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 2004-MV-025 previously approved for a church and telecommunications facility to permit site modifications. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (In association with SEA 2004-MV-001.)

Chairman Ribble noted that SPA 2004-MV-025 had been administratively moved to March 31, 2010, at 9:00 a.m. at the applicant's request.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. GARY R. CHURCH AND BETTY H. CHURCH, SP 2009-SP-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from front lot line. Located at 8752 Center Rd. on approx. 10,971 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((28)) 2.

Chairman Ribble noted that SP 2009-SP-110 had been withdrawn.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. BRITTANY L. VO, DDS, SPA 80-D-035-04 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for home professional office to permit a 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. (Withdrawn, subsequently reactivated.)

Chairman Ribble noted that there was a deferral request by the applicant for SPA 80-D-035-04.

Chairman Ribble called for a motion.

Mr. Hammack moved to defer SPA 80-D-035-04 to March 10, 2010, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. FAIRFAX YACHT CLUB, SPA 83-V-007 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-007 previously approved for private marina to permit increase in land area, modification of development conditions and site modifications. Located at 10721 Old Colchester Rd. on approx. 9.15 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-1 ((2)) (A) 1-20; 117-1 ((2)) (B) 1-38; 117-1 ((2)) (C) 1-39; 117-1 ((2)) (D) 1-37; and 117-1 ((2)) (E) 1-36.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Harry D. Croft, 6610 Maisail Court, Burke, Virginia, Commodore and agent for the Fairfax Yacht Club, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions, and recommended approval.

Mr. Croft presented the special permit amendment request as outlined in the statement of justification submitted with the application. The applicant did not learn there was a discrepancy in the dock lengths until they applied for a building permit to replace the original docks. Staff advised them that both the existing and proposed docks exceeded the maximum 240-foot length as designated in the original special use permit. He said they were replacing the exact same footprint they had for 24 years. They were floating docks, and there was no land disturbance activity. Mr. Croft said they sought to become a clean marina with regard to the oil tank. In compliance with the County Fire Marshal's instructions, they would utilize the shed to store the flammables. He noted that the club provided \$100,000 plus a year in property taxes, and had virtually no encumbrance on the County, as it was practically a self-contained unit. Mr. Croft said the club had been a good neighbor for 24 years with everyone; the property had been maintained under the original special use permit; it was a jewel over the Occoquan, and they wanted to continue that way.

In response to Mr. Hammack's question concerning the development conditions, Mr. Croft said they had the chance to work with staff, and they were in agreement with all of them.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 83-V-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

FAIRFAX YACHT CLUB, SPA 83-V-007 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-007 previously approved for private marina to permit increase in land area, modification of development conditions and site modifications. Located at 10721 Old Colchester Rd. on approx. 9.15 ac. of land zoned R-E. Mt. Vernon District. Tax Map 117-1 ((2)) (A) 1-20; 117-1 ((2)) (B) 1-38; 117-1 ((2)) (C) 1-39; 117-1 ((2)) (D) 1-37; and 117-1 ((2)) (E) 1-36. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2010; 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 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, Fairfax Yacht Club, Inc., and is not transferable without further action of this Board, and is for the location at 10721 Old Colchester Road indicated on the application and is not transferable to other land.
2. This approval is granted for the uses indicated on the plans submitted with this application indicated on the special permit plat prepared by Target Surveys, Inc. dated October 1, 2009, revised through January 27, 2010, except as qualified below and approved with this application.
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 shall be from 6:00 a.m. to 12:00 midnight seven (7) days a week. Boat owners shall be allowed to spend the night on their boats occasionally, but not on a permanent basis.
5. The total number of members shall be two hundred fifty-five (255) and there shall be no associate members.
6. The total number of parking spaces shall be ninety-five (95).
7. The number of boat slips shall be restricted to one hundred seventy-five (175).
8. The maximum number of employees shall be ten (10).
9. With the exception of the 20' x 25' dinghy storage rack, there shall be no on-site dry-dock boat storage, no gasoline pumps, no boat ramps, nor any other public service facility.
10. No more than fifteen (15) small watercraft may be parked in the floating watercraft parking area at any one time.
11. No clearing shall be allowed within fifty feet (50') of the shore property line except for a minimal area around the proposed building which may be located twenty-five feet (25') from the shore property line and three (3) walkways across the marshland to the piers.
12. Conditions of all State and Federal permits shall be met.
13. No fill or grading shall be allowed within the 100 year floodplain or the Resource Protection Area (RPA).
14. Any exterior lighting and parking lot lights shall be the low 18 to 22 foot high design which directs the light directly downward.
15. The existing trees and vegetation may be substituted for the required Transitional Screening 1 along the northern, southern, and western lot lines provided supplemental screening is provided if it is deemed necessary by Urban Forest Management. A forty foot (40') area along the eastern property line adjacent to the parking lot shall be provided and the existing trees and vegetation shall be supplemented with low evergreen plantings to screen the vehicle lights from the adjacent potential development. The barrier along this property line may be waived until such time as the adjacent property is developed. The requirement for a barrier along the other property lines may be modified. All vegetation shall be maintained in a healthy condition and dead/dying vegetation replaced as necessary to maintain screening.
16. Boardwalks and steps on piles shall be used to provide access from the proposed building down the steep bank and across the marsh to the piers.

17. Notwithstanding that shown on the SPA Plat, all accessory structures shall conform with the requirements of Sect. 10-104 of the Zoning Ordinance, subject to DPWES approval.

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

Under Section 8-014 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the effective date of the special permit unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. THE CHURCH FOR ALL NATIONS, INC., SPA 83-P-057-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a place of worship to permit change in permittee and deletion of land area. Located at 2535 Cedar La. and 8506, 8526 and 8529 Amanda Pl. on approx. 12.38 of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Admin. moved from 12/15/09 at appl. req.) (Deferred from 1/13/10 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, agent for the applicant, reaffirmed the affidavit.

Suzanne Lin, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 83-P-057-05, subject to the proposed development conditions.

In response to questions from Board members Ms. Lin explained the following. There was a condition which would address the historic problems with storm water impacts on the houses on the south of the site. There were regular monitoring inspections, and there were storm water management ponds to the north and south. Concerning the parking situation impacting Thoreau Middle School during the school's sporting events, the proposed use would be less intense, and a development condition was drafted to eliminate the current problematic situation.

In response to Mr. Hammack's question concerning a development condition that reduces the number of seats in the sanctuary to resolve the impact of required parking during church events, Susan C. Langdon, Chief, Special Permit and Variance Branch, noted staff's concern with the site's history; the complaints; and, activities at the site. She said the present applicant would soon build a new church at another location and will move. The new applicant does not foresee the previous parking problems would continue, as it was a much smaller congregation. Ms. Langdon explained the configuration of the proposed parking.

Discussion ensued regarding the parking concerns; water flow circumstances; water retention/dry pond facilities; adverse impact of the previous church; and, merits of this application.

Ms. Strobel, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained the proposals presented to the surrounding parcels and property owners. She gave a brief history of the site and the matter of Parcel 35A. She noted the Korean

Central Presbyterian Church's ministry and situation was quite different from that of the applicant's, and the applicant's congregation was much smaller. She addressed the storm water management and parking issue, offering resolutions. Ms. Strobel noted that the Planning Commission recommended approval, the Korean Central Presbyterian Church supported the application, and staff recommended approval.

Ms. Strobel submitted the applicant's proposed resolutions to cover Mr. Hammack's concerns over the parking situation, and its negative impact on the surrounding commercial businesses.

Chairman Ribble noted the historic and current storm water agreements.

Mr. Hart commented that, although both staff and the Planning Commission recommended approval, it was the Board of Zoning Appeals ultimate responsibility for defining the details and making the final decision on this application. He recalled the property had a history; that there were several contentious public hearings, largely about storm water; and there was a determination that the required storm water facilities were not being maintained. Mr. Hart said part of the BZA's responsibility was to be careful and make sure the development conditions do what they are supposed to do.

Discussion ensued regarding potential future complications with storm water management facilities in the event the land area to the south was not included in this application's approval, and the possibility of or necessity for proffers or development conditions which would address problems of parking, impervious surface, and, storm water drainage.

Chairman Ribble called for speakers in support of the application.

Harriet Epstein, 2602 Dennis Drive, Vienna, Virginia, and Ken Quincy, 8225 Bucknell Drive, Vienna, Virginia, President of the Dunn Loring Woods Civic Association came forward. Although they were not opposed to the application, they had concerns about the south side of the property, storm water management, and parking.

There being no further speakers, Chairman Ribble asked Ms. Strobel if she would like to comment.

Mr. Strobel said she could not disagree with the speakers or the Board's comments, as she thought storm water management was absolutely important. She said the church needed to make sure it would not have an adverse impact by removing the pond. Ms. Strobel said she had been dealing very closely with the matter for a number of months; that she believed there had been a lot of investigation and work; that the applicant must be sure to share all its efforts and staff comments with the Board, so that the Board would feel as comfortable as the applicant.

Chairman Ribble closed the public hearing.

Mr. Byers said a deferral of the decision on SPA 83-P-507-05 would be the most prudent action for the following reasons; storm water management issues; more information be provided to the Board regarding storm water management agreements there had been in the past; the percentage of impervious surface on the current parking and what it would be after adding the 50 additional parking spaces; having the representative for or reviewer of storm water management be present at the next hearing; having the applicant's documentation of its engineer's storm water management review; having further clarification of exactly what might occur on Parcel 35A; and, knowing what the County intended to do if there was no rezoning.

Mr. Byers then moved to defer decision on SPA 83-P-057-05 to March 31, 2010 at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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The meeting recessed at 10:37 a.m., and reconvened at 10:49 a.m.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. MOST REV. PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCESSORS IN OFFICE, ST. BERNADETTE'S CATHOLIC CHURCH/SCHOOL, SPA 78-S-276 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP S-276-78 previously approved for a church and private school of general education to permit addition of nursery school and child care center. Located at 7600 Old Keene Mill Rd. on approx. 24.73 ac. of land zoned R-2 and PDH-3. Braddock District. Tax Map 90-1 ((1)) 1. (Admin. moved from 10/20/09 and 1/6/10 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Reverend Kevin J. Larsen, Pastor and agent for the church, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff believed the subject application was in conformance with the Comprehensive Plan and all applicable Zoning Ordinance provisions. Ffor the reasons outlined in the staff report, staff recommended approval of SPA 78-S-276 with the implementation of the proposed development conditions.

Father Larsen presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church and school were in existence for 50 years without a nursery school or childcare center, which were now needed. There would be no expansion of their buildings, and they would continue to operate within the current footprint. Father Larsen said their operations were very well managed.

Chairman Ribble called for speakers.

Patricia V. Beeks, 6420 Stonehaven Court, Clifton, Virginia, came forward to speak. She said this was a private school of general education and part of the Catholic diocese of Arlington. She noted the need for the pre-school and nursery as many parents have shared with her that they have been on a wait-list for neighboring churches and preschools. She assured that the preschool would not impact the traffic on Old Keen Mill Road. Ms. Beeks said the church was ready to accommodate the two programs. She listed other available amenities of the church, and said the families wanted and supported, financially and otherwise, the proposals. She said of the 58 children currently enrolled, 26 had younger siblings, and potentially the preschool would be filled easily.

In response to Mr. Hart's question, Father Larsen said he agreed with the development conditions, but made one clarification concerning transitional screening. He said there was a power line easement through that part of the property, and Virginia Power had instructed them it was they who did all maintenance.

Mr. Hart then clarified and suggested language for the development condition.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 78-S-276 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOST REV. PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCESSORS IN OFFICE, ST. BERNADETTE'S CATHOLIC CHURCH/SCHOOL, SPA 78-S-276 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP S-276-78 previously approved for a church and private school of general education to permit addition of nursery school and child care center. Located at 7600 Old Keene Mill Rd. on approx. 24.73 ac. of land zoned R-2 and PDH-3. Braddock District. Tax Map 90-

1 ((1)) 1. (Admin. moved from 10/20/09 and 1/6/10 at appl. 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, 2010; 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.
3. The staff report recommends approval.
4. The rationale in the staff report is adopted.
5. This is a fairly modest request.
6. With the development conditions, any impacts are sufficiently mitigated.
7. There are no exterior changes.
8. There are a number of e-mails from the community in support.

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 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, Most Rev. Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his successors in office/ St. Bernadette's Catholic Church/School, and is not transferable without further action of this Board, and is for the location indicated on the application, 7600 Old Keene Mill Road, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William H. Gordon, Associates, dated through June 19, 1980 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 the approved special permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main area of worship shall not exceed 1,324 seats.
6. The maximum total daily enrollment for the private school of general education shall be limited to 540 children, kindergarten through eighth grade.
7. The maximum hours of operation for the private school of general education shall be 7:45 a.m. to 3:00 p.m., Monday through Friday.
8. Staff/teachers for the private school of general education shall not exceed (50) school employees at any one time.
9. The maximum total daily enrollment for the child care center shall be limited to 50 children. All children enrolled in the child care center shall be students in the school of general education.

10. The maximum hours of operation for the child care center shall be 6:45 a.m. to 7:45 a.m., and 2:30 pm to 6:00 pm, Monday through Friday.
11. The maximum total daily enrollment for the nursery school shall be limited to 20 children per session with a maximum of two (2) sessions per day.
12. The maximum hours of operation for the nursery school shall be limited to 8:30 a.m. to 11:15 a.m., and 12:00 p.m. to 2:45 p.m., Monday through Friday.
13. No more than 258 students for the private school of general education shall occupy the designated outdoor recreation area at any one time.
14. The operator of the private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods.
15. Parking shall be provided as depicted on the special permit amendment plat, and shall consist of a minimum of 335 parking spaces. All parking shall be on site.
16. The applicant shall obtain approval of a parking reduction through the Department of Public Works and Environmental Services (DPWES) as required by Sect. 11-106.3 of the Zoning Ordinance, prior to the issuance of a new Non-RUP for the church, private school of general education, child care center and nursery school uses. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the private school of general education, child care center and/or nursery school shall be reduced to meet parking requirements as determined by DPWES.
17. Transitional screening shall be modified along the western lot line to permit existing vegetation on site to meet the requirements of Transitional Screening 1 (TS 1). All vegetation shall be maintained in good condition and any dead or dying vegetation shall be replaced as determined necessary by Urban Forest Management Division (UFMD), DPWES.
18. The barrier requirement shall be waived along the western lot line.
19. All signs on the property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established 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 7-0.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX
MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the
Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery,

mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09) (Decision deferred from 10/6/09 and 1/6/10)

Chairman Ribble noted that there was a request to defer the decision on SPA 81-A-022-09 to March 24, 2010, and called for a motion.

Mr. Byers moved to defer SPA 81-A-022-09 to March 24, 2010, at 9:00 a.m. The motion was seconded by Ms. Gibb and carried by a vote of 7-0.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (Admin. moved from 6/16/09, 7/14/09, and 8/11/09 at appl. req.) (Decision deferred from 9/29/09, 11/17/09, and 12/15/09.)

Chairman Ribble noted that the decision on this application had been deferred three times, and asked staff whether there was anything new on it.

Deborah Hedrick, Staff Coordinator, said the public hearing on this application was held on September 29, 2009. The purpose for the deferral was to permit sufficient time for the Virginia Department of Transportation (VDOT) to review several waivers and exceptions requested by the applicant for the application site. Staff had recommended denial of the application, as outlined in the staff report. The reasons for that recommendation specifically were related to an exception request for the proposed median break relocation and a waiver request for the turn lane proposed into the site. On December 15, 2009, VDOT approved the exception request for the proposed median break relocation; however, as of this date, a formal response has not been received regarding the turn lane.

In discussion with the Fairfax County Department of Transportation staff continued to believe that the issue of the turn lane required VDOT full review and recommendation prior to a decision on this special permit application. Staff no longer supported applications that attempted to resolve these types of issues at site plan, and believed these are unresolved issues which required resolution as part of the special permit application review process. Therefore, staff continued to recommend denial. Staff distributed revised proposed development conditions as prepared by the applicant, as well as an email and supporting documentation from Park Authority staff with regard to the wood turtles, which may be located in this area. This information has also been provided to the applicant. She noted that Lou Ann Hutchins was there today to answer any transportation related questions.

Discussion ensued with regard to an estimated time-frame for staff to receive the necessary information from VDOT, and the requirements and review process of these applications, including the processing time limitations on special permit applications.

Amber Scharn, Esquire, agent for the applicant, came forward, and was administered the oath. She explained that the applicant had to submit one exception request for the median break, and two waiver requests for the length of the turn lanes. VDOT requested additional information on all three requests, which caused delays with the application's processing. She said they maintained that the median break was the main issue, and the turn-lane lengths could be dealt with in a condition. She said it should be a site plan issue.

Ms. Gibb moved to defer the decision on SP 2009-SU-018 to April 28, 2010, at 9:00 a.m. The motion was seconded by Mr. Beard and carried by a vote of 7-0.

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~ ~ ~ February 24, 2009, Scheduled case of:

- 9:30 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, and 8/4/09)
- 9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, and 8/4/09)

Chairman Ribble noted that the decisions were deferred on A 2008-SU-008 and A 2008-SU-037.

Mr. Hart indicated that he would recuse himself from this public hearing, as he had done on the previous hearings.

Doug W. Hansen, Staff Coordinator, Zoning Administration Division, said there were separate considerations although in the summary, the cases were discussed together. He said that this was technically for the Cronan Family LLC application.

Chairman Ribble then stated that the Board would first hear the Cronan appellant.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was reopened.

Mr. Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position. This was an appeal of a Notice of Violation (NOV) dated January 30, 2008 for property located at 14800 Thompson Road. The appellant had established uses including an office, motor vehicle storage and impoundment yard, a storage yard, and placed accessory storage structures without site plan or building permit approval and without obtaining a valid Non-Residential Use (Non-RUP) permit.

Mr. Hansen said the Cronan appeal was originally heard June 17, 2008. As of the December 16, 2008 public hearing for both appellants, a site plan had not been submitted for the property, which was six months after the Board granted a continuance. The decision was again deferred to April 21, 2009, and as of that public hearing, it was noted that there was some progress on cleanup of the property, although it was incomplete. As to the matter of site plan, the appellant had not even authorized completion of a site plan for the project, now ten months past the original BZA hearing. The appellant had submitted only a request for waiver of road-frontage improvements, subsequently disapproved by Department of Public Works & Environmental Services (DPWES). Staff's opinion was that waiting for an answer for the waiver of road-frontage improvements was not an excuse for inactivity on a site plan. The BZA again deferred decision to August 4, 2009. As of August 4th, a site inspection revealed sufficient progress had been made in cleaning up the property, however, it was noted that it was now over one year after the original BZA hearing, and still no site plan had been submitted. The BZA again deferred decision until today, February 24, 2010, to give the appellant one final opportunity to obtain an approved site plan. On August 11, 2009, the appellant finally submitted a site plan, which was disapproved by DPWES on September 30, 2009, due to numerous omissions and unresolved issues. The appellant is challenging DPWES on a variety of issues regarding the site plan related to the RPA, site grading, road improvements, parking lot light, and not providing water and sewer facilities on-site.

Mr. Hansen pointed out that it had now been 20 months since the original public hearing, and the appellant had yet to submit an acceptable site plan according to DPWES requirements. Because of the outstanding site plan, building permits, and Non-RUPS still not being obtained, staff continued to believe that the

appellant had not made a good faith effort to bring the property into compliance, especially through lack of submission of an approvable site plan. Staff also believed the appellant would not come into compliance absent further action by the BZA.

Discussion ensued with regard to questions concerning the history and extensive problems of the appellants. Ms. Gibb noted her concern for the appellants' situation. She said that it should not be inferred they were not acting in good faith.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said Ms. Cronan requested a meeting with the Supervisor and staff, but before a date was scheduled, Ms. Cronan said she would be unable meet with them. The meeting was to assist the concerned parties by discussion and working through the issues.

Chuck Cohenour, Senior Zoning Inspector, responded to Mr. Smith's question concerning progress on the site's clean-up.

Responding to Mr. Smith's questions about the 1976 proffers regarding curb and gutter, sidewalk, road widening, and site plan issues, Clinton Abernathy, DPWES, explained what the issues were and the appellants' responsibility to address them. He concurred with Mr. Smith that there was no statute of limitations on enforcement of proffers.

Addressing Mr. Hansen, Mr. Byers asked whether the Cronans were being asked to do anything that was in the Public Facilities Manual (PFM) that would not be required of any other businesses. Mr. Hansen said no. He noted that the outstanding requirements were those of the PFM, the previously approved proffers, and typical VDOT standards in the road related concerns.

Staff responded to Ms. Gibb's question concerning the difficulty with attaining information on a property's proffers.

J. Charles Curran, Kdiwell, Kent & Curran, Woodson Square, 9695 C. Main Street, Fairfax, Virginia, the appellants' agent, presented the arguments forming the basis for the appeal. He said neither he nor his client received staff's updated report, and that he picked one up when coming into the auditorium. He said he had no knowledge of the meeting referenced by staff, and that as counsel for the Cronan family, he should have been contacted.

In response to Mr. Smith's questions concerning the appeal's progress, Ann Germaine, 1024 Tostleston Road, McLean, Virginia, with the engineering firm Paciulli, Simmons & Associates, LTD, gave the appellant's time-line progress, pursued activities, projects completed, and the appellant's discussions with the County. She said a wetland professional was retained to address the RPA, and the boundary plats were completed. She noted that a proffer interpretation might have been required.

Discussion ensued regarding the importance of the appellant keeping staff apprised of progress, and the matter of the private road, its dedication, its improvements and its maintenance.

Cynthia Wood, the daughter of Mary Cronan, came to the podium. She explained the on-going progress they were making, and assured they were proceeding with the engineering requests. Ms. Wood said Ms. Cronan's poor health due to the stress over the possibility of losing the property, had prevented her from attending the meeting with Supervisor Frey. She said they were cooperative with DPWES giving access to water and sewer, and she noted that there was no sewer in that particular area. She said the County was not willing to work with them. She said Ms. Cronan was not intending to develop the property, only rent it to help pay the mortgage.

Francis McDermott, Esquire, Hunton & Williams, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, agent for Danella Construction Co. of Virginia, Inc., came forward to speak. He made the distinction that Mr. Curran was the Cronan's attorney, and that if action were taken on the Cronan case, Danella's case would be moot. He said his client was the contractor in and around Fairfax County for Verizon installing and repairing all fiber optic cables, and that Danella provided a critical service, both residential and business, to the County. He pointed out the importance of keeping the use in its present location and not moving to another County. Mr. McDermott said the laundry list of County requirements was typical, and that there were many meetings with DPWES for storm water management, waiver issues, and the many aspects of site plans. He said there were possible waivers, interpretations, and modifications, that might be appropriate. Mr. McDermott pointed out

the enormous amount of money the Cronan family had expended trying to deal with the maze of complicated requests and requirements of the County. They were not developers, just a family owning a property. He said there were discussions about selling the property to Danella, and that proposal was being researched. Mr. McDermott said if the intent was to allow these uses to continue as long as they came into compliance with the Ordinance, to please allow the appellants sufficient time to meet the requirements. They were doing the best they could. Mr. McDermott also noted it was the BZA who allowed 20 months of additional time, not the County, who seemed to only want to proceed with legal enforcement.

Mr. Curran apologized to staff for his assumption that staff had failed to inform him of the Supervisor meeting.

In closing staff comments, Ms. Stanfield also apologized that the updated memorandums and staff reports were not timely received, and assured that would not happen again. She said she appreciated Ms. Cronan's concern that she only wanted to rent the land out, but that was not possible, because it required some sort of a plan for development, which was what it was. She said she understood the value to the County that the tenants were providing. She noted that there were other properties affected by the County's investigation; that they engaged in a Comprehensive Plan Amendment and were undergoing a rezoning process; and, when it became apparent that there were many issues which would take a long time to resolve, the County offered the opportunity to enter into a Consent Decree, requesting the BZA uphold the Zoning Administrator's determination, so that the decree could move forward. That would allow ample time for such things as a plan amendment and rezoning to occur. Ms. Stanfield said this was very staff intensive to continually staff this over this two-year period, and without knowing when there would be an end to it.

Chairman Ribble called for a motion.

Mr. Smith moved to further defer the decision. He said there were compelling points made on both sides; that he was looking on what was the best interest of the County, the citizens, and how to treat the appellants fairly; and, he thought a lot of good faith was shown in the cleanup process, with the scope of the violations being significantly narrowed. He concurred that it was, unfortunately, a time-consuming and expensive process with a proffer interpretation and an RPA delineation. Mr. Smith said the key issue to him was whether the process was moving forward in good faith, and if it was, the BZA would allow the time necessary for the resolution. He noted there now was a commitment to enhance effective communication from everybody. Mr. Smith said he thought a deferral on this case was reasonable under the circumstances, with the key issue being whether it was continuing to move forward in good faith. He believed it had been.

Discussion ensued regarding how much time might be necessary for Danella Construction to determine going forward on acquiring the Cronan property; the continuation and approval of a site plan; and, a time frame for processing, review, and approval of the County permits and plans.

Mr. Smith then moved to defer decision on A 2008-SU-008 to August 11, 2010. Mr. Hammack seconded the motion. Subsequently, Mr. Smith amended his motion to clarify that the Cronan Family LLC, Appeal A 2008-SU-008 and Danella Construction Company of Virginia, Inc., Appeal A 2008-SU-037, were both deferred to August 11, 2010, at 9:30 a.m. with interim reports to be submitted by April 1st and June 1st. Mr. Hammack accepted the amended motion and the vote carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ February 24, 2010, Scheduled case of:

9:30 A.M. MARILYN HILDEBEIDEL, A 2009-MV-034 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit and has established outdoor storage in excess of what is permitted on property in the RE District in violation of Zoning Ordinance provisions. Located at 10900 Harley Rd. on approx. 5.08 ac. of land zoned RE. Mount Vernon District. Tax Map 118-2 ((2)) 11A. (Admin. moved from 10/6/09 at appl. req.)

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Marilyn Hildebeidel, 10900 Harley Road, Lorton, Virginia, came forward.

Doug Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated February 17, 2010. This was an appeal of a determination that the appellant was maintaining a second dwelling unit and had established outdoor storage in excess of what was permitted. As a result of a June 11, 2009 site inspection, a Notice of Violation (NOV) was issued to Marilyn Hildebeidel for maintaining two complete and separate dwellings in a single-family dwelling unit. She was also cited for storage in the front, side and rear yards. Zoning Enforcement staff's September 8, 2009 visit observed that the second dwelling unit was maintained clearly as a separate group of rooms; the second kitchen used for the second dwelling unit had not been removed; and, the area clearly appeared to be used as a separate unit with a separate entrance. It was emphasized to the appellant that the kitchen had to be removed with the utilities capped behind the wall along with the complete removal of the kitchen counters and cabinets on the wall. As an option, Ordinance Administration staff met with Ms. Hildebeidel to advise her how she could file for a special permit for an accessory dwelling unit, but no application has been filed. Staff believed the appellant had not made a good faith effort to bring the property into full compliance, and staff believed the appellant would not come into compliance absent further action by the BZA.

Vice Chairman Hammack assumed the Chair.

Ms. Hildebeidel presented the arguments forming the basis for the appeal. She said she had no idea she was in violation of anything when in 1992 she purchased her five-bedroom, five-bath, two-kitchen house. She did her own research, but could not understand why part of the house was considered a separate dwelling unit when it had multiple accesses from all over the house. She complied with most of staff's instructions by removing all outside storage items, but she remained firm about wanting to keep the second kitchen sink and its cabinets. As she proposed to sell the house and move to Texas, she thought a second kitchen might make the house more desirable. Ms. Hildebeidel said modern homes often had additional kitchens, and clarified that it was 2007 when she rented out part of the house, and only because she needed the extra income to maintain the property after the loss of her husband. She pointed out that her property was five acres; it was a farm; and it concerned her that the County was citing outside storage, with front, side and back yard setbacks although her drive was a private road and the parcel not visible from the road. Her request of the County to provide her with documentation that clearly defined her lot's front, back and side yard lot line was unanswered, and it concerned her greatly when renting the land. She did not want ever to go through this process again. Ms. Hildebeidel said she knew her situation also concerned many of her neighbors. They assumed they resided in the country, and then suddenly it seemed they did not.

Discussion ensued regarding the location and usage of the bathrooms; the number of door locks on the second floor; clarification of what constitutes a second kitchen and second dwelling unit; the five Ordinance statutes that were not met; the ease of refurbishing a house to afford a second dwelling unit if removal and capping of the major appliances was not executed; the matter of violations cited during the inspections; court rulings upholding the Zoning Administrator's position on such cases; the circumstances when issuing a second kitchen letter; consistency of County policy regarding second kitchens and second dwelling units; County residents, realtors, etc., general lack of knowledge regarding Ordinance restrictions about second dwelling units and second kitchen arrangements; the matter of a technical violation; an explanation of the house's floor plan; and, furniture and assorted things that were in the rooms.

Chairman Ribble resumed the Chair, and called for speakers.

Mark Smith, (address was not given), the neighbor directly across the street from Ms. Hildebeidel, came forward to speak. He said his concern was what might become of the house when Ms. Hildebeidel moved to Texas. Mr. Smith said perhaps it was a caretaker who told him he was interested in purchasing the property and planned on utilizing it as a barracks, of sorts, to house individuals who are working 10 to 12 hours daily. Mr. Smith said he and his neighbors, as parents of teenage girls who are often home alone and living out in the woods, were concerned over that prospect.

In response to Mr. Beard's question concerning Ms. Hildebeidel's tenants, Mr. Smith said he was aware of only one couple with a single car, and numerous others coming and going when boarding their horses.

In response to Mr. Beard's question concerning her tenants, Ms. Hildebeidel explained why, when, and to whom she rented. She said she found her renters from Craig's List.

In closing staff comments, Ms. Stanfield requested the BZA to uphold the Zoning Administrator's determination so as to be consistent with the County's treatment of other similar cases.

Mr. Beard commented that this was a close issue, but he thought it fairly obvious that at the time of the initial inspection, the house was being utilized as a second dwelling. It had separate entrances and each area had its own bathroom facilities. Mr. Beard said the BZA had a history of upholding the Zoning Administrator's determination in these cases. He then moved to uphold the determination of the Zoning Administrator. Mr. Smith seconded the motion.

Mr. Hart commented that the Zoning Ordinance would benefit if the County's Work Program defined and clarified this language.

Chairman Ribble called for a vote.

The motion carried by a vote of 7-0.

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~ ~ ~ February 24, 2010, After Agenda Item:

Request for Reconsideration
Kevin M. and C. Nicole Ferguson, A 2009-MV-035

Chairman Ribble moved to accept the reconsideration request. Ms. Gibb seconded the motion, which carried by a vote of 7-0. Mr. Hammack moved to schedule the appeal on April 28, 2010, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ February 24, 2009, After Agenda Item:

Request for Additional Time
Oakwood LLC, VC 2004-LE-119

Mr. Hart moved to approve 30 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was July 18, 2012.

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As there was no other business to come before the Board, the meeting was adjourned at 1:20 p.m.

Minutes by: Paula A. McFarland

Approved on: July 19, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 3, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Norman P. Byers; Nancy E. Gibb; James R. Hart; and Thomas W. Smith, III. Paul W. Hammack, Jr., was absent from the meeting.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ March 3, 2010, Scheduled case of:

9:00 A.M. LISA PETERS, SP 2009-DR-111 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit accessory storage structure to remain 7.1 ft. from side lot line and 4.6 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 12.7 ft. from rear lot line. Located at 6631 Kirkley Ave. on approx. 13,953 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((9)) 25A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Lisa Peters, the applicant, 6631 Kirkley Avenue, McLean, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of the application, subject to adoption of the revised development conditions.

Ms. Peters presented the special permit request as outlined in the statement of justification submitted with the application. She stated her desire to add living space onto the home in the form of a family room and screen porch.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-DR-111 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LISA PETERS, SP 2009-DR-111 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit accessory storage structure to remain 7.1 ft. from side lot line and 4.6 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 12.7 ft. from rear lot line. Located at 6631 Kirkley Ave. on approx. 13,953 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((9)) 25A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2010; and

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

1. The applicant is the owner of the property.

2. The application meets all the criteria under Sect. 8-914, A through G, and all the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval of the addition.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed additions and shed as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, LLC, dated April 23, 2009, revised and signed through January 27, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,700 square feet existing + 2,550 (150%) = 4,250 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

5. The applicant shall obtain an encroachment exception for construction within the RPA in accordance with the memo provided by the Environmental and Site Review Division, DPWES.
6. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed addition and the dripline of the significant trees outlined in the memo from the Forest Conservation Branch, DPWES. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity such as the storage of construction equipment does not occur within these areas.
7. The applicant shall remove or relocate the existing playhouse depicted on the plat in the front yard to be in compliance with Zoning Ordinance location regulations.

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

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

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

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9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09)

Chairman Ribble noted that SP 2009-SU-066 had been administratively moved to May 26, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ March 3, 2010, Scheduled case of:

9:00 A.M. GREENBRIAR POOL CLUB, INC., SPA 68-S-870 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-870 previously approved for community swimming pool to permit building addition and site modifications. Located at 13001 Point Pleasant Dr. on approx. 3.52 ac. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((1)) 26B. (Admin. moved from 2/10/10 for ads)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Lawrence Kelly, the applicant's agent, 4210 Mayport Lane, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of the application, subject to the proposed development conditions.

Mr. Kelly presented the special permit request as outlined in the statement of justification submitted with the application, noting that he was the Vice President of the Greenbriar Pool Club, Inc., a nonprofit corporation. He said the proposed building would store materials used to support youth activities and community recreation, and would enhance the appearance of the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 68-S-870 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREENBRIAR POOL CLUB, INC., SPA 68-S-870 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-870 previously approved for community swimming pool to permit building addition and site modifications. Located at 13001 Point Pleasant Dr. on approx. 3.52 ac. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((1)) 26B. 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 3, 2010; and

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

1. The applicant is the owner of the property.
2. The staff recommends approval and the Board adopted the rationale in the staff report.
3. Modifications to the site are almost in the middle of the site and are situated such that they would not have any significant 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 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 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, Greenbriar Pool Club, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 13001 Point Pleasant Drive (3.52 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 amendment plat prepared by Anthony Owens, P.E., dated April 23, 2009, as revised through January 14, 2010, 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 development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 248 pool patrons on site at any one time.

6. Parking shall be provided as shown on the special permit amendment plat. All parking shall be on site.
7. The regular hours of operation for the swimming pool shall be 11:00 a.m. – 9:00 p.m., Memorial Day through Labor Day. After hour parties for the swimming pool shall be governed by the following:
 - Limited to six (6) per season.
 - Limited to Friday, Saturday and pre-holiday evenings.
 - Shall end by midnight.
8. A written copy of the development conditions shall be provided to the individual responsible for any after-hours party or event, to all members, to contactors providing services at the club and to parties who may rent the club's facilities.
9. During discharge of swimming pool waters, the following operation procedures shall be implemented:

Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

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

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

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

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~ ~ ~ March 3, 2010, Scheduled case of:

9:30 A.M. GARY G. SLACK, A 2009-HM-041 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the PRC District in violation of Zoning Ordinance provisions. Located at 11082 Thrush Ridge Rd. on approx. 6,640 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-3 ((16)) 7. (Admin. Moved from 1/27/10 at appl. req.)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. She provided a brief history of the case, noting that a complaint had been received alleging multiple dwelling units on the property. After inspection by Zoning Enforcement, a Notice of Violation (NOV) was issued on September 22, 2009, and an appeal of the NOV was received from the appellant on October 21, 2009. Ms. Cooper stated that Zoning Administration received a request from the appellant asking for a deferral, so that he could remove the kitchen components, and the hearing was administratively moved to this day. She said that recent correspondence from the appellant stated that the kitchen had been removed.

Ms. Gibb and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the Ordinance definition of a kitchen, and whether a second kitchen would be allowed in a residence without an extra tenant. Ms. Stanfield stated that second kitchens were considered on a case-by-case basis.

Mr. Hart and Charles Fitzhugh, Zoning Inspector, discussed the residence photos in the staff report, with Mr. Fitzhugh stating the he had taken the photographs. Mr. Fitzhugh pointed out the area on the main level where it accesses the basement, noting that the occupants of the upper level could lock access to the basement.

In response to a question from Mr. Hart, Mr. Fitzhugh stated that there was no evidence of any building permits being issued, since the house was built in the early 80s. Robert Burke, Building Code Enforcement, stated he found a permit dating from 1999 when the homeowner converted from an electric furnace to a gas furnace. However, Mr. Burke said no plans for the residence were found.

Michelle Rosati, agent for the appellant, said her client had cured the violation within the prescribed 30-day period. She said the Zoning Ordinance did not require cabinets and sinks to be removed, and noted that the permanent provision for cooking in the lower level had been removed. Therefore, under the Zoning Ordinance definition, it was not a dwelling unit. Ms. Rosati stated that the definition of an accessory dwelling unit was a five-element definition, and unless you have all five elements, e.g., permanent provisions for living, sleeping, eating, cooking, and sanitation, you do not have an accessory dwelling unit. She continued that the Zoning Ordinance did not say you have to clear the violation in the manner specified in the notice, noting that the Zoning Administrator only had the authority to ask the homeowner to come into compliance. Ms. Rosati acknowledged that the Zoning Administrator had consistently asked for removal of the cabinets and sinks, but that the County's policy cannot differ from the plain language of the Zoning Ordinance, which she believed was clear.

In response to a question from Mr. Smith, Ms. Rosati thought that with removal of the microwave oven, her client was in compliance.

Mr. Smith and Ms. Rosati discussed the definition of a permanent cooking fixture, as it pertains to an accessory dwelling unit. Ms. Rosati noted that the other permanent kitchen fixtures, the dishwasher and the refrigerator) had been removed within the 30-day time limit.

In response to a question from Mr. Smith regarding the enforceability of the Ordinance if a microwave oven was considered a permanent fixture, Ms. Rosati said she felt the Board of Supervisors needed to address and modify the definition in the Zoning Ordinance.

Mr. Hart and Ms. Rosati discussed the sketch of the lower level as depicted in the staff report, with Ms. Rosati noting the rooms were mislabeled, and the bathroom was not located as shown. She also pointed out the sketch showed a refrigerator and dishwasher, which were not present.

Ms. Rosati asked Mr. Hart whether the appellant had a right to cure the violation. He responded that the answer went to when the violation was really cured. Ms. Rosati said that question would be appropriate for an interpretation by the Zoning Administrator.

They further discussed the difference between code violations and zoning violations, with Ms. Rosati noting that code enforcement had been out to the property twice, and found no violations.

In summary, Ms. Rosati said the appeal revolved around two main issues, which were, does an appellant have a right to cure a violation, and when. She again stated that the NOV requested more than the Zoning Ordinance definition required.

In response to a question from Mr. Hart, Ms. Cooper said that a determination had not been made by the County on whether the appellant had adequately cured the violation.

Chairman Ribble called for speakers.

Nancy Lasater, 11080 Thrush Ridge Road, Reston, Virginia, came forward. She was the next door neighbor of the appellant, and appeared before the Board in support of the Zoning Administrator's determination. She commented that the lower-level tenant had intimidated her daughter to where she was hesitant to use the back yard, because the lack of privacy, his attempts to engage her in conversation, and his frequent comings and goings.

Richard Wilcox, 11078 Thrush Ridge Road, Reston, Virginia, came forward, and stated he had submitted a letter in support of the Zoning Administrator's determination.

In closing, Ms. Cooper stated that the issue was whether a violation existed on the day the NOV was issued, noting that the refrigerator had been moved to the utility room, but not out of the property.

Ms. Stanfield commented that the County was notified 80 days after the NOV that there had been some remedy of the violation.

In her rebuttal, Ms. Rosati stated that the issue was about the proper scope of the NOV, and whether the County was asking for more than the Zoning Ordinance required. She asked that the plain language of the Zoning Ordinance be honored and upheld.

In response to a question from Ms. Gibb, Ms. Rosati said she would like to get a determination from the Zoning Administrator on whether the appellant had complied with the NOV.

Ms. Stanfield said she would have to confer with the Zoning Administrator before making a comment on Ms. Rosati's remark.

Mr. Gibb and Ms. Stanfield discussed the definition of a permanent provision for cooking, with Ms. Stanfield stating that the appellant would have to remove the cabinets, countertop and refrigerator, which had been consistently applied to accessory dwelling units.

Mr. Hart commented on the BZA authority under the statute for appeals, noting that they are limited to upholding, upholding in part, overturning, deferring, dismissing, or not accepting an appeal. He said the BZA did not have injunctive authority, that is, they could not direct someone to do something. Mr. Hart stated that only a judge had that ability.

Mr. Rosati commented that the BZA could modify the determination of the Zoning Administrator, citing Section 18-306, Decision on Appeals.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the Zoning Administrator, and stated that the Board was working from a Notice of Violation, dated September 22, 2009. It was her understanding that the BZA's job was to determine whether the Zoning Administrator was correct in the letter on that date, and whether there was an accessory dwelling unit. She said on that date, there was an accessory dwelling unit. Ms. Gibb stated that testimony and photographs showed one or more rooms in the house designed and used as a complete independent living facility, which included permanent provisions for living, sleeping, eating, cooking, and sanitation. Ms. Gibb said a question arose as to whether that was cured within the 30 days allowed, further noting the appellant's position was that by removing the dishwasher and microwave, the appellant had removed the cooking implements from the dwelling unit, and that the area no longer fell within the definition of a separate dwelling unit.

Ms. Gibb said that although it was a very close case, she felt in this particular case, based on the photographs showing the sink, eating items on the counters, dishwashing implements, and dish drain on the counter, that the totality of this was a kitchen, and the appellant was going to have to comply with what the County had requested, which was to remove the cabinets and counter. Ms. Gibb stated that it seemed like a very drastic and costly cure, but looking at the cases cited by the County and staff, that was her motion.

Mr. Beard seconded the motion, and commented that the Board had consistently found for the Zoning Administrator on issues such as this. He felt with the documentation presented, there was no question about what was going on there. Mr. Beard said it was not only about removing counters, but there was a sink there with a disposal, which was hardwired. He stated that the lawyers had quite a dialogue today, but being a layman, he tried to stay focused on what the staff had presented and what he saw as a result of the inspections. It looked like a second dwelling unit with all the accoutrements. He said Ms. Rosati made a fine legal presentation and quoted something about the scope of violation, but he thought this was something a judge should decide. Mr. Beard did not feel the Board was qualified to do that. He said he was going to support the motion.

Mr. Hart said he would also support the motion. This was extraordinarily difficult for the Board, because they recognized that the Zoning Ordinance had to be enforced consistently, and the circumstances which seemed to bring some of these cases before them, such as cabinets, countertops, and sinks, were frequent features of homes, which were not getting violations for whatever reasons. Mr. Hart said looking at the total package and the way in which the kitchen materialized, the Board could conclude that the Zoning Administrator's determination was correct. He stated that in conjunction with the other rooms in the basement, the entrance to the outside, the bathroom, the area for sleeping, kitchen table with chairs, microwave, and cooking tools, this area was set up as a kitchen. It was not really for a wet bar for entertaining, and did not appear to be appurtenant to a laundry room. He felt it was obviously for preparing meals and eating them at the table. Mr. Hart said it was on the record, with a lot of correspondence from neighbors, some of which was not rebutted or attempted to be rebutted, that the kitchen went in later, and there were no building permits. He felt it was somewhat under the radar the way the kitchen materialized, but thought there were situations where a wet bar with cabinets were there when a house was built, and they put a microwave on it, then maybe the cabinets would stay. Where there is a total package, and a kitchen materializes after the fact, with the fact that it had granite countertops, pushed him in that direction that it was pretty glamorous for a basement or a laundry area. It appeared to be a nice set up for one person or a small family. Mr. Hart said because it materialized out of nothing, was not original to the house, had no building permits, and no County review, the Zoning Administrator's determination was not plainly wrong, so he was going to support the motion.

Mr. Smith said he was also going to support the motion, noting that it was an exceedingly difficult case. He stated he was struck by the language in the Ordinance referencing rooms in a residential building or residential portion of a building which were arranged, designed, used, or intended for use as a complete independent living facility. Mr. Smith said if you looked at this language and the totality of the circumstances, different from when you have a storage room with cabinets, a refrigerator, or a utility sink which was not intended for use as a complete independent living facility, this use was clearly intended for use as a complete independent living facility. He also stated that the Ordinance could use a little bit of clarification, which would help a similar situation in the future.

The vote carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Suzanne L. Frazier

Approved on: July 13, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 10, 2010. The following Board Members were present: Chairman John F. Ribble III; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers. V. Max Beard and Paul W. Hammack, Jr., were absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. On behalf of the Board, Mr. Byers extended their congratulations to Shelby and Willie Johnson on the birth of their son, Caleb William. He said it appeared mother and son were doing well, although he was not sure about dad, and the Board wished the family the best.

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

~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. T-MOBILE NORTHEAST LLC & SPRINGFIELD SWIMMING AND RACQUET CLUB, INCORPORATED, SPA 81-S-017 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-S-017 previously approved for community swimming pool and tennis courts to permit addition of telecommunications facility. Located at 7400 Highland St. on approx. 3.75 ac. of land zoned R-3. Lee District. Tax Map 80-1 ((5)) (52) 1. (in association with SE 2009-LE-016)

Chairman Ribble noted that SPA 81-S-017 had been administratively moved to March 24, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. RICHARD A. MARCINOWSKI, SP 2009-LE-112 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 6105 Lemon Thyme Dr. on approx. 9,077 sq. ft. of land zoned PDH-4 and NR. Lee District. Tax Map 91-1 ((25)) 45.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Linda M. Marcinowski, 6105 Lemon Thyme Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval subject to the proposed development conditions.

Ms. Marcinowski presented the special permit request as outlined in the statement of justification submitted with the application. She said they would like to replace their existing deck with a sunroom to be able to better enjoy their back yard.

Since there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-LE-112 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD A. MARCINOWSKI, SP 2009-LE-112 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line.

Located at 6105 Lemon Thyme Dr. on approx. 9,077 sq. ft. of land zoned PDH-4 and NR. Lee District. Tax Map 91-1 ((25)) 45. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2010; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all the submission requirements set forth in Sect. 8-922, provisions for the Reduction of Certain Yard Requirements, of the Zoning Ordinance.
3. The staff recommends approval.
4. The Board adopts staff's rationale.
5. There are two letters of support with four different signatures.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a sunroom addition (240 square feet), as shown on the plat prepared by DRH Design Group, Inc., dated September 22, 2009, as revised through December 4, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,174 square feet existing + 4,761 square feet (150%) = 7,935 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant shall designate the area from the edge of the building envelope to the northwestern property line as a tree save area and shall install tree protection fencing prior to commencement of the construction process to preserve the on-site and off-site trees and vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area. The limits of clearing and grading shall be no further than 10 feet from base of 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.

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. Hart and Ms. Gibb each seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. W.M. (JACK) JONES, TRUSTEE UNDER THE JONES LIVING TRUST, SP 2010-LE-004 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.5 ft. and 1.9 ft. from side lot lines, deck to remain 14.7 ft. from a front lot line and fence greater than 4.0 ft. in height to remain in a front yard. Located at 3401 Austin Ct. on approx. 11,147 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 64.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Wilton M. (Jack) Jones, 3401 Austin Court, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation.

Mr. Jones presented the special permit request as outlined in the statement of justification submitted with the application. He said he replaced the shed, because it started to fall down. It was located in the same place as it was in 1989 when he bought the property.

Since there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-LE-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

W.M. (JACK) JONES, TRUSTEE UNDER THE JONES LIVING TRUST, SP 2010-LE-004 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.5 ft. and 1.9 ft. from side lot lines, deck to remain 14.7 ft. from a front lot line and fence greater than 4.0 ft. in height to remain in a front yard. Located at 3401 Austin Ct. on approx. 11,147 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 64. 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 10, 2010; and

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

1. The applicant is the owner of the land.

2. The Board adopts the standard special permit resolution and standard special permit mistake resolution.
3. The applicant has presented testimony showing compliance with the required standards.
4. This case is similar to some others the Board has heard in the same neighborhood as when the subdivision was laid out, some of the lots were through lots.
5. Most of the lots that are on Gentele Court have the front of the house facing the street; the two cul-de-sacs that back up to it have the front of the house facing the cul-de-sac and the back of the house facing the street, although those are front yards for all of those houses.
6. The approval of this application is not any different from the ones the Board has already done.
7. Based on the vegetation and topography, allowing an existing patio to remain is not going to have significant impact on anybody.
8. There appears to be two fences, and one of them may or may not be entirely on the lot, but the taller fence is the one that is over four feet and it is consistent with other fences the Board has approved for the lots that have the back of the house facing the street in this little segment of this street.
9. Even though the shed was replaced, there has been a shed in the location for a very long time.
10. This is a small shed and it does not seem that it would have had a significant negative impact on anybody.
11. It is unclear whether there is another place for the shed on the lot, but it seems to be a logical place to put it; it is the functional back yard of the house, and although unclear whether this is a front yard or a side yard, the shed does not seem to be hurting anybody where it is.
12. With respect to the mistake request, the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval for Reduction in the Minimum Yard Requirements Based on Error in Building Location.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. This special permit is approved for the location of the deck (at-grade patio), accessory storage structure (shed) and fences (ranging from 5.6 feet to 5.8 feet in height) as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 30, 2009 as revised through December 12, 2009, as 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. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. JONATHAN B. & ELISABETH R. MORSE, SP 2009-DR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirement to permit construction of addition 20.6 ft. from front lot line. Located at 2220 Casemont Dr. on approx. 12,147 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((8)) 16. (Admin moved from 12/15/09) (Decision deferred from 1/6/10)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jonathan and Elisabeth Morse, 2220 Casemont Drive, Falls Church, Virginia, reaffirmed the affidavit.

Shannon Caffee, related the following information. A public hearing was held on January 6, 2010 for the subject property where the applicants requested approval of a reduction of certain yard requirements to permit construction of an addition 20.6 feet from the front lot line. At that time, Mr. Hart made a motion to deny the application. During discussion of the motion, the applicants were asked if they would like an opportunity to redesign the addition to be less of an impact, which they said yes to. Therefore, the decision was deferred to March 10, 2010.

The applicants have since modified their requests to permit a reduction of certain yard requirements to permit construction of an addition 24 feet from the front lot line. The Zoning Ordinance required a minimum front yard of 30 feet, therefore, a modification of 6 feet, or 20 percent, was the modified request.

Copies of the revised statement of justification with exhibits provided by the applicant, which outlined the proposed changes, along with the new revised proposed development conditions had been distributed to the Board that morning.

Ms. Caffee concurred with Chairman Ribble that the applicant was required to get a certified, new plat at the time of obtaining a building permit.

In response to Ms. Gibb's question concerning staff's recommendation, Ms. Caffee explained that staff was more comfortable with the 24-foot setback, but still contended there was an availability of an alternate location on the site. Therefore, staff still did not support the application. She said, specifically it was Standard 9 of Sect. 8.922 which was not met.

Scott Body, 42990 Golf View Drive, South Riding, Virginia, gave information about the house's first and second level façades, existing setback, and measurements of the overhangs.

In response to Mr. Hart's question concerning permitted eave extensions, Ms. Langdon explained staff's position, spoke about the 24-foot setback matter, other possible locations for the addition, and Ordinance setback requirements.

In response to Mr. Smith's request to further explain the proposed layout, Ms. Morse stated they did not agree with staff that an expansion on the south side was a viable option. She said it was a functionality

discrepancy, as it would completely change the house's layout mandating the relocation of all utilities, plumbing, gas, and sewer on that side, and the cost of the addition would triple. Ms. Morse said construction on the south side would disrupt their three-season porch, brick patio, native and established vegetation, and prohibit the functional use of the back yard. She pointed out that they had five letters in support from all their adjacent neighbors.

Chairman Ribble called for a motion.

Ms. Gibb moved to approve SP 2009-DR-099 for the reasons stated in the Resolution.

Discussion ensued with regard to the application and the newly proposed changes.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JONATHAN B. & ELISABETH R. MORSE, SP 2009-DR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirement to permit construction of addition 20.6 ft. from front lot line. Located at 2220 Casemont Dr. on approx. 12,147 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((8)) 16. (Admin moved from 12/15/09) (Decision deferred from 1/6/10) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 2010; and

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

1. The applicants are the owners of the land.
2. The applicants have redesigned the addition in an acceptable manner, and the setbacks were reduced.
3. With the revised design of the addition, the property is now compatible with the neighborhood and therefore, has met Standard 6 and Standard 7.
4. The applicants' testimony today and in their revised written report, they had presented a compelling argument that the other location on the lot suggested by staff simply was not economically or functionally viable.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by Thomas W. Kendall, Kendall Consulting, Inc. dated June 23, 2009 and signed through June 29, 2009, submitted with this application and is not transferable to other land. Notwithstanding what is depicted on the above mentioned plat, the location of the proposed addition shall be 24 feet from Moly Drive and in conformance with the modified plat provided in attachment 1 of these conditions which is stamped and dated March 5, 2010. At the time of obtaining a building permit, the

applicant shall provide a plat certified by an architect and/or engineer to the Zoning Permit Review Branch which is in substantial conformance with attachment 1 to these conditions.

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,356 square feet existing + 3,534 (150%) = 5,890 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 2 to these conditions.

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

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

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. MIDDLEBURG ASSOCIATES, LLC, SP 2010-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 10.2 ft with eave 9.5 ft. from a side lot line. Located at 1253 Ingleside Ave. on approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sara V. Mariska, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Staff responded to Mr. Hart's questions concerning by-right construction.

Ms. Mariska presented the special permit request as outlined in the statement of justification submitted with the application. She said a building permit was issued, but the garage was accidentally constructed 10.2 feet at the foundation with an eave 9.5 feet instead of the required 12 feet from the lot line. She said the garage did not negatively impact the use and enjoyment of the adjacent properties, and complied with all applicable Ordinance standards.

Ms. Mariska responded to Mr. Smith's question concerning the March 8th opposition letter from an adjoining property owner, Roger Blum, which raised an issue of good faith. She said to her and her client's knowledge, there was never a conversation concerning the garage. She submitted that she could not see how the

current placement of the garage negatively impacted Mr. Blum's property. Ms. Mariska noted that the garage was permitted by-right 12 feet from the lot line, and she did not know if there would be a significant difference moving the garage over 1.8 feet.

Robert C. Moesle, 7402 Old Maple Square, McLean, Virginia, the owner of Middleburg Associates, LLC, came to the podium to address Mr. Hart's question concerning the error in the building location. He was administered the oath. He said the construction was complete. It was only after receiving the Notice of Violation letter that he became aware of the mistake in the measurements. Mr. Moesle said the area was staked, the footers and foundation laid, and they just did not notice the 1-foot error at the time.

Mr. Moesle said the project's superintendent, Chris, had several discussions with Mr. Blum. One concerned a tree, and the other was regarding the close proximity of the Virginia Department of Transportation's right-of-way and Mr. Blum's driveway. However, Chris remembered no conversation or discussion about the garage's footings and setback. Mr. Moesle said the function of the room over the garage was for an office or playroom. Without a kitchen, and it being detached from the house, it was not a guest house.

Chairman Ribble called for speakers.

Roger Blum, 1251 Ingleside Avenue, McLean, Virginia, came forward to speak. He was administered the oath. Mr. Blum was opposed to the application, and proceeded to reiterate what was in his letter. He requested the Board deny the special permit request. Mr. Blum said when he approached Chris about the closeness of the footers, Chris assured him they would have it re-measured by a surveyor, and if there was a problem, it was easy to correct at that stage. He explained that there was concern over the longevity of the large maple tree, because its surrounding earth was deeply dug to install cable to the applicant's air conditioning unit. Mr. Blum was told that the tree was not dead yet but it very well could die.

Mr. Blum responded to questions from Board members concerning measurements he took, the ensuing construction, and the time-line when Mr. Blum spoke with County staff.

In rebuttal, Ms. Mariska said the construction did not negatively impact the value of Mr. Blum's property. She noted that there were no cables laid in the vicinity of the maple tree, and that Mr. Blum's statement was inaccurate. She pointed out that the structure was permitted by-right 12 feet from the lot line, which was farther from the lot line than Mr. Blum's accessory structure. There was a 6-foot, tall fence and mature trees between the two properties. Ms. Mariska stated that the Notice of Violation was issued in July after all the construction was complete.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2010-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

MIDDLEBURG ASSOCIATES, LLC, SP 2010-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 10.2 ft with eave 9.5 ft. from a side lot line. Located at 1253 Ingleside Ave. on approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2010; 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 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. The Board has determined that the error exceeds 10 percent of the measurement involved.
4. There is some confusion about exactly who was notified and when, and what was said and what was heard; where the source of the error came from; was it the surveyor or the person who put in the footings.
5. The Notice of Violation was issued July 16, 2009, and the structure was already complete. It does appear pretty clear that there was an error in building location, which is the Standard B; it either has to be done in good faith or through no fault of the property owner, or was the result of an error in location of the building subsequent to the issuance of the building permit.
6. There does not appear to be any motive in trying to move this; it did not free up some valuable space for some other alternative; there would not have been any motive to do this, other than an error that was found.
7. The Board is sympathetic to Mr. Blum's concerns, although the garage is pretty close to the lot line on the adjoining property, as well as the six-foot fence and some vegetation.
8. To force compliance with the minimum yard requirements would cause an unreasonable hardship upon the owner, and it would not be in the best interest of Mr. Blum either.
9. There is already some concern about the tree; to go out there and have to dig out the existing footings, and pour new concrete and tear down one wall and put up a new one, we have already got landscaping installed and the driveway and the fencing.
10. It would be a lot more detrimental to go in and try and change this at this point in time.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 existing detached accessory structure

(detached garage) as shown on the plat prepared by Harold A. Logan, Harold A. Logan Associates P.C., dated December 9, 2009 and signed through December 10, 2009, 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. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. BRITTANY L. VO, DDS, SPA 80-D-035-04 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for home professional office to permit a 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. (Withdrawn, subsequently reactivated) (Deferred from 2/24/10 at appl. req.)

Chairman Ribble noted that SPA 80-D-035-04 had been administratively moved to April 14, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. WENDY ARNOLD, SP 2009-LE-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.3 ft. from side lot line and 5.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 27.1 ft. from front lot line. Located at 5811 Larpin La. on approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3. (Concurrent with VC 2009-LE-005). (Admin. moved from 12/1/09 for ads) (Admin. moved from 2/3/10 for ads)

9:00 A.M. WENDY ARNOLD, VC 2009-LE-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure which exceeds 200 sq. ft. in gross floor area. Located at 5811 Larpin La. on approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3 (Concurrent with SP 2009-LE-093). (Decision deferred from 1/6/10) (Admin. moved from 2/3/10 for ads)

Chairman Ribble noted that VC 2009-LE-005 had a withdrawal pending.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the public hearing for the variance and the special permit was heard February 3, 2010, and on that date the Board deferred decision to allow the applicant to take the variance for the shed back to the Zoning Administration Division (ZAD) on the use and size issue. She said the Ordinance states a storage structure/shed cannot exceed 200 square-feet in size, and the shed on site is 256 square-feet. Zoning Administration staff determined that since a portion of the shed contained work benches and tools, the structure can be considered a shed/workshop, and since the shed portion is less than 200 square feet in size, the structure is not subject to the 200 square-foot limitation on storage structures. Ms. Langdon said ZAD would not require the shed to be divided or cut down in size. She said the variance has therefore been administratively withdrawn, and the sole issue remaining for the shed is the distance from the lot lines, which was covered under the special permit application. Ms. Langdon noted that there was a new plat before the Board that designated it as a workshop/shed, but revised development conditions were distributed that morning to change the wording to workshop/shed with the revised date of the plat.

Chairman Ribble called for a vote.

Mr. Byers moved to approve SP 2009-LE-093 for the reasons stated in the resolution.

Mr. Hart commented that he would support the motion and was pleased that the variance issue was resolved. He said that the issues were still a rather vague area of the Ordinance, and, perhaps, the matter should be placed on the Work Program.

Chairman Ribble called for a vote. The motion carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WENDY ARNOLD, SP 2009-LE-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.3 ft. from side lot line and 5.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 27.1 ft. from front lot line. Located at 5811 Larpin La. on approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3. (Admin. moved from 2/3/10 for ads) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2010; and

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

1. The applicant is the owner of the land.
2. The captioned application has been properly filed in accordance with the requirements of all applicable State and County Code(s), and with the By-laws of the Fairfax County Board of Zoning Appeals.
3. 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; and, the additional standards for the Provisions for Reduction in Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance.
4. The Board has determined that Items A through G are applicable.
5. The application meets all the submission requirements as set forth in Sect. 8-922.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, 165 square feet for the roofed deck (covered front porch) and shed/workshop, as shown on the plat prepared by Douglas A. Richmond, Land Surveyor, Geometrics, GPS, Inc., dated July 8, 2009, revised through February 1, 2010, as submitted with this application and is not transferable to other land.
3. Within 120 days of approval of this application, building permits and final inspections for the accessory storage structure (shed/workshop) and any applicable additions shall be diligently pursued and obtained or the structure shall be removed or brought into compliance with Zoning Ordinance Requirements.
4. The addition shall be architecturally compatible with the existing dwelling on site, as depicted on Attachment 1.
5. The applicant shall designate the area at the edge of the building envelope to the western property boundary as tree save area and install tree protection fencing to preserve the off-site trees and vegetation in this area and to provide screening for the adjacent property owner. The tree protection fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area.
6. A minimum of five (5) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the southern foundation of the front porch 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.

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 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF THE VIENNA CONGREGATION OF JEHOVAH'S WITNESSES AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 84-D-064 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-D-064 previously approved for a church to permit the addition of a telecommunications facility. Located at 1580 Beulah Rd. on approx. 1.94 ac. of land zoned R-1. Dranesville District. Tax Map 28-1 ((1)) 3A. (Admin. moved from 1/27/10 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James R. Michal, Esquire, Jackson & Campbell, 1120 20th Street, N.W., Suite 300 Washington, DC, agent for the applicant, reaffirmed the affidavit.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, made staff's presentation. The applicants, Trustees of the Vienna Congregation of Jehovah's Witnesses and New Cingular Wireless, requested approval of a special permit amendment to permit the construction of an unmanned ground equipment compound for a telecommunications facility on the church site, measuring 20.0 feet x 20 feet, 6 inches (404 square feet) in area, to house eight equipment cabinets.

Mr. Michal presented the special permit amendment request as outlined in the statement of justification submitted the application. To address Mr. Hart's concern, he assured the bamboo and dead trees would be removed, and the pertaining development condition would be amended accordingly. He pointed out that the equipment, with its placement far from the road and significant tree screening, would have virtually no impact on anyone. It was unmanned, and no vehicular or foot traffic would be generated. As for staff's request for a 40-foot lateral move of the equipment, he would submit a request for a minor adjustment to the Planning Commission approval. He noted that there was a desperate need for AT&T for cellular service along the Toll Road and the surrounding areas. Mr. Michal said the applicant concurred with the development conditions, and respectfully requested the Board's approval.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 84-D-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE VIENNA CONGREGATION OF JEHOVAH'S WITNESSES AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 84-D-064 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-D-064 previously approved for a church to permit the addition of a telecommunications facility. Located at 1580 Beulah Rd. on approx. 1.94 ac. of land zoned R-1. Dranesville District. Tax Map 28-1 ((1)) 3A. (Admin. moved from 1/27/10 at appl. 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 March 10, 2010; 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.

3. Staff has recommended approval.
4. The rationale in the staff report is adopted.
5. The location of the equipment compound is in a place where, with the vegetation and everything else, it is not going to have any significant impact on anybody.
6. This is probably an ideal place for something like this.

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 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 the Vienna Congregation of Jehovah's Witnesses and New Cingular Wireless PCS, LLC, d.b.a. AT&T Mobility, and is not transferable without further action of this Board, and is for the location indicated on the application 1580 Beulah Road, 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) as indicated on the Special Permit Amendment (SPA) Plat titled Special Permit / 2232, New Cingular Wireless PCS, LLC, AT&T, prepared by BC Architects Engineers, dated May 27, 2009, as revised through January 27, 2010 and signed by Christopher D. Morin, P.E. on January 28, 2010, 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 (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 uses.
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 amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the sanctuary shall be 231.
6. Parking shall be provided as shown on the special permit amendment plat. All parking for the uses shall be on site.
7. Transitional screening 1 (25') shall be provided and maintained along all lot lines without modification except that a modification may be permitted along the southern lot line to provide a fifteen (15) foot transitional screening yard. Supplemental planting shall be provided as depicted on the SPA Plat and as approved by the Forest Conservation Branch, DPWES. In addition, along the frontage of Beulah Road, a fifteen (15) foot undisturbed transitional screening yard shall be provided and maintained, and the planting requirement may be modified to provide a lawn area landscaped with evergreen shrubs and low level plantings. The amount and type of these plantings shall be determined by the Director, DPWES. The dead, dying and unhealthy trees within the transitional screen yard, including the clump of bamboo, shall be removed and replaced with appropriate transitional screening vegetation as approved by the Forest Conservation Branch, DPWES.
8. The barrier requirement may be modified except that a fence may be installed and maintained along the southern lot line as depicted on the SPA Plat.
9. Interior parking lot landscaping shall be provided and maintained as required in Article 13 of the Zoning Ordinance.

10. Parking lot lighting shall be the low intensity type on standards not to exceed twelve (12) feet in height, and shielded in a manner that would prevent the light or glare from projecting onto adjacent residential properties.
11. Stormwater management shall be provided at the discretion of the Director, DPWES.
12. Appropriate noise attenuation measures shall be provided to attain a maximum interior noise of 45 dBA Ldn.
13. A trail shall be provided along the full frontage of Beulah Road pursuant to the policies of DPWES.
14. A right turn deceleration lane shall be provided for the entrance on Beulah Road.
15. All Virginia Department of Transportation (VDOT) permits for antenna installations shall be obtained prior to the operation of the telecommunications facility.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

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~ ~ ~ March 10, 2010, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, and 1/13/10 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to May 26, 2010 at 9:30 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that was correct.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Paula A. McFarland

Approved on: September 13, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 24, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Norman P. Byers; Nancy E. Gibb; Paul W. Hammack, Jr., James R. Hart; and, Thomas W. Smith, III.

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

~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. T-MOBILE NORTHEAST LLC & SPRINGFIELD SWIMMING AND RACQUET CLUB, INCORPORATED, SPA 81-S-017 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-S-017 previously approved for community swimming pool and tennis courts to permit addition of telecommunications facility. Located at 7400 Highland St. on approx. 3.75 ac. of land zoned R-3. Lee District. Tax Map 80-1 ((5)) (52) 1. (In association with 3/31/10 at SE 2009-LE-016) (Admin. moved from 3/10/10 at appl. req.)

Chairman Ribble noted that SPA 81-S-017 had been administratively moved to March 31, 2010, at 9:00 a.m., at the applicants' request.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. SUSAN & DOUGLAS CORBIN, SP 2010-DR-002 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.8 ft. from side lot line. Located at 1703 Forest La. on approx. 15,010 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((5)) 13.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Stephen F. Perlik, 260 Cedar Lane, Vienna, Virginia, agent for the applicants, reaffirmed the affidavit.

Mary Ann Godfrey, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-DR-002 subject to adoption of the proposed development conditions.

Mr. Perlik presented the special permit request as outlined in the statement of justification submitted with the application.

In response to a question from Mr. Hammack, Mr. Perlik stated his agreement with the proposed development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-DR-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN & DOUGLAS CORBIN, SP 2010-DR-002 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.8 ft. from side lot line. Located at 1703 Forest La. on approx. 15,010 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((5)) 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 24, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants met the six required standards set forth in Sect. 8-922 of the Zoning Ordinance.
3. There was a favorable recommendation by 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by George M. O'Quinn, Dominion surveyors, Inc., dated November 10, 2009, revised through February 12, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,244 square feet existing + 4,866 (150%) = 8,110 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The garage addition shall be consistent with the architectural renderings contained in Sheets SP-02, SP-03, and SP-04, entitled Garage Addition prepared by David Maudlin, Architect, dated November 19, 2009, and shall be constructed of brick.
5. The applicant shall designate the area along the northern portion of the lot as a tree save area and shall install tree protection fencing prior to commencement of the construction process to protect the 8-inch diameter dogwood tree and the off-site 12-inch diameter holly from construction activities. The applicant shall also designate the area around the 24-inch tree located east of the driveway as a tree save area and shall install tree protection fencing prior to commencement of the construction process. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area.

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

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

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

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

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. FRANK L. AND VICTORIA Z. RINDONE, SP 2009-DR-105 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7 ft. 6" from side lot line. Located at 1502 Audmar Dr. on approx. 10,519 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((9)) 117A. (*Admin. moved from 2/3/10 due to inclement weather.*)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm currently had an attorney/client relationship with a couple of the people listed on the affidavit, and indicated he would recuse himself from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Robert Murphy, 9746 Oaktop Court, Fairfax Station, Virginia, agent for the applicants, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2009-DR-105, subject to adoption of proposed development conditions.

Mr. Murphy presented the special permit request as outlined in the statement of justification submitted with the application. He said the family needed additional space for their growing family.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-DR-105 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 L. AND VICTORIA Z. RINDONE, SP 2009-DR-105 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7 ft. 6 in. from side lot line. Located at 1502 Audmar Dr. on approx. 10,519 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((9)) 117A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 2010; and

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

1. The applicants are the owners of the property.
2. The application meets all the submission requirements as forth in Sect. 8-922.
3. Staff recommends approval, and the Board adopts its rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 1,430 square feet) of the addition, as shown on the plat prepared by Robert Lach, Jr., Architect dated October 30, 2009, revised by Robert Murphy, Agent, through December 22, 2009, submitted with this application and is not transferable to other land.
3. Building permits for the addition shall be obtained prior to construction.
4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,088 square feet existing + 3,012 (150%) = 5,020 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. The applicant shall designate the area at the edge of the building envelope to the southern property boundary as tree save area and install tree protection fencing to preserve the holly tree located in this area.
7. A minimum of five (5) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the southern foundation of the 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.

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. Hart recused himself. Ms. Gibb was not present for the vote.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. JOHN. J. KELLY AND KAYE R. KELLY, SP 2009-SP-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements used on error in building location to permit open deck to remain 3.6 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 9102 Paloma La. on approx. 9,048 sq. ft. of land zoned R-3 (Cluster).

Springfield District. Tax Map 97-2 ((3)) 488. (*Admin. moved from 2/3/10 due to inclement weather.*)

Chairman Ribble called the applicant to the podium.

Shannon Caffee, staff coordinator, stated that she had received a telephone call from the applicants' agent, who was stuck in traffic.

Chairman Ribble said would move this case until later in the agenda.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. D. MICHAEL ELLIS, TR., SP 2009-SP-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from the rear lot line. Located at 6410 Stonehaven Ct. on approx. 13,226 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((4)) 391. (*Admin. moved from 2/3/10 due to inclement weather.*)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard L. Flather, 2925 Elmesmeade Court, Oakton, Virginia, agent for the applicant, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-SP-106 subject to adoption of the revised proposed development conditions.

Mr. Flather presented the special permit request as outlined in the statement of justification submitted with the application. He said they wanted to add a 13 by 19 square-foot addition on the back of the house. They had a trellis on top of the open deck, which was not previously permitted, and had come with the house. The applicant did not realize it was not previously permitted, and apologized for that.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-SP-106 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

D. MICHAEL ELLIS, TR., SP 2009-SP-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from the rear lot line. Located at 6410 Stonehaven Ct. on approx. 13,226 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((4)) 391. 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 24, 2010; and

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

1. The applicant is the owner of the property.

2. Staff recommends approval and the Board adopts the rationale in the staff report.
3. This is a very strangely shaped pipestem lot.
4. It has a rectangular house on it, but the lot is more or less a triangle.
5. There is not really any direction to expand the house easily.
6. Functionally, the place for the sunroom is at the rear of the house, but the way that the house is positioned, and particularly because the triangle is so shallow, the sunroom extends into the minimum yard.
7. Being in the proposed location, the sunroom would not bother anyone.
8. The sunroom is in the same location as the deck, which has a trellis on top of it already, which visually sets up where the room is going to be.
9. It is not going to be significantly different from what is there now.
10. All of the criteria in the standard Section 8-922 motion have been satisfied.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by John C. Manganello, Land Development Consultants, Inc. dated May 28, 2009, signed through November 12, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,067 square feet existing + 3,100 (150%) = 5,167 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the architectural renderings included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. ANTHONY CICCO, JR., AND LINDA CICCO, SP 2010-BR-005 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 14.4 ft. Located at 5100 King David Blvd. on approx. 8,939 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 151.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Stephen Nicholson, 12841 Braemar Village Plaza, Bristow, Virginia, agent for the applicants, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-BR-005 subject to the proposed development conditions.

Mr. Nicholson presented the special permit request as outlined in the statement of justification submitted with the application.

Mr. Hart stated that he could not correlate the drawing of the proposed garage with the photographs of the property, stating the angle of the roof would have to be changed, because of the gabled roof on the end of the house. Mr. Nicholson said the garage roof would align with the existing height of the house.

In response to a request from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, said the drawing would be removed as an attachment to the development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith made a motion to defer decision on SP 2010-BR-005 to March 31, 2010, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb abstained from the vote.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. MEHDI MOLAEI, SP 2010-HM-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from rear lot line. Located at 8587 Raglan Rd. on approx. 2,263 sq. ft. of land zoned R-5. Hunter Mill District. Tax Map 29-3 ((19)) 15.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mehdi Molaei, 8587 Ragland Road, Vienna, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Ms. Caffee stated that members of Code Enforcement were present to answer any questions regarding the corrective work orders and Notices of Violation (NOVs).

In response to a question from Mr. Beard, Ms. Caffee said that the building permit in the staff report was issued for the deck, and the sunroom was not included in that permit.

Mr. Hart asked if the shed roof mentioned on the building permit was part of the deck or part of the sunroom. Ms. Caffee replied that the shed roof description was on the building permit, but there was no description of where the roof would have been located on the attached approved plat.

Mr. Hart and Al Sanchez, Zoning Enforcement, discussed a photograph showing a post resting on a cinderblock on the ground, with Mr. Sanchez saying that the post was temporary, and the photograph was taken during the construction phase. He stated the deck was subsequently totally approved.

Mr. Molaei presented the special permit request as outlined in the statement of justification submitted with the application. He said the deck and sunroom were already in place when he purchased the house. Mr. Molaei said he did not make any additions or extend the sides, he just enclosed the sides with vinyl siding.

Mr. Beard and Mr. Molaei discussed the vinyl siding, with Mr. Molaei stating that he installed the siding in 2008 to protect the wood during the winter, noting that it was rotted and faded.

Questions arose on the history of the NOV. Wayne Bass, Chief of Code Enforcement, stated that the County received a complaint in 2008 when the siding was applied to the deck, and an NOV was issued. The inspector subsequently left the employ of the county and the NOV was lost, never to be pursued. Mr. Bass stated that there was a statute of limitations for criminal prosecution of an NOV, and the one-year deadline had lapsed. He said the County's only remedy would be through civil court.

Mr. Hammack noted that the applicant had a right to appeal the NOV. Mr. Bass stated that, to his knowledge, no appeal had ever been filed.

A discussion ensued between Chairman Ribble, Mr. Byers, Mr. Hammack, Ms. Caffee, and Mr. Molaei regarding the timing of the sunroom construction, with Mr. Molaei noting that he had not stopped construction when he received the corrected work orders, because the project was complete.

Mr. Hart and Mr. Molaei discussed the building materials for the sunroom, noting that the sunroom was like a screened porch, but with clear plastic windows. Mr. Molaei stated that the light fixture in the corner of the sunroom, skylights, and steps were present when he bought the house.

Chairman Ribble called for speakers.

Rahmir Razavi, 7908 Old Cedar Court, McLean, Virginia, came forward, and spoke in support of the application. He noted that he was a relative of the applicant, and had been present during all stages of the construction.

Virginia Frye, 8583 Raglan Road, Vienna, Virginia, came forward and spoke in opposition to the application. She said she represented the Board of Directors of the Townes Townhome Association, noting that the applicant had been notified in 2007 that he was in violation of the covenants, but still continued with the construction. Ms. Frye said the prior president of the Association had talked to the County about the violation.

In response to a question from Ms. Gibb, Ms. Frye stated that she could not remember if the deck had been enclosed before the applicant bought the house.

In response to a question from Mr. Byers, Mr. Bass said that since the corrective work orders were not appealed, they still stood. However, he pointed out that the normal procedure would be to pursue a criminal complaint, and in this instance, their only remedy would be to prosecute civilly.

Robert Jensen, 8597 Raglan Road, Vienna, Virginia, came forward. He stated that although the applicant was a good person and a good neighbor, he could not support granting an exception to the Zoning Ordinance.

In rebuttal, Mr. Molaei said he did not understand Ms. Frye's reference to 2007, since he did not begin the project until 2008. He said he now had the full support of his representative on the Association Board, but did not have a letter with him stating it. Mr. Molaei said he wanted to be in compliance, and would do whatever was necessary.

Chairman Ribble closed the public hearing.

Mr. Beard moved to deny SP 2010-HM-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

MEHDI MOLAEI, SP 2010-HM-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from rear lot line . Located at 8587 Raglan Rd. on approx. 2,263 sq. ft. of land zoned R-5. Hunter Mill District. Tax Map 29-3 ((19)) 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 March 24, 2010; and

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

1. The applicant is the owner of the property.
2. There is sympathy for this particular situation with an individual who purchases a property and it is represented to the purchaser that there are certain conditions that people are buying and then it turns out that these conditions are not sanctioned by the County and there is some kind of a problem with them.
3. Unfortunately that does not eradicate the conflict.
4. The Board is aware, based on the testimony, that when this property was purchased, the condition of the deck/sunroom was not such that it represented really what it does today, which is a fully enclosed, functioning, and operating room with egress, enclosed sides double case hung windows, and so forth.
5. It was discussed throughout the case that there was something analogous to isinglass-type windows, and a less permanent situation that has evolved, apparently, from a screened in porch.
6. It was testified that it was put in place by an owner and then seems to have evolved into this fully enclosed, functioning room.
7. There are some interesting enforcement issues here, specifically as Mr. Hammack brought up the salient point of the lack of an appeal.
8. There has been some lack of cooperation within the neighborhood community, which is another issue and not something that the Board needs to take into consideration.
9. The applicant has not presented testimony indicating compliance with Sect. 8-006, in particular Item 3, which talks about the proposed use shall be such that it is harmonious with, and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district resolutions and the adopted Comprehensive Plan.
10. The Board does not think the applicant has met the criteria under Sect. 8-914, the provisions for approval of reduction of minimum yard requirements based on error in building location.
11. The granting of this special permit will impair the intent and purpose of the Zoning Ordinance and will be detrimental to the use and enjoyment of other property in the immediate vicinity.
12. It will create an unsafe condition with respect to other properties.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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9:00 A.M. JOHN. J. KELLY AND KAYE R. KELLY, SP 2009-SP-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements ased on error in building location to permit open deck to remain 3.6 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 9102 Paloma La. on approx. 9,048 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 97-2 ((3)) 488. (*Admin. moved from 2/3/10 due to inclement weather.*)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Arif Hodzic, 1003 Snapper Cover Lane, Pasadena, Maryland, agent for the applicants, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-SP-104 subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said when the owners purchased the property, there was a wood patio in place, 3.6 feet away from the rear property line. Mr. Hodzic stated that the applicants wanted to demolish the existing wood deck, build a screened porch, and keep the wood patio.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-SP-104 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. J. KELLY AND KAYE R. KELLY, SP 2009-SP-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 3.6 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 9102 Paloma La. on approx. 9,048 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 97-2 ((3)) 488. 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 24, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants presented testimony indicating compliance with the standards as set forth under each respective section of the Ordinance.
3. Staff recommends approval of the screened porch addition.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch and open deck (wood patio) as shown on the plat prepared by William E. Ramsey, P.C., dated July 30, 2009, revised through September 30, 2009, and signed October 1, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,253 square feet existing + 3,379 (150%) = 5,632 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. BRIAN AND GINA DEAN, SP 2009-DR-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from front lot line of a corner lot. Located at 2106 Grayson Pl. on approx. 15,900 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 89. (*Admin. moved from 9/22/09 and 10/20/09 at appl. req.*)

Chairman Ribble noted that SP 2009-DR-053 had been withdrawn.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. JOANNE MOAK, SP 2010-DR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.4 ft. from side lot line such that side yards total 15.1 ft. Located at 1900 Woodgate La. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 40-2 ((20)) 24.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Joanne Moak, 1900 Woodgate Lane, McLean, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-DR-003 subject to the proposed development conditions.

Ms. Moak presented the special permit request as outlined in the statement of justification submitted with the application. She said her neighbors supported her proposal, noting that her home was one of only two houses of nineteen which did not have a garage.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-DR-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

JOANNE MOAK, SP 2010-DR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.4 ft. from side lot line such that side yards total 15.1 ft. Located at 1900 Woodgate La. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 40-2 ((20)) 24. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 2010; and

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

1. The applicant is the owner of the property.
2. The application meets all of the submission requirements as set forth in Sect. 8-922.
3. The staff recommends approval, and the Board adopts the staff's rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a garage addition (404 square feet), as shown on the plat prepared by Merestone Land Surveying PLLC, dated December 9, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the

dwelling that existed at the time of the first expansion (2,034 square feet existing + 3,051 square feet (150%) = 5,085 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area west of the proposed garage addition and along the northern property boundary as tree save areas to protect the on-site 22-inch diameter red maple tree and the existing off-site vegetation and shall install tree protection fencing to protect the vegetation in these areas from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. *(Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09.) (Decision deferred from 10/6/09, 1/6/10, and 2/24/10,)*

Chairman Ribble called the applicants to the podium. He reminded the Board this case was for decision only, noting that the public hearing had previously been closed.

Mr. Hart confirmed with Susan Langdon, Chief, Special Permit and Variance Branch, that staff's position was to approve the application with the March 17, 2010 conditions, but change Condition 18 to take out the words "in perpetuity". Ms. Langdon said that those conditions had been vetted through the County staff.

Jerry Emrich, representing the applicants, referenced his letter of March 23, 2010, and asked the Board to consider those issues. He asked for the opportunity to explain the three proposed changes contained in the letter.

Mr. Hart and Mr. Emrich discussed Condition 36, with Mr. Emrich stating that he was only trying to anticipate and avoid future issues. He said there was recent case law involving a subdivision plat in which there was an agreement made by the applicant, and they subsequently wanted to challenge it. The Court responded that the applicant agreed, so end of discussion. Mr. Emrich said that he was trying to avoid a similar situation in

the future with this application. Mr. Hart said if there was a future question about interpretation of a development condition, it would result in an appeal.

Mr. Hart and Mr. Emrich moved onto Condition 20, with Mr. Hart asking what was it the applicant felt the need to do that was being prohibited by that condition. Mr. Emrich said the area of concern was the southeast corner across Braddock Road from the State Police Headquarters.

Charles DeLashmutt from the engineering firm, 1120 S. George Mason Drive, Arlington, Virginia, explained the original grading plan in section 8, the area which was addressed in Condition 20. Mr. Hart, Ms. Langdon, Mr. Emerich and Mr. DeLashmutt discussed the proposed clearing area, with Ms. Langdon stating that staff wanted to retain the 40-to 50-foot band of native vegetation along Braddock Road. Mr. DeLashmutt said the 40-foot strip of woods would have to be disturbed, since it was adjacent to the silt traps. Ms. Langdon noted that the applicants wanted to clear the entire area and replant it, whereas staff wanted it to be preserved. In response, Mr. Emerich said the applicants proposed to clear the area, but that staff and the applicant would then determine how it would be revegetated. He explained they needed to retain as much of the property for burials as possible.

Mr. Hart, Ms. Langdon, Mr. Emerich, and Mr. DeLashmutt discussed the possibility of using retaining walls, with Mr. DeLashmutt stating that it would take him a couple of weeks to revise the plan.

Mr. Hart mentioned the contentious points concerning Condition 30, which addressed the final stage for soil storage. Mr. Emerich and Mr. DeLashmutt felt that submitting a new site plan every five years was excessive. Mr. Hart thought that Condition 30 could be revised to both parties' satisfaction.

Mr. Hart moved to defer decision on SPA 81-A-022-09 to April 14, 2010, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:30 A.M. MIDDLEBURG ASSOCIATES, LLC, A 2009-DR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory structure that exceeds seven feet in height and does not comply with the minimum side yard requirements for the R-3 District in violation of Zoning Ordinance provisions. Located at 1253 Ingleside Av. on approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B. (*Admin. moved from 11/17/09 at appl. req.*)

Chairman Ribble noted that A 2009-DR-037 had been administratively moved to April 21, 2010, at 9:30 a.m., at the applicant's request.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:30 A.M. JOHN D. BIRGE AND SUSAN D. FADOUL, A 2009-DR-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed single family detached condominium development in the R-3 District may not provide access via private driveways onto a public street. Located at 1300, 1308, 1312 and 1316 Ingleside Av. on approx. 2.02 ac. of land zoned R-3. Dranesville District. Tax Map 30-2 ((1)) 1A, 5, 6, 7 and 8. (*Admin. moved from 5/19/09, 8/11/09, and 12/1/09 at appl. req.*)

Chairman Ribble noted that A 2009-DR-005 had been withdrawn.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-040 Appl. under sect(s). 18-301 of the

Zoning Ordinance. Appeal of a determination that, according to the conditions specified in Special Permit Amendment SPA 81-A-022-8, the expiration date for the mausoleums and columbariums approved with SPA 81-A-022-4 and extended by SPA 81-A-022-5 shall continue to remain in effect. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 10/7/08, 1/13/09, 3/24/09, 5/19/09, 5/12/09, 7/28/09, and 11/3/09 at appl. req.)

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to June 16, 2010, at 9:30 a.m., at the applicant's request.

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~ ~ ~ March 24, 2010, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. (T/A FAIRFAX MEMORIAL PARK) AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-064 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a grading plan cannot be approved because dirt stockpiling shown on the grading plan is not in conformance with Special Permit SPA 81-022-08. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 2/3/09, 5/19/09, 5/12/09, 7/28/09, and 11/3/09 at appl. req.)

Chairman Ribble noted that A 2008-BR-064 had been administratively moved to June 16, 2010, at 9:30 a.m., at the applicant's request.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding *Lord vs. BZA*, At-Law CL 2009-12456 and *Lord vs. BZA*, At-Law CL 2010-197, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:44 a.m. and reconvened at 11:57 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers 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 11:58 a.m.

Minutes by: Suzanne L. Frazier

Approved on: September 13, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 31, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

9:00 A.M. TRUSTEES OF THE NEW LIFE CHRISTIAN CHURCH & NEW CINGULAR WIRELESS PCS, LLC, SPA 75-D-096 (modification of development conditions and telecommunications facility) (Admin. moved from 2/10/10 at appl. req.)

Chairman Ribble noted that this case had been indefinitely deferred at the applicant's request.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. THE CHURCH FOR ALL NATIONS, INC., SPA 83-P-057-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a place of worship to permit change in permittee and deletion of land area. Located at 2535 Cedar La. and 8506, 8526 and 8529 Amanda Pl. on approx. 12.38 of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Admin. moved from 12/15/09 at appl. req.) (Deferred from 1/13/10 at appl. req.) (Decision deferred from 2/24/10.)

Chairman Ribble called the case noting that the decision had been deferred pending receipt of new information.

Suzanne Lin, Staff Coordinator, said new development conditions were distributed that morning regarding Condition 11 concerning stormwater management. In response to Mr. Hammack's question about development condition changes, Ms. Caffee explained changes that addressed staff's and the Board's concerns over the removal of land area, specifically Parcel 35A.

Discussion ensued regarding responsibility of the pond's maintenance.

Lynne J. Strobel, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, agent for the applicant, explained the existing stormwater management agreement; the obligation to maintain the pond until development occurs; requirements for bonds and recordation of subdivision plats; applicant's agreement with the revised development conditions; particulars about the pond on Parcel 35; and the existing underground pipe system. She said the pond maintenance would all be resolved, and there would not be a circumstance where an individual homeowner would bear the responsibility. Ms. Strobel clarified their position on the pond on parcel 35A and some referenced undetained runoff from a neighboring school property. She said the applicant had agreed to provide some type of facility in an open space area to take that runoff so that it won't pass through the site.

Beth Forbes, Stormwater Engineer, Environmental and Site Review Division, Department of Public Works and Environmental Services, confirmed Mr. Hart's understanding of the church's on-site stormwater management, the water uphill from the church, the pond on the south side and, the protection of the houses downhill.

Chairman Ribble called for a motion.

Mr. Hammack moved to approve SPA 83-P-057-05 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 CHURCH FOR ALL NATIONS, INC., SPA 83-P-057-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a place of worship to permit change in permittee and deletion of land area. Located at 2535 Cedar La. and 8506, 8526 and 8529 Amanda Pl. on approx. 12.38 of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Admin. moved from 12/15/09 at appl. req.) (Deferred from 1/13/10 at appl. req.) (Decision deferred from 2/24/10) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2010; 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 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, The Church for All Nations, Inc., and is not transferable without further action of this Board, and is for the location (2535 Cedar Lane, 8529 Amanda Place, 8526 Amanda Place and 8506 Amanda Place) indicated on the application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Larry D. Caruthers, P.E., ATCS, P.L.C., dated May 15, 2009 and revised through December 9, 2009 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 the approved special permit amendment (SPA) plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall not exceed 500.
6. 169 parking spaces shall be provided as shown on the special permit plat. Overflow parking shall be provided at the Thoreau Intermediate School so long as the applicant obtains and maintains a valid agreement with the appropriate County agency. All other parking shall be on-site. There shall be no parking on Amanda Place. If after diligent efforts, a valid parking agreement with Thoreau Intermediate School cannot be obtained or maintained, a site plan shall be submitted to DPWES for approval to construct a minimum of 50 parking spaces in that area identified on the SPA Plat as "Possible Future Parking." All new parking lots shall be constructed, screened by landscaping and/or

barriers, and maintained in accordance with provisions of the Zoning Ordinance and the Public Facilities Manual (PFM).

7. All interior and peripheral landscaping for the parking lot(s) shall be provided in accordance with Article 13. The landscaping shall be maintained in a healthy condition and dead and/or dying plant materials replaced. Prior to the issuance of the new Non-RUP, Urban Forest Management shall inspect the site and shall require replacement and/or new vegetation to meet the intent of the parking lot landscaping requirements.
8. Transitional Screening shall be modified along all lot lines, as shown on the SPA Plat. The landscaping shall be maintained in a healthy condition and dead and/or dying materials replaced. Prior to the issuance of the new Non-RUP, Urban Forest Management shall inspect the site and shall require replacement and/or new vegetation to meet the intent of Transitional Screening requirements.
9. The barrier requirement shall be waived on all lot lines.
10. Except as required by Conditions 6 and 11, there shall be no land disturbance associated with this application.
11. The stormwater management facilities shall be properly maintained on this site. In addition to the existing stormwater management facilities as shown on the SPA Plat, a stormwater management facility shall be installed between the Church building and the multi-use building, north of the existing concrete walk and in proximity to the northern property line shared with Thoreau Intermediate School. Said facility may consist of a rain garden, an infiltration trench, a combination thereof, or other type of facilities as reviewed and approved by DPWES. In order to assure that the trees in the area adjacent to the new facility will be minimally impacted, prior to installation of any facility; the plans shall be reviewed and approved by Urban Forestry Management (UFM). The facility shall be designed to accommodate un-detained runoff from Thoreau Intermediate School so that there is no net increase in the 10-year pipe flow at Structure M-2 located in Bowling Green Drive, adjacent to Lot 11, Dunn Loring Woods, Section One, Block N, as calculated using current methodologies. Said facility shall be installed prior to installation of Phase 1 sedimentation controls associated with development of property identified among the Fairfax County tax assessment records as 49-1 ((1)) 35A.
12. If the shed on Parcel 38A is removed for any reason, it may be replaced provided that minimum required yards are met and it is located outside any required planting areas.
13. There shall be a minimum of 45 minutes between the end of one worship service and the start of the next worship service.
14. The multi-use building shall not be used for services or other activities that coincide with services in the sanctuary, other than Sunday School, adult Bible Study, children's services and English Ministries (youth outreach/bible study in English), to ensure that the parking needs are met during the peak operating hours of the place of worship, which is the principal use on the property. With the exception of a "crying room" for parents and infants, worship services held in the main sanctuary shall not be simultaneously broadcast to other rooms or buildings.
15. Any new parking lot lighting installed shall be in accordance with the outdoor lighting standards as set forth in Section 14-900 of the Zoning Ordinance. The proposed parking lot light fixtures shall be fully shielded and International Dark Sky (IDA) approved. Exclusive of security lighting, all outdoor lighting shall be turned off within a half hour of the end of any night time meetings and/or services. Motion detectors may be installed on parking lot and security lighting as a security measure.

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. ANTHONY CICCICO, JR., AND LINDA CICCICO, SP 2010-BR-005 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 14.4 ft.. Located at 5100 King David Blvd. on approx. 8,939 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 151. (*Decision deferred from 3/24/10.*)

Chairman Ribble noted that this case was deferred for decision only for clarification of plat numbers.

Shannon Caffee, Staff Coordinator, said there were discussions at the original public hearing about the discrepancies between the dimensions and drawings and the plat prepared for the special permit application. The information requested of the applicant was not received in time for staff to provide the Board with revised proposed development conditions. Ms. Caffee noted that the agent was present with a copy of a drawing and a letter from the engineer that signified and explained the discrepancy in the dimensions.

Stephen K. Nicholson, 12841 Braemar Village Plaza, #143, Bristow, Virginia, engineer and agent for the applicants, distributed the revised plat to the Board, and the measurements were verified.

Chairman Ribble called for a motion.

Mr. Byers moved to approve SP 2010-BR-005.

Discussion ensued regarding discrepancies with the street address and several measurements as listed on the plans and the development conditions, therefore, Mr. Byers made a motion to reconsider the application with the correct address. Mr. Hammack seconded the motion. Chairman Ribble called for a vote, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Byers then made a substitute motion to approve SP 2010-BR-005 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY CICCICO, JR., AND LINDA CICCICO, SP 2010-BR-005 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 14.4 ft. Located at 5100 King David Blvd. on approx. 8,939 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 151. (*Decision deferred from 3/24/10*) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 31, 2010; and

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

1. The applicant is the owner of the land.
2. The application meets all of the submission requirements set forth in 8-922.
3. Staff recommends approval.
4. The staff's rationale is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed garage addition as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc. dated and signed October 21, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,403 square feet existing + 3,604.5 (150%) = 6,007.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. DAVID SHERIDAN, SP 2009-SP-107 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 6801 Sue Paige Ct. on approx. 10,715 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 286. (*Admin. moved from 2/10/10 due to inclement weather.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David Sheridan, 6801 Sue Paige Court, Springfield, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of application SP 2009-SP-107, subject to the proposed development conditions.

Mr. Sheridan presented the special permit request as outlined in the statement of justification submitted with the application. He explained the layout and drainage conditions of his property, where he pointed out the numerous water controlling devices, such as French drains, a retention wall, and numerous plantings, which he installed to direct the runoff. Mr. Sheridan said he contacted his neighbor about the neighbor's complaint, noting it was not his property causing the drainage problem. Mr. Sheridan said he wanted to put in the screened porch, because that area of his property was fairly useless having poor sunlight exposure, bugs, it was hot in the summer, and unattractive with poor quality grass. He said there were no privacy issues, as the neighbor's property was barely visible.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-SP-S107 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID SHERIDAN, SP 2009-SP-107 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 6801 Sue Paige Ct. on approx. 10,715 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 286. (Admin. moved from 2/10/10 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 31, 2010; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The staff report's rationale is adopted.
4. Based on the applicant's presentation, the impact from the additional stormwater from the screened porch, if any, would be minimal.
5. The water is not really draining from the porch toward the neighbor that had the flooded basement.
6. With the development conditions, the impacts are satisfactorily mitigated.
7. From the photographs, even with the leaves off the trees at the time the picture was taken, there is very heavy, mature vegetation between this structure and anything that would be impacted by it.
8. The lot is oddly shaped; it is very wide and shallow.
9. There is no really useable way with this house to extend it to the sides or to where there might be room with the setbacks; all those spaces would be kind of strange triangles.
10. Putting the screened porch at the rear of the house is appropriate given the house that they have.
11. With the topography and the vegetation, there will not be significant impact on anybody, the one letter notwithstanding.
12. The Board has determined that the application meets all the standards and criteria in Sect. 8-922.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by Thomas W. Kendall, Kendall Consulting, Inc. dated June 22, 2009, revised November 3, 2009 and signed November 4, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,657 square feet existing + 2,485.5 (150%) = 4,142.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed addition and the dripline of the significant trees outlined in the memo from the Forest Conservation Branch, DPWES along the rear property line. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment and personnel do not occur within the areas.

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

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

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. PHAN SO HUYNH, SP 2009-MA-109 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3322 Nevius St. on approx. 11,717 sq. ft. SC of land zoned R-3. Mason District. Tax Map 61-2 ((7)) 21A. (*Admin. moved from 2/10/10 due to inclement weather.*)

Chairman Ribble noted that SP 2009-MA-109 had been withdrawn.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. T-MOBILE NORTHEAST LLC & SPRINGFIELD SWIMMING AND RACQUET CLUB, INCORPORATED, SPA 81-S-017 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-S-017 previously approved for community swimming pool and tennis courts to permit addition of telecommunications facility. Located at 7400 Highland St. on approx. 3.75 ac. of land zoned R-3. Sully District. Tax Map 80-1 ((5)) (52) 1. (in association with SE 2009-LE-016.) (*Admin. moved from 3/10/10 and 3/24/10 at appl. req.*)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James R. Michal, Esquire, Jackson & Campbell, P.C., 1120 20th Street, N.W., Washington, D.C., the applicant's agent, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of application SPA 81-S-017, subject to the proposed development conditions.

Mr. Michal presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed flagpole was substantially comparable to that of Fire Station 35. The facility would be serviced by underground electrical lines, it would be quiet, and very well screened by mature trees. Mr. Michal said a balloon test was done where residents attended to see what little visual impact there would be. He noted that cell service was necessary for the area, it would provide for co-coverage of other carriers, and the Lee District Land Use Advisory Committee approved of the use.

Chairman Ribble called for speakers.

John M. Renahan, 7422 Highland Street, Springfield, Virginia, came forward to speak in opposition. He said the cell tower was in a residential area. He believed it was an industrial use, and this industrial application should only occur in clearly defined industrial-zoned areas. He believed it was not appropriate to build a 13-story cell phone tower in a residential area of single-family homes and, the applicant could fulfill its needs by citing a cell phone tower in an industrial-zoned location.

In rebuttal, Mr. Michal said they were unable to find an industrial property to lease on which to install their tower, for if they had, they would not need a special exception or special permit, only a 2232 Review. There was no other viable alternative, which was why they came to the swim club property. He mentioned a prior arrangement, which resulted in a dispute with the industrial landlord who voided the lease. Those issues came up during the Lee District Land Use Committee meeting, and he was asked if this facility were approved, would T-Mobile relinquish the prior 2232 approval at that industrial site. Mr. Michal assured the committee they would. Mr. Michal said the use of wireless communication was extremely important to the community and for public safety.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SPA 81-S-017 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

T-MOBILE NORTHEAST LLC & SPRINGFIELD SWIMMING AND RACQUET CLUB, INCORPORATED, SPA 81-S-017 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-S-017 previously

approved for community swimming pool and tennis courts to permit addition of telecommunications facility. Located at 7400 Highland St. on approx. 3.75 ac. of land zoned R-3. Sully District. Tax Map 80-1 ((5)) (52) 1. (in association with SE 2009-LE-016) (Admin. moved from 3/10/10 and 3/24/10 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 31, 2010; and

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

1. Springfield Swimming & Racquet Club, Incorporated, is the owner of the property.
2. The present zoning is R-3.
3. The area of the lot is 3.75 acres.
4. There is a requirement of a finding that there is no other alternative site, and the applicant has presented that testimony.
5. In this case, in many ways this is looked at as a win-win.
6. Although sympathetic to the issues that Mr. Rehanan has referenced, it does provide an income stream to the neighborhood pool, which provides certainly a valuable benefit to the community.
7. It will increase the level of service with the cell phones in the community.
8. The applicant has made a significant effort to minimize the visual impact by the location of the pole in this case, as well disguising it as a flag pole, which is a clever and patriotic way to do this.
9. There has been some citizen support for this, and the applicant has reached out to the local community.
10. Measures have been taken to mitigate the impact and to provide, again, a win-win to the community.
11. The application has the recommended approval from staff.
12. Staff's rationale is adopted.

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 the Zoning Ordinance.

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

1. This approval is granted to the applicants only, T-Mobile Northeast LLC and Springfield Swimming and Racquet Club, Inc., and is not transferable without further action of this Board and is for the location, 7400 Highland Street, indicated on the application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat titled T-Mobile Northeast LLC, prepared by Compass Technology Services, consisting of 8 sheets dated October 23, 2008, as revised through February 22, 2010, 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 development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of memberships for the Springfield Swimming and Racquet Club, Inc. shall be 525.
6. Parking shall be provided as shown on the Special Permit Amendment Plat. All parking shall be on site.
7. The regular hours of operation for the swim club shall be 7:00 a.m. to 9:00 p.m., Memorial Day through Labor Day. After hour parties for the swim club shall be governed by the following:
 - Limited to six (6) per season;
 - Limited to Friday, Saturday and pre-holiday evenings;
 - Shall end by midnight.
8. A written copy of all applicable development conditions shall be provided to the individual responsible for any after-hours party or event, to all members, to contractors providing services at the club, and to parties who may rent the club's facilities.

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

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

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH & NEW CINGULAR WIRELESS PCS, LLC d.b.a. AT&T MOBILITY, SPA 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 2004-MV-025 previously approved for a church and telecommunications facility to permit site modifications and modifications of development conditions. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (In association with SEA 2004-MV-001) (*Admin. moved from 2/24/10 at appl. req.*)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James R. Michal, Esquire, Jackson & Campbell, P.C., 1120 20th Street, N.W., Washington, D.C., the applicant's agent, reaffirmed the affidavit.

Mr. Hammack made a disclosure that he owned eight shares of stock of one of the companies listed on the affidavit, but indicated he did not believe his ability to participate in the case would be affected.

Chris DeManche, Staff Coordinator, made staff's presentation. On March 18, 2010, the Planning Commission unanimously recommended approval of the companion application SEA 2004-MV-001, therefore, staff recommended approval of SPA 2004-MV-025.

Mr. Michal presented the special permit request as outlined in the statement of justification submitted with the application. He said the facility was a co-location that did not involve a new structure; no on-site personnel required; no traffic generated; and would provide needed services to the neighborhood and the County. He said they concurred with staff's development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers made a disclosure that he owned 500 shares of AT&T stock, but had forgotten earlier, so was just disclosing this. He asked the Chairman if he should be recused. Chairman Ribble said unless he owned 10 percent or more, he did not believe Mr. Byers had to be recused. Mr. Byers did not have to recuse himself.

Mr. Beard moved to approve SPA 2004-MV-025 in association with SEA 2004-MV-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

TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH & NEW CINGULAR WIRELESS PCS, LLC d.b.a. AT&T MOBILITY, SPA 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 2004-MV-025 previously approved for a church and telecommunications facility to permit site modifications and modifications of development conditions. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (In association with SEA 2004-MV-001) (Admin. moved from 2/24/10 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 March 31, 2010; and

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

1. Trustees of the Calvary Korean Baptist Church is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.98 acres.
4. The Board has a staff recommendation for approval.
5. This, in conjunction with Sect. 9-104, will be disguised as a tree, which is in keeping with the proximity.
6. There are no other locations available since it is in an R District, pursuant to Sect. 9-104.

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 the Zoning Ordinance.

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

1. This approval is granted to the applicants, Trustees of the Calvary Korean Baptist Church and New Cingular Wireless PCS, LLC d.b.a. AT&T Mobility, and is not transferable without further action of this Board, and is for the location indicated on the application, 8616 Pohick Road (3.98 acres) 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 amendment plat prepared by Entrex Communication Services, Inc., dated June 5, 2009, as revised through February 18, 2010, plat entitled "Maverick-Pohick Road Verizon Monopole", approved with the application, as qualified by these development conditions.
3. A copy of this special permit amendment 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 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 exception shall be in substantial conformance with these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 70 seats in the sanctuary of the church.
6. Parking shall be provided as shown on the SEA/SPA plat. All parking shall be on-site.
7. All signs, existing and proposed, shall be in conformance with Article 12 of the Zoning Ordinance.
8. All existing vegetation on the property is to be maintained in good condition, including the removal and replacement of all dead, dying and diseased trees, as determined by Urban Forest Management (UFM).
9. Prior to issuance of the Non-Rup, the applicant shall install a single row of evergreen plantings along the southern and western boundaries of the parking area to shield automobile headlight glare from impacting Pohick Road and the property identified as Tax Map 98-1 ((1)) 20. These evergreen plantings shall be installed subject to approval by Urban Forest Management (UFM).
10. Transitional screening shall be modified as shown on the SEA/SPA plat and as described in Condition # 8.
11. Barriers shall be waived in favor of that shown on the SEA/SPA plat.
12. Any new lighting, or replacement lighting installed on the subject property shall be provided in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
13. The trailers (C, D and E) depicted on the SEA/SPA plat shall be approved until July 1, 2013.
14. A site plan shall be submitted within six months from the final approval date of this special permit for trailer "E" and the gravel area located to the north and east of all trailers (C, D and E) depicted on the SEA/SPA plat. If the site plan has not been submitted as required above, the approval for trailer "E" shall be null and void, and the trailer shall be removed.
15. Prior to the issuance of a Non-Rup, a site plan shall be submitted for trailer "E" and the impervious gravel area located to the north and east of all trailers (C,D and E) depicted on the SEA/SPA plat. A re-vegetation plan shall be submitted concurrently with the site plan, depicting the re-vegetation of the gravel area with mixed native seedlings. All re-vegetation plantings shall meet Public Facility Manual (PFM) standards, as determined by UFM. The re-vegetation plan shall include, but not be limited to, the following:
 - Plant list detailing species, sizes, quantities and stock type of trees
 - Soil treatments and amendments, if necessary.
 - Methods of installation
 - Maintenance

- Monitoring

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

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

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. JAMES P. HARWELL, SP 2009-LE-108 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7064 Elton Way on approx. 1,848 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((17)) 13A.
(Admin. moved from 2/10/10 due to inclement weather.)

Chairman Ribble noted that this case had been administratively moved to April 14, 2010 at the applicant's request.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. KELLY L. BATIE, SP 2010-LE-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.4 ft. from side lot line and 6.8 ft. from rear lot line, to permit roofed deck to remain 8.8 ft. from a rear lot line and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 8134 Norwood Dr. on approx. 11,861 sq. ft. of land zoned R-3. Lee District. Tax Map 101-2 ((3)) 3.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kelly L. Batie, 8134 Norwood Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. The applicant requested approval of three special permit requests. The first request is to permit reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain. The second error in building location request was to permit a roofed deck to remain 8.8 feet from a rear lot line, and the third request was to permit an existing six-foot high fence to remain in the front yard.

Mr. Batie presented the special permit request as outlined in the statement of justification submitted with the application. When he purchased his home in December 2008, he was unaware that the workshop was not authorized by the County, and after being advised of the non-compliance, he assured he would do anything necessary to keep it.

Melissa Smarr, Code Specialist II, responded to Mr. Hart's questions concerning a building permit; the closeness to the lot line; staff's willingness to work with the applicant; and the requirement for a fire-rated wall.

Ms. Hedrick responded to Mr. Hart's questions concerning the use of the garage as a workshop, and the recent interpretation that had involved a similar case.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-LE-007 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Beard commented on staff's positive attitude and willingness to work with and assist Mr. Batie, noting Mr. Batie had expressed his appreciation of staff's excellent service.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KELLY L. BATIE, SP 2010-LE-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.4 ft. from side lot line and 6.8 ft. from rear lot line, to permit roofed deck to remain 8.8 ft. from a rear lot line and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 8134 Norwood Dr. on approx. 11,861 sq. ft. of land zoned R-3. Lee District. Tax Map 101-2 ((3)) 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 March 31, 2010; 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 Sect. 8-914, Provisions for Approval of Reduction to Minimum Yard Requirements Based on Error in Building Location.
3. The non-compliance was done in good faith, having been done by a former owner of the property, and which the applicant had no knowledge when he bought the property.
4. Although the structure is a little close to the side lot line, it is there; and, it is not seen to be detrimental to the use and enjoyment of other property in the immediate area, which is an important criterion.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 existing detached accessory structure (frame garage/workshop), roofed deck (wood deck) and fence as shown on the plat prepared by Scartz Surveys, dated August 20, 2009, and signed through December 22, 2009, submitted with this application and is not transferable to other land.
- 2. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the detached accessory structure (garage/workshop) or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.
- 3. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the roofed deck (wood deck) or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.
- 4. The accessory structure shall not be converted into livable space.
- 5. Notwithstanding what has been depicted on the plat, the applicant shall reduce the height of the fence on the wood deck to meet Zoning Ordinance requirements.

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

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST CHURCH), SPA 85-C-003-05 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church with private school of general education to permit the addition of a nursery school. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard L. Flather, the applicant's agent, 2925 Elmesmeade Court, Oakton, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff believed the application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions, and recommended approval.

Vice Chairman Hammack assumed the Chair.

Ms. Langdon responded to Mr. Hart's questions concerning the on-going progress between an adjoining church property, Zoroastrian Temple, and the connection between the applicant's property to the entrance/exit which will be provided by the Zoroastrian Temple.

Mr. Flather said he had no presentation, and was present to answer any of the Board's questions. He did agree with staff's Proposed Development Conditions.

Chairman Ribble resumed the Chair.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 85-C-003-05 for the reasons stated in the Resolution, and Mr. Hammack seconded the motion.

Mr. Beard noted that the school's total enrollment would not exceed the current 96 students, and traffic generation would actually decrease, because of the earlier dismissal time of the younger children.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST CHURCH), SPA 85-C-003-05 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church with private school of general education to permit the addition of a nursery school. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 31, 2010; and

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

1. The applicant is the owner of the land.
1. The present zoning is R-E.
2. The area of the lot is 7.16 acres.
3. Staff recommends approval with the adoption of the development conditions in Appendix 1.
4. The applicant has indicated concurrence with those development conditions.
5. The staff's rationale is adopted.

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 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, the Church of the Good Shepherd (United Methodist), and is not transferable without further action of this Board, and is for the location indicated on the application, 2351 Hunter Mill Road, 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 Land Design Consultants, dated February, 1994, as revised through December 14, 1994, 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 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 church seats in the main area of worship shall be limited to 400. The maximum number of seats in the outdoor worship area shall be 30.
6. There shall be no amplification used in the outdoor seating area.
7. Parking shall be provided as depicted on the special permit plat. All parking shall be on site, notwithstanding however, that approximately five (5) spaces may be removed in conjunction with the construction of an inter-parcel connection to the north, via Lot 26.
8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but supplemental plantings shall be maintained along the southern and western lot lines, as depicted on the plat. The barrier requirement shall be waived.
9. The limits of clearing and grading shall be maintained as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Division. There shall be no structures except the existing outdoor seating, and no removal of vegetation except for dead or dying trees or shrubs in the area outside the existing limits of clearing and grading.
10. Any new proposed or replacement lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
11. The width of the existing entrance shall be provided as determined by the Virginia Department of Transportation (VDOT).
12. At such time as the entrance on Tax Map 37-2 ((1)) 26 to the north is constructed, the applicant shall utilize the existing easement to the north for a combined entrance to Hunter Mill Road that aligns with Hunter Valley Road. If provision of the consolidated entrance necessitates the removal of parking spaces, existing asphalt on the site may be re-stripped to make up for the lost spaces without the approval of an amendment to this special permit. The existing site entrance onto Hunter Mill Road must then be closed and landscape plantings shall be provided in that area similar to that provided between the existing parking lot and the lot line abutting Hunter Mill Road.
13. Upon issuance of a Non-Residential Use Permit, the hours of operation for the private school of education shall be limited to 8:45 a.m. to 3:30 p.m., Monday through Friday. The private school of general education will operate during the school year and will not operate during the summer.
14. Upon issuance of a Non-Residential Use Permit, the hours of operation for the nursery school shall be limited to 9 a.m. to 1 p.m., Monday through Friday.

15. Upon issuance of a new Non-Residential Use Permit, the number of students enrolled in the private school of general education and the nursery school shall be limited to a total maximum daily enrollment of ninety-six (96) children. Upon issuance of a new Non-Residential Use Permit, the number of employees associated with the private school of general education and the nursery school shall be limited to a maximum of ten (10) at any one time.
16. The outdoor play equipment shall be located in the existing cleared area north of the church building. The play equipment shall not be located on a septic field.
17. The applicant shall obtain a sign permit for the proposed sign for the private school of general education in accordance with the provisions of Article 12 of the Zoning Ordinance.

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

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~ ~ ~ March 31, 2010, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. *(Admin. moved from 8/7/07 and 11/6/07 at appl. req.) (Decision deferred from 2/26/08, 5/13/08, 6/17/08, 12/16/08, 4/14/09, and 10/27/09.)*

Chairman Ribble noted that Appeal A 2007-LE-017 had a withdrawal request pending.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that the appellant had withdrawn its application, as all the issues associated with their Notice of Violation were resolved.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:30 A.M. LANDSCAPE CONSTRUCTION SERVICES, INC., A 2009-MV-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a storage yard and has erected structures on property in the C-8 District without the of a site plan, Building Permits, or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. on approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. *(Admin. moved from 9/15/09 and 1/13/10 at appl. req.)*

Chairman Ribble noted that there was a deferral request for Appeal A 2009-MV-024.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said staff thought a site plan would be filed to correct the violations; however, subsequent construction since the initial approval warranted a new site plan. Ms. Stanfield said the appellants pursued several avenues to come into compliance, but with none coming into fruition. Staff did support the deferral request, as the appellant was in renegotiation with a new lease, and the property owner and tenant would work to resolve the violations.

Mr. Hart moved to continue A 2009-MV-024, Landscape Construction Services, Inc., to August 4, 2010, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:30 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (*Admin. moved from 9/15/09 and 1/13/10 at appl. req.*)

Chairman Ribble noted that A 2009-MV-025 had a request for a deferral. He asked if there was anyone who wished to speak to the deferral.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Alejandro (Alex) Bertoldo, 9300 Castle Hill Road, Springfield, Virginia, came forward, stating he was the agent and supported the deferral request. He said his client was working to clean the site up and with the current tenant's lease ending in June, and there was work that would best be completed after that. Mr. Bertoldo pointed out several contractors retained, who would proceed with the site cleanup after the previous lease was up. Mr. Bertoldo said his client indicated he would install a chain-link fence to retain debris/trash from blowing onto adjoining properties, and that his client assured the non-compliance structures would be removed as soon as the lease was up.

Chairman Ribble called for a motion.

Mr. Hart moved to continue Appeal A 2009-MV-025 to August 4, 2010, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Following the motion, a brief discussion ensued whereby John C. Decker, II, Esquire, identifying himself as the agent for Mr. Espina's tenant, supported the August 4th continuation.

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~ ~ ~ March 31, 2010, Scheduled case of:

9:30 A.M. CAMPUS POINT REALTY CORPORATION, A 2009-PR-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located on approx. 14.40 ac. of land zoned I-3 and HC pt. Providence District. Tax Map 39-2 ((1)) 13C.

Chairman Ribble noted that A 2009-PR-046 had been administratively moved to April 21, 2010, at 9:30 a.m., at the appellant's request.

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Chairman Ribble noted that the scheduled April 7, 2010, meeting had no agenda items. He asked for a motion to cancel the meeting.

Mr. Hammack moved to cancel the April 7, 2010 meeting. Mr. Hart 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 recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Lord v. BZA in Circuit Court of Fairfax County, Virginia, No. CL-2009-12456 pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms Gibb was absent from the meeting.

The meeting recessed at 10:56 a.m. and reconvened at 11:29 a.m.

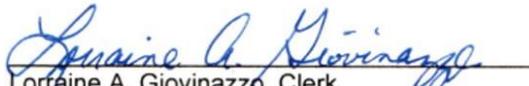
Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Paula A. McFarland

Approved on: September 20, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, April 14, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC., & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088

Chairman Ribble noted that The Parklawn Recreation Association, Inc., and New Cingular Wireless PCS, LLC, SPA 76-M-088, had been indefinitely deferred at the applicants' request.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. JAMES P. HARWELL, SP 2009-LE-108 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7064 Elton Way on approx. 1,848 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((17)) 13A. *(Admin. moved from 2/10/10 due to inclement weather) (Admin. moved from 3/31/10 at appl. req.)*

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James P. Harwell, 7064 Elton Way, Alexandria, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested special permit approval to permit a modification on the keeping of animals to allow three dogs on a lot smaller than 12,500 square feet.

Ms. Langdon concurred with Mr. Beard that the case was the result of a complaint.

Mr. Harwell presented the special permit request as outlined in the statement of justification submitted with the application. He said he had good relations with the neighbors, was always responsive to any matter brought to his attention concerning the dogs, would immediately take action to mitigate a problem or concern, and he recently had laid lime to neutralize an acidic odor a neighbor brought to his attention. Mr. Harwell said the neighbor who filed the complaint chose not to speak to him directly, but when unable to reach his landlord, filed the complaint through the County. He said the dogs were never allowed outside without supervision; the yard was picked up three times daily; the two basset hounds were elderly and would not be with them much longer; and as he and his wife were military personnel, they had always maintained professional courtesy with their neighbors.

In response to Ms. Gibb's question concerning the e-mail from Kelley Pinzon complaining about the dogs' barking, Mr. Harwell said the dogs were crate trained and remained inside while he and his wife worked. He noted that Ms. Pinzon acknowledged that the dogs had been quiet since the special permit process, and he had taken extraordinary measures to ensure his dogs were not a nuisance. Mr. Harwell said there were many neighboring townhomes with small dogs that often barked, and perhaps his pets were being blamed.

In response to Mr. Smith's question about the Bark Meter, Mr. Harwell explained how it worked and that it was only used for the dachshund. The two basset hounds were very quiet.

In response to Mr. Hart's question concerning staff's development conditions, Mr. Harwell said he was in agreement with the development conditions, noting that he would limit the dogs' outdoor time to 10 minutes instead of 30 minutes when unattended.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-LE-108 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES P. HARWELL, SP 2009-LE-108 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7064 Elton Way on approx. 1,848 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((17)) 13A. (Admin. moved from 2/10/10 due to inclement weather) (Admin. moved from 3/31/10 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2010; and

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

1. The applicant is not the owner of property; however, the applicant has obtained written permission for approval to seek this special permit by the owner.
2. The present zoning is R-5.
3. The area of the lot is 1,848 square-feet
4. Major Harwell has taken appropriate mitigation efforts over the period of time that he has been in the home.
5. Mr. Harwell has indicated that he is on a three-year assignment at the Pentagon and two of those years have now passed.
6. The dogs' ages are 3, 10, and 14.
7. This owner would be able to keep two dogs by-right on this property.
8. This is also an issue when there are multiple dogs in the vicinity and it is very, very difficult to tell exactly what dog has been making the noise.
9. There is no issue with the granting of this.

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 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, James P. Harwell, and is not transferable without further action of this Board, and is for the location indicated on the application, 7064 Elton Way (1,848 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 dogs. If any of these animals die, are sold or given away, they shall not be replaced, except that two dogs may be kept on the property in accordance with the Zoning Ordinance
4. The yard area 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. Smith seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. LILIANA VAN GILDER, SP 2010-DR-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 6702 Pine Creek Ct. on approx. 8,418 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 40-2 ((35)) 10.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Mary Ann Godfrey, Staff Coordinator, made staff's presentation as contained in the staff report. She said that staff believed the application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions, therefore, she recommended approval with adoption of the proposed development conditions contained in the staff report.

Ms. Godfrey responded to questions from Mr. Hart and Mr. Hammack, clarifying that the house was grandfathered. She explained preservation of two specific trees, clarification of Development Condition 5, installation of protective fencing during construction phases, and the assurance of the trees' protection because heavy equipment would not be used to bring in construction materials.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He verified that there would be no tree disturbance, and explained the preventative measures that would be used. Mr. Ahrens said all the neighbors supported his client's special permit request for the porch.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-DR-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LILIANA VAN GILDER, SP 2010-DR-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at

6702 Pine Creek Ct. on approx. 8,418 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 40-2 ((35)) 10. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2010; 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 six required standards set forth in the Ordinance to authorize this particular construction.
3. The reasons set forth by staff in their recommendation for approval is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by Scartz Surveys, dated January 5, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,424 square feet existing + 3,636 (150%) = 6,060 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The screened porch addition shall be consistent with the architectural renderings and materials shown in Attachment 1 of these conditions.
5. The applicant shall designate the trees located in the rear and side yards as tree save areas and shall install tree protection fencing prior to commencement of the construction process to protect the trees from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within these tree save areas.

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. ROBERT W. MILFORD & DEBORAH L. MILFORD, SP 2010-SP-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.2 ft. from side lot line such that side yards total 18.1 ft. Located at 9208 Setter Pl. on approx. 10,745 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((6)) 39.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Arif H. Hodzic, AIA, the applicants' agent, Hodzic Architects, P.C., 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval.

In response to Mr. Hart's question, Ms. Langdon said an inspection by the Urban Forrester may be requested to ensure fulfillment of development conditions regarding specific plantings.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the two construction constraints were the lot's irregular shape and a large fireplace chimney causing a slight encroachment into the side yard. Mr. Hodzic said the applicants had agreed to the installation of the requested plantings.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SP-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

ROBERT W. MILFORD & DEBORAH L. MILFORD, SP 2010-SP-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.2 ft. from side lot line such that side yards total 18.1 ft. Located at 9208 Setter Pl. on approx. 10,745 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((6)) 39. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2010; and

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

1. The applicants are the owners of the land.
2. We have a staff recommendation of approval.

3. The rationale in the staff report is adopted.
4. This lot is very narrow; somewhat narrower at the back than at the front.
5. To add a garage, the logical place to put it is in the place of the existing carport.
6. Although the garage is slightly wider than some garages the Board has approved, the house has a chimney inside the garage that sticks out on that side, and if the garage were narrower, the car door could not be opened properly.
7. The side yard problem is less than a foot at the rear corner; actually, the location of the side of the garage would be legal at the front of the house, but it is because the lot line is somewhat angled that the back corner is a problem.
8. The other problem with this lot is that even though the back corner is within a foot of being by-right, the total side yards are too narrow; that is sort of a function of this lot anyway.
9. What is being requested, although it is 24 feet wide, there is a reason for that; it is only 26 feet long, which is logical for parking a car and being able to walk around the car inside the garage. It is also the same length as the rest of the house.
10. With the development conditions, any potential impacts have been mitigated.
11. There does not seem to be any opposition to this.
12. The Board has determined that all of the Sect. 8-922 criteria have been satisfied.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed garage addition as shown on the plat prepared by William E. Ramsey, dated October 8, 2009 and signed October 20, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,492 square feet existing + 3,738 (150%) = 6,230 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. A minimum of one small flowering tree, such as a Japanese styrax, Kousa dogwood or star magnolia, a minimum of six feet tall at time planting, and a minimum of four medium shrubs such as rhododendron, cherry laurel, or viburnum, with a mature height of 4 to 8 feet, and size at time of planting of 30-36 inches tall, shall be planted between the garage and the eastern property line once construction has been completed and prior to final building inspection of the garage.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

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

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

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. WEN J. HSU & TSAN H. LIU, SP 2010-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit construction of addition 14.2 ft. and deck 11.5 ft. from rear lot line. Located at 1103 Riva Ridge Dr. on approx. 21,979 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-1 ((5)) 26.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Arif H. Hodzic, AIA, the applicants' agent, Hodzic Architects, P.C., 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested approval for the reduction of certain yard requirements to permit construction of an addition 14.2 feet from the rear lot line, and the reduction of certain yard requirements to permit construction of an open deck 11.5 feet from the rear lot line. Staff recommended approval.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the lot was unusual because it was a pipestem lot, and what appeared to be the front yard was actually a rear yard.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-DR-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

WEN J. HSU & TSAN H. LIU, SP 2010-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit construction of addition 14.2 ft. and deck 11.5 ft. from rear lot line. Located at 1103 Riva Ridge Dr. on approx. 21,979 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-1 ((5)) 26. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2010; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,979 square feet.

4. Because of the way the house is sited on a pipe stem lot, the addition, which would have plenty of room to be built in what appears to be the side yard but which is actually the rear yard, the applicant needs a special permit.
5. The Board has a favorable staff report.
6. There will definitely not be an impact on neighbors because the property where the addition would be is surrounded, at least to a very large extent, by flood plain and common area owned by the homeowners association.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition and deck as shown on the plat prepared by William E. Ramsey dated October 12, 2009 revised through November 17, 2009 and signed November 20, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,586 square feet existing + 3,879 (150%) = 6,465 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance.

Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. LUKE LEVASSEUR & KATHRYN D. RAY, SP 2010-DR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.3 ft. from side lot line. Located at 1815 MacArthur Dr. on approx. 10,018 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 135.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Luke Levasseur, 1815 MacArthur Drive, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants proposed construction of two additions adjacent to the southern side lot line. The first addition proposed a one-and-a-half story addition for a one-car garage with a small mud room, as well as a half floor above to provide an additional bedroom and expansion of a portion of the existing upper level of the home. The second addition was a one-story family room/dining room with a vaulted ceiling approximately 15 feet in length. Together both additions created a side wall 45.3 feet in length along the southern side lot line.

Staff recommended approval-in-part for the application. Staff recommended approval of the request for the one-car garage with the half floor subject to the development conditions contained in the staff report. Staff recommended denial of the proposed one-story addition located to the rear of the garage addition. Staff believed that portion of the proposed addition could be reconfigured in such a way that would not require special permit approval if shifted further north away from the side lot line.

Mr. Levasseur presented the special permit request as outlined in the statement of justification submitted with the application. He explained why he did not agree with staff's conclusion, and noted that he could build a much larger addition by-right, but that he sought only to build a reasonable addition to accommodate the needs of his growing family. He believed it was in keeping with the neighborhood, minimize any impact on his neighbor, and had his neighbors' support. He said his lot was not zoned correctly; it was too small to be an R-2; it should be an R-4; and under that zoning, the setback would be 10 feet.

Discussion ensued regarding questions concerning the floor plan, modulating the design, the garage's dimensions, clarification of elevations, location of rooms, the layout of the existing basement, and the statute requirement concluding the requested setback was the minimum necessary.

Discussion ensued regarding potential impact and aesthetic considerations from various design changes, staff's position on modifications and/or redesign, and what could make the proposal legally acceptable.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2010-DR-008 for the reasons stated in the Resolution.

Mr. Hart explained the reasons he could not support the application, but would support a redesign. He said modulating the structure would still afford a room large enough to accommodate the family and have less setback.

Chairman Ribble called for a vote. The motion carried by a vote of 5-2. Mr. Hart and Mr. Byers voted against the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUKE LEVASSEUR & KATHRYN D. RAY, SP 2010-DR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.3 ft. from side lot line. Located at 1815 MacArthur Dr. on approx. 10,018 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 135. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2010; and

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

1. The applicants are the owners of the land.
2. The property is zoned R-2.
3. It is recognized that staff has recommended approval-in-part, and this is somewhat a close case particularly in meeting Standard 9 that states the "BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot."
4. The BZA must evaluate specific factors to include, but are not limited to, the layout of the existing structure, the availability of alternate locations for the addition, and the orientation of the structures on the lot. Reasonableness must be applied with this standard.
5. The applicants could have put on a much larger addition within the footprint.
6. The addition is consistent and harmonious with the existing Cape Cod architecture.
7. The existing roofline of the existing dwelling will be maintained.
8. As mentioned in Standard 6, the materials, the size, and the scale of the proposed addition are compatible with the existing architecture of the home, and the applicants have made a significant effort to do that.
9. There is concern about the addition's bulk that will move into the setback; however, as was the applicants' testimony and also in the written materials, it does preserve a beautiful view out at the park environment, the ball fields back behind the home, and allows for a larger contiguous open space where the children can play while preserving vegetation along the south property line.
10. It is noted that there is support from the property owner to the south, who would be most directly impacted, and the property owner to the north, and the property owner across the street, who is in a very large home.
11. There were examples of other variances granted in the area, and it seems this would be harmonious with the surrounding areas.
12. This is a close call.
13. Staff's analysis is good and well reasoned.
14. A lot of effort was put in on both sides.
15. Under the circumstances, this is a reasonable use.

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

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

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by Alexandria Surveys, Inc., dated April 26, 2001, as revised and signed by Thomas M. French, III, Architect, P.C., dated October 16, 2009 as revised through March 10, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,632 square feet existing + 2,448 (150%) = 4,080 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The garage addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

Mr. Beard seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hart voted against the motion.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. REZAN A. SOFY, SP 2010-SU-013 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a home child care facility. Located at 4401 Pleasant Valley Rd. on approx. 10,500 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 49A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Trei F. Laizure, 4401 Pleasant Valley Road, Chantilly, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a home childcare facility for up to ten children at any one time. The driveway appeared to accommodate up to four vehicles with one space in the one-car garage to total five parking spaces. As outlined in the staff report, staff did not believe the application property could provide safe vehicular access to the site given the distance of the subdivision's entrance to the driveway, as well as a landscape island located directly in front of the applicant's driveway, which forced the circumvention of traffic's natural flow around the median.

Staff believed that the subject application was not in harmony with the Comprehensive Plan or in conformance with all applicable Zoning Ordinance provisions and recommended denial.

Ms. Hedrick concurred with Mr. Hart's comments regarding parking, access, egress, and thoroughfare of Pleasant Valley Road.

Michelle Dearing, Transportation Planning, Department of Transportation (DOT), addressed Mr. Beard's questions concerning Virginia Department of Transportation concerns.

Ms. Laizure presented the special permit request as outlined in the statement of justification submitted with the application. She had run a child care center from her home for three years, and there had never been any issues coming or leaving the premises. The drop-off and pickup schedule was staggered to assure no more than one car was in the driveway at one time. She referenced a letter of support from one of the parents, Angela Cross Green, who affirmed she never had an issue entering, exiting, or parking. She explained an alternate route some parents used from Cub Run Drive to avoid traffic on Pleasant Valley Road. Ms. Laizure said she had never received any complaints.

In response to Mr. Beard's question, Ms. Hedrick explained state and Zoning Ordinance licensing regulations for the number of children allowed at daycare centers. In response to Chairman Ribble's question, she clarified that the closing paragraph in a staff report stated whether an application met the requirements of the Comprehensive Plan, but this application was based on transportation issues as opposed to the Comprehensive Plan.

Ms. Dearing and Angela Kadar Rodeheaver, Chief, Site Analysis Section, DOT, each responded to Mr. Smith's and Ms. Gibb's questions concerning the sight distance and safety issues, particularly when turning around to access the site, and the danger of backing out of the driveway.

Mr. Hart brought staff's attention to the fact that there was not a number for the children specified in the conditions. Ms. Langdon said there should be a development condition stipulating the number of children.

In response to Mr. Hart's question concerning the parking, Ms. Hedrick explained staff's justification, clarifying that the parking was not the issue, that the ingress/egress was the concern.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to deny SP 201-SU-013 for the reasons stated in the Resolution.

Mr. Hart seconded the motion, and explained his reasons for supporting the denial.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

REZAN A. SOFY, SP 2010-SU-013 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a home child care facility. Located at 4401 Pleasant Valley Rd. on approx. 10,500 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 49A. 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 14, 2010; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 10,500 square feet.
4. Staff has recommended denial primarily because of Fairfax County Department of Transportation's traffic analyses as well as Virginia Department of Transportation's concern about ingress and egress to the subject property.
5. As noted in the staff report, there are sight line problems and a median situation that comes into play.
6. The proximity to the turn point as well as the entrance into the subject property is a proximity issue that has been pointed out by a staff member that could point to a perilous situation.
7. Up to seven children are able to be kept by-right with a State license; the applicant has been keeping five children for the last three years; the request would be to double that.
8. Although the applicant has pointed out they are careful to attempt to regulate the period of time the drop off happens, that is a bit static insofar as how the parents adhere to that.
9. This is a situation where there could be a ticking clock for a pretty serious traffic situation.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

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

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

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The meeting recessed at 10:47 a.m. and reconvened at 10:54 a.m.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09.) (Decision deferred from 10/6/09, 1/6/10, 2/24/10, and 3/24/10.)

Chairman Ribble noted that SPA 81-A-022-09 had been deferred for decision only.

Deborah Hedrick, Staff Coordinator, said the Department of Public Works and Environmental Services, Urban Forestry, and Stormwater Management staff met with the applicant, who subsequently submitted two revised special permit amendment plats. Staff had revised the development conditions, the applicant had concurred, and staff now recommended approval.

Chairman Ribble called for a motion.

Mr. Hart moved to approve SPA 81-A-022-09 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09) (Decision deferred from 10/6/09, 1/6/10, 2/24/10, and 3/24/10). 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 April 14, 2010; and

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

1. The applicants are the owners of the land.
2. The motion has been a long time coming.
3. The cemetery is an important use in Fairfax County; it takes up a lot of area; it has potential impacts upon neighbors; and, the neighborhood has changed a great deal since the 1950s.
4. The regulatory approach has changed over the years with respect to stormwater management and Chesapeake Bay and such things.
5. It is recognized now that the impacts on Chesapeake Bay are more stringently regulated than at the time the cemetery began operation.
6. The Board has struggled with the issue of what to do with the dirt generated by an ongoing cemetery operation on this and other cases.
7. There is now closure between what the applicant believes is feasible and what they propose to do as well as what the staff is looking for in terms of monitoring the ongoing dirt moving and storage operation and ensuring that the water quality is not negatively impacted.
8. It has been recognized through the review of the materials over the months that there was some opposition in the neighborhood, but to the extent that land use issues have been identified, through the continued dialogue between the applicant and staff, the impacts have been mitigated as much as could reasonable be done.
9. It is recognized that the cemetery use was there first; as long as it is adequately screened and buffered, the use is going to be there for a considerable period of time.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Calvary Memorial Park, Inc. t/a Fairfax Memorial Park and Fairfax Memorial Funeral Home, L.L.C., only and is not transferable without further action of this Board, and is for the location indicated on the application, 4401 Burke Station Road and 9900 and 9902 Braddock Road (128.14 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses as indicated on the special permit plat prepared by DeLashmutt Associates Ltd., dated October 14, 2008 as revised through March 12, 2010 for Sheets 2 through 7 and as revised through April 5, 2010 for Sheets 1 and 7B and approved with this application, as qualified by these development conditions. This does not require that the new crypts, columbaria, mausoleums, and niches be on the plats provided they meet the language contained in Development Condition Number 33.
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) as qualified by these conditions. Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. All parking shall be on-site, as shown on the special permit amendment (SPA) plat. Except for times of use, hearses and similar business vehicles used in the operation of the funeral home shall be parked and/or stored within a garage.
6. Lighting for the funeral home/crematory use shall focus only onto the subject property. Any parking lot lighting fixtures shall be limited in height to twelve (12) feet. All lighting fixtures added for the funeral home/crematory use shall be full cut-off lights, and shall be fully shielded in such a manner to prevent light from projecting onto adjacent residential property.

7. The funeral home/crematory building shall be limited in size to 16,150 square feet of interior floor area, and the garage and crematory unit shall be limited to a total of 3,968 square feet, as depicted in the plat building dimensions.
8. The maximum number of chapels within the funeral home/crematory structure shall be limited to one (1). The maximum total number of seats contained within the funeral home chapel shall be limited to 272. The maximum number of viewing parlors within the funeral home/crematory structure shall be limited to five (5). The maximum total number of seats contained within each viewing parlor shall be limited to 30.
9. Funeral services shall be conducted only between the hours of 10:00 a.m. and 3:00 p.m. Visitations and wakes shall be conducted only between the hours of 2:00 p.m. and 4:00 p.m. and between 7:00 p.m. and 9:00 p.m.
10. There shall be no chapel within mausoleums, or use of chimes or bells in conjunction with this use.
11. Crematorium services shall not be provided for any other funeral home establishment.
12. The crematory shall comply with all County, State and Federal Environmental Regulations and any other regulations applicable to its operation.
13. The number of burial services within each of the mausoleum or columbarium structures shall be limited to one at a time except that multiple services may be allowed if more than one member of the same family.
14. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance. The directional sign shall be permitted if in accordance with the Zoning Ordinance, as amended.
15. Any dumpster located at the funeral home shall be placed indoors or within an enclosure constructed of brick or architectural block. A gate shall be included on the enclosure. The dumpster in the maintenance area shall continue to be screened by the existing vegetation and topography.
16. The flower shop (as noted on the plat) shall be maintained as an accessory use to the cemetery/mausoleums or columbaria only. No retail sales to the general public for use outside the cemetery grounds shall be permitted.
17. All vegetation adjacent to the funeral home and surrounding parking lots as depicted on the SPA plat shall be maintained in a healthy condition. Any dead, dying, diseased or damaged vegetation shall be removed and replaced with like kind and size as needed, subject to review and approval by the Urban Forest Management Division (UFMD).
18. The existing vegetation along the eastern and northern lot lines shall be deemed to satisfy the transitional screening requirement, subject to review and approval by UFMD to ensure the 25 foot transitional screening requirements remain except for Lot 194 which is owned by the applicant. In the event Lot 194 is no longer owner occupied, full transitional screening shall be provided. To the north of the parking lot, the hedge and the existing row of evergreen trees, a maximum of fifteen (15) feet on center as shown on the SPA plat shall be maintained. These shall be large evergreens a minimum of six (6) feet in height. In addition, between the hedge and the evergreen trees, an earthen berm shall be provided, as shown on the plat. The vegetation and berm shall extend from the western to the eastern corners of the parking lot, as shown on the plat. The existing vegetation along the western lot lines shall be deemed to satisfy the transitional screening requirement, except within the area of the parking lot and Burke Station Road where existing evergreen trees shall be maintained. The evergreen trees to be maintained shall be sufficient in number and height to create a year-round visual screen for residential properties to the west, subject to review and approval by the UFMD.
19. The existing vegetation along the southern lot line, except as noted below, shall be deemed to satisfy the transitional screening requirement, except that the existing trees shown within the limits of clearing and grading for the funeral home/crematory facility, stormwater management pond and turn

lane shall be replaced if removed or if irreparably damaged during development, as determined by the UFMD. Any required replacement trees shall be installed and maintained within the area between the funeral home facility and Braddock Road, to the satisfaction of the Urban Forest Management. All vegetation required for screening purposes shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation.

20. As shown on Sheet 1 of the SPA plat, the applicant shall preserve and maintain the "Undisturbed Area" along the southeastern property boundary along Braddock Road if and when Wooded Area A is developed. If the area shown to be cleared is cleared to meet adequate outfall, it shall be re-vegetated with native plant material in amount, variety and size as determined by UFMD. An existing buffer of vegetation a minimum 25 feet wide shall be preserved and maintained along the eastern boundary of Wooded Area A to serve as transitional screening. Additional evergreen screening trees and/or shrubs shall be planted to supplement the existing vegetation in order to meet the intent of transitional screening, subject to review and approval by the UFMD.
21. Wooded Areas C and D shall remain in their entirety. Any dead, dying, diseased or damaged vegetation shall be removed and replaced subject to review and approval by the UFMD.
22. The barrier requirements shall be waived along all the lot lines of the special permit property.
23. Existing vegetation shall be preserved to the maximum extent reasonable, consistent with the uses approved with this SPA, as per Note 12 on Sheet 1 of the SPA plat, and as set forth under the PFM and County Code requirements to ensure the tree cover canopy requirements are maintained.
24. Unless a 10-year tree cover canopy requirement modification request is applied for and approved by the Urban Forest Management Division during the site plan review process, the 10-year tree cover canopy shall be met by:
 1. Off-site Tree Banking
 2. Contributions to the Tree Preservation and Planting Fund
 3. On-site planting maximizing opportunities to gain additional 10-year tree canopy credit for trees planted to provide environmental and ecological benefits
 4. and/or a combination of the above techniques, subject to review and approval by the Urban Forest Management Division.
25. A Tree Preservation Plan and Narrative shall be submitted as part of the first and all subsequent site plan submissions which involve removal and preservation of trees within 25 feet of the limits of clearing and grading. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the UFMD, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees, on and off-site, living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing shall be erected at the limits of clearing and grading in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots.

All tree protection fencing shall be installed prior to any clearing and grading activities. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition

activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

The Applicant shall root prune, as needed, to comply with the tree preservation requirements of these conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the site plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted under the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as conditioned and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or registered consulting arborist to monitor all construction and tree preservation efforts in order to ensure conformance with all tree preservation conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

26. A site plan shall be submitted for the first phase and all subsequent phases of the soil storage area. The first site plan shall be submitted within six (6) months of approval of this SPA and shall include at the minimum the existing disturbance and may include the next phase of development. Silt ponds/stormwater management/Best Management Practices (SWM/BMP) ponds and the configuration of each phase shall be as approved by DPWES on the site plan.
27. The ultimate height of the soil storage area at the face of the slope shall be no greater than that depicted on the SPA plat, with a maximum height of 26 feet. The limits of disturbance for the soil storage area shall be no greater than that depicted on the SPA plat. This area shall only be used for storage of excess soil from graves and construction of crypts, columbaria, mausoleums or niches. No soil, dirt, and/or other debris shall be imported from off-site sources for inclusion in the soil storage area, and no construction debris of any kind shall be placed within the soil storage area shown.
28. Any land disturbance, including, but not limited to the area depicted on the SPA plat as "temporary storage area" shall meet the requirements of Chapter 104 of the Code of the County of Fairfax, Erosion and Sediment Control, and be in accordance with the Erosion and Sediment (E&S) Control Handbook, as determined by DPWES.
29. Immediately after construction for the stormwater management/sediment ponds and diversion dike is completed, plantings shall be provided on the upslope side of the pond (excluding the fill dam embankment or areas within 10 feet of the toe of the embankment slope and abutment contacts), as well as downslope side of the diversion dike to provide screening for the adjacent properties and provide revegetation of these areas. Additionally, as each lift is completed and the area is compacted, or at the completion of each site plan representing each phase, whichever comes first or as appropriate as determined by DPWES, the face of the lifts shall be planted, as determined necessary by UFMD. These plantings shall be shown on a landscaping plan and be part of the first and all subsequent site plan submissions, subject to review and approval by UFMD.
30. The site plan proposing the final phase of soil storage, such that the final grade shown on the SPA plat will be reached for the soil storage area shall include a final planting/reforestation plan to be

submitted to UFMD for review and approval. This plan shall include the proposed placement, amount, variety and size of the plant material to fill in open areas on the face of the slopes.

31. A full size copy of the approved SPA plat and development conditions shall be included with the first site plan submission and all subsequent site plan submissions for each phase of the fill operation for the soil storage area.
32. All requirements pertaining to adequate outfall and stormwater quantity and quality control shall be provided for review and approval if required by DPWES. If stormwater detention and/or BMP ponds must be provided, they shall be located within the areas shown to be cleared, other than what is needed to meet adequate outfall.
33. Except for those structures shown on the SPA plat as "previously approved", all new crypts, columbaria, mausoleums and niches may be located any place within the cemetery, with the following limitations:
 - No structures shall be located on top of occupied gravesites;
 - No structures shall be located within the shaded areas as depicted on Sheet 5 of 7, Exhibit A, of the SPA plat;
 - All structures located in the unshaded areas shall be a minimum fifty (50) feet from any exterior lot line;
 - All structures shall have a maximum height of 25 feet above the concrete foundation upon which it is placed;
 - All structures shall have a maximum footprint of 400 square feet; and,
 - All structures shall be screened from the view of any adjacent residential use property by evergreen vegetation with a minimum planted height of six (6) feet and an ultimate growth height equal or exceeding the height of the crypts, columbaria or mausoleums.
34. There shall be no time limitation on commencement of construction for uses approved in this SPA unless otherwise noted in these conditions.
35. A Resource Protection Area (RPA) field delineation study shall be completed as required by DPWES.

These conditions incorporate and supersede all previously approved 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 any required Non-Residential Use Permits through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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~ ~ ~ April 14, 2010, Scheduled case of:

9:00 A.M. BRITTANY L. VO, DDS, SPA 80-D-035-04 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for home professional office to permit a 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. *(Withdrawn, subsequently reactivated) (Deferred from 2/24/10 at appl. req.) (Admin. moved from 3/10/10 at appl. req.)*

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Brittany L. Vo, DDS, 7340 Gold Ring Terrace, Rockville, Maryland, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the

staff report. The applicant requested approval of a special permit amendment for a home professional office to continue a dental practice on-site with a change in permittee from Patrick Cieplak, DDS, to Brittany L. Vo, DDS. No physical changes to the application property were proposed. The property contained a single-family detached dwelling constructed in 1984, a driveway from Beulah Road, and 12 parking spaces. Dr. Vo proposed to keep all operational practices the same as were approved for the previous practitioner. Staff recommended approval.

Ms. Vo said there had been a dental office on the property since 1984, and she sought to change the permit holder's name in order to continue practicing dentistry on the property. She agreed with staff's development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 80-D-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

BRITTANY L. VO, DDS, SPA 80-D-035-04 Appl. under Sect(s). 8-907 of the Zoning Ordinance to amend SP 80-D-035 previously approved for home professional office to permit a 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. (Withdrawn, subsequently reactivated) (Deferred from 2/24/10 at appl. req.) (Admin. moved from 3/10/10 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2010; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 35,247 square feet.
4. Staff recommends approval.
5. The rationale of staff is adopted.

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 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, Brittany L. Vo, DDS, 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), as indicated on the special permit plat prepared by Dominion Surveys Inc., dated August 8, 2010, 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 than 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 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.

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.

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

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~ ~ ~ April 14, 2010, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09 and 11/17/09) (Admin. moved from 2/10/10 due to inclement weather.)*

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09 and 11/17/09.) (Admin. moved from 2/10/10 due to inclement weather.)*

Chairman Ribble noted that A 2009-PR-004 and A 2009-PR-007 would be heard concurrently.

Ms. Gibb recused herself from the public hearings.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in her Status Update memorandum, dated April 7, 2010. She said the appeal had been ongoing for over a year with most of the remaining violations being Brian Kelly's, the tenant on Mr. Thompson's property, and Mr. Kelly had indicated he was working towards completing the removal of all his equipment and the violations could be resolved by mid-June. She said it was her understanding that Mr. Thompson believed that he retained nonconforming rights, and explained why staff's position remained that

Mr. Thompson was incorrect. Ms. Stanfield also pointed out that Mr. Thompson and the Family Tree Care, Inc., business had been cited for similar violations in 1989 and 1990. The violations were cleared, and no assertions of nonconforming rights had been made at that time. She said the use did impact neighbors and the trucks were very loud and caused a disturbance to the surrounding residential properties.

Ms. Stanfield noted that Mr. Thompson was concerned about one vehicle parked on his property, and during the inspector's site visit, it was discovered the vehicle had been vandalized. Ms. Stanfield said staff recommended that the vehicle also be removed as it apparently was not in a safe location. Staff supported a deferral for decision.

In response to Mr. Hammack's question of the remaining violations, Bruce Miller, Property Maintenance Zoning Inspector, said the items included several shipping containers, a small trailer, a dump truck, a fuel oil tank, and assorted rebar. He said he had conducted his site visit the prior day at 1:00 p.m.

In response to Mr. Hart's question, Mr. Miller said Mr. Kelly was at the site during his inspection and had been informed of the issues remaining.

Chairman Ribble asked Mr. Thompson and Mr. Kelly if they would like to address the matter of a deferral.

Alfred H. Thompson, 2756 Marshall Street, Falls Church, Virginia, gave a brief history of his family, their farm, and how his life had changed over the years. He said, as long as he could remember, throughout Fairfax County there were small ongoing business activities.

Mr. Thompson and the Board discussed a possible deferral date. June 30, 2010, was chosen and both Mr. Thompson and Mr. Kelly agreed.

Mr. Kelly noted that he was born in Fairfax County in 1962, and there had always been equipment in Mr. Thompson driveway.

In response to Mr. Hart's questions, Mr. Kelly, said he would remove the items cited by Mr. Miller by the June 30, 2010, deferral date.

Dwight Pounders, no address given, stated he was the owner of the truck on the property, and it had been recently vandalized. He would remove his vehicle, but if everything was removed, he was concerned about Mr. Thompson's grandfathered rights.

Mr. Hammack commented that this situation was ongoing for years. He agreed to make a motion of defer, but noted that part of the reason for the deferral the previous year had been for Mr. Thompson to get legal counseling to help him determine if he had grandfathered rights, and that had not been done.

A brief discussion ensued regarding Mr. Kelly's and Mr. Pounder's commitment to remove their items off the property.

Jim Wentink, President and CEO of Family Tree Care, Inc., came forward to speak. He stated that Mr. Thompson was one of the most honorable men he knew. He acknowledged that it was his business that generated some of the noise complaints and that his wood chipper was used to clean up storm damage on the property. Mr. Wentink said because there was no regular activity on the property, there was vandalism and things stolen.

Mr. Hammack moved to defer the decisions on A 2009-PR-004 and A 2009-PR-007 to June 30, 2010, at 9:30 a.m. Mr. Beard seconded the motion.

Mr. Byers explained his reasons for not supporting another deferral, noting that there have been ample time to clear the violations.

Chairman Ribble called for a vote. The motion carried by a vote of 4-1. Mr. Byers voted against the motion. Ms. Gibb recused herself. Mr. Smith was not present for the vote.

Ms. Stanfield said that she would urge Mr. Thompson to contact the County's Tax Administration Department to pursue the tax abatement program.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:30 A.M. BAHRAM B. FOROUZANFAR, A 2009-MA-033 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has paved a portion of the front yard on property located in the R-2 District in excess of the allowable surface area under Zoning Ordinance provisions. Located at 6548 Spring Valley Dr. on approx. .752 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 52. (Admin. moved from 10/20/09) (Decision deferred from 10/27/09)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth.

Bahram B. Forouzanfar, 6548 Spring Valley Drive, Alexandria, Virginia, came forward.

Cathy Belgin, Staff Coordinator, Zoning Administration Division, said the decision had been deferred for the appellant to re-survey his driveway in order to challenge the amount of paved area which had been determined by the county staff. Staff had received the information that morning, but the engineer incorrectly conducted his survey by including portions of the yard that were not considered a front yard as determined by the Zoning Ordinance. Ms. Belgin said because of that error in measurements, the solutions the appellant proposed would not work. The appellant must recalculate the area, and if it exceeded the permitted amount of pavement, his options remained to either remove some pavement or pursue a variance. She noted that the appellant had suggested alternatives that morning, but there had been insufficient time for staff's review.

Mr. Forouzanfar explained that he had done a title search; had checked with the County before he purchased the house in 2004; and the driveway was already there. He said he blamed the County for creating the error by approving all the permits; and that he had the problem of correcting something he had not done and had thought was legal. He said there were no problems until a neighbor, who was denied approval to put in a similar driveway, complained to the County. He explained how the mistake was made with his calculations, and in response to Mr. Hart's question, Mr. Forouzanfar said he wanted to go forward with a decision.

Ms. Belgin responded to Ms. Gibb's question concerning how the error was discovered. She said the final inspection for the addition that was built in 2003 had not specifically included the driveway. She noted the engineer's mistakes in the measurements, but said the Ordinance language was fairly straightforward.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, noted that the pertaining 2002 Ordinance Amendment language was a very consistent application of the Ordinance.

In response to Mr. Gibb's question of why it had taken so long to re-survey the driveway, Mr. Forouzanfar said he had to wait for Virginia Department of Transportation to provide its right-of-way information, and he was involved in a construction project that kept him quite busy.

Discussion ensued regarding the facts of the situation and possible resolutions; the Board's purview on such decisions; the need for a corrected plat; suggestion of legal counsel for Mr. Forouzanfar's assistance through the process; the appellant's position on the County's responsibility for the error and its resolution; and the fact that it was not the appellant who did the violation.

Mr. Beard commented that the appellant had not caused this, and he could not uphold the Zoning Administrator's position.

In his closing comments, Mr. Forouzanfar said his neighbors supported him; the backyard was almost completely wooded; there was no water runoff, adverse view or impact on anyone; and because a neighbor was not permitted to pave almost all of his front yard, his complaint created the situation.

Ms. Gibb and Mr. Hart discussed Section 11-102.8 of the Zoning Ordinance. Ms. Gibb read that no more

than 25 percent of any front yard shall be surfaced. She commented that the Board sympathized with an appellant who bought a house with a driveway that did not meet Zoning Ordinance requirements, and that there was no way to determine it from a title search, checking through Department of Public Works and Environmental Services records, or even making a visual calculation. Ms. Gibb said it seemed unfair, but the fact was that a portion of the front yard was paved that exceeded the 25 percent rule, and there was nothing to dispute that the inspector's survey was inaccurate. Ms. Gibb moved to uphold the Zoning Administrator's determination.

Mr. Hart said he would second the motion for discussion. He said he thought it might be better to uphold-in-part, and explained his reasoning, stating that the appellant had satisfactorily rebutted that he did not cause the error. Mr. Hart offered a friendly amendment to uphold-in-part.

Ms. Gibb said she accepted Mr. Hart's amendment.

Mr. Byers noted that he could not support the motion. He and Ms. Gibb discussed that there were many situations where a purchaser had no way of knowing something was illegal, a play set, a fence, a widened driveway, et cetera, and those violations were not found in land records or even a diligent search.

Ms. Stanfield informed the Board that another individual in the neighborhood was recently cited for the same violation and had applied for a variance for remedy.

Discussion ensued regarding the BZA's purview with the restrictions set down by the courts for determining such cases, the matter of fairness and equitable solutions, and the fact that a situation was unfair was not a valid reason for a decision on an appeal.

Chairman Ribble called for a motion. The motion to uphold the Zoning Administrator's determination, as stated by Ms. Gibbs and modified by Mr. Hart, carried by a vote of 4-2. Mr. Beard and Mr. Byers voted against the motion. Mr. Smith was not present for the vote.

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~ ~ ~ April 14, 2010, Scheduled case of:

9:30 A.M. LM 734 LC TRADING AS COMSTOCK TREE FARM, C/O CHRISTOPHER CLEMENTE, A 2009-DR-047 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a commercial recreation use not permitted in a residential district, has added soil in excess of allowable area and depth, and is allowing an accessory use to remain on a vacant lot, all on property in the R-E District and in violation of Zoning Ordinance provisions. Located at 734 Leigh Mill Rd. on approx. 5.42 ac. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 79B.

Chairman Ribble noted that there was a withdrawal pending on A 2009-DR-047.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that a notice would be rescinded and reissued, but since it had not yet been withdrawn, staff recommended setting a deferral date of April 28, 2010.

Ms. Gibb moved to defer A 2009-DR-047 to April 28, 2010, at 9:30 a.m., at staff's request.

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

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding amendment of the BZA by-laws; Lord v. BZA in Circuit Court of Fairfax County, At Law CL 2010-00197; and a 2009 companion case with that, SCI Virginia Funeral Services, Inc., in the Circuit Court of Fairfax, CL-2010-268; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

The meeting recessed at 12:25 p.m. and reconvened at 12:35 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

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Mr. Hammack moved to amend Article 3, Paragraph 1 of the by-laws to read that the regular meeting of the BZA shall be held on Wednesdays as needed each month; each regular meeting shall begin at 9:00 a.m. He noted that the purpose of the change was to conform the by-laws to the present practice. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

Mr. Hammack said that in view of a number of legislative changes that had come to the Board's attention, he would move that the Board request that it be granted legal counsel to review its by-laws to ensure that they were in compliance with the statutory changes, which would come into effect on July 1, 2010, especially with respect to voting and procedural requirements. Mr. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

Mr. Hammack referenced the case of Lord v. BZA in the Circuit Court of Fairfax County, Law No. CL 2010-LL-197, and moved that the Board seek legal counsel to represent them in the matter, since the appellant had made motions to hold the Board in contempt, which justified a basis for seeking legal counsel. Ms. Gibb seconded the motion.

Mr. Hart clarified that the BZA was seeking approval for legal counsel from the County Executive, Anthony Griffin.

Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Mr. Smith was not present for the vote.

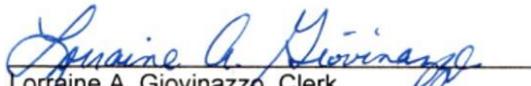
Mr. Hammack referenced the case of SCI Virginia Funeral Services, Inc. v. BZA in the Circuit Court of Fairfax, CL 2010-268, and moved to also request legal counsel from the County Executive, because of time limitations that had surfaced on it, and because staff would be unable to produce the record within the time required by the writ due to lack of service or questionable service on the staff. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Paula A. McFarland

Approved on: September 27, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, April 21, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:03 a.m. He discussed the policies and procedures of the Board of Zoning Appeals.

During Board matters, Mr. Byers recognized Jordan Long, daughter of Jim and Suzanne Long, and a student at Lake Braddock High School. He said Ms. Long was participating in the Special Olympics this weekend and wished her well.

Chairman Ribble called for the first scheduled case.

~ ~ ~ April 21, 2010, Scheduled case of:

9:00 A.M. SARESH SHAH, SP 2010-MA-011

Chairman Ribble noted that SP 2010-MA-011 had been administratively moved to June 9, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ April 21, 2010, Scheduled case of:

9:00 A.M. DEEPAK BHATTASALI AND MEI XIE BHATTASALI, TRUSTEES, SP 2010-MA-014 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 27.08 ft. from front lot line. Located at 3404 Mansfield Rd. on approx. 16,292 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 998.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mark A. Kohler, 5206 Rolling Road, Burke, Virginia, the applicants' agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-MA-014, subject to the proposed development conditions.

Mr. Hart noted the presence of a planter and walkway behind the garage, asking if they would affect the side yard requirements. Ms. Caffee stated that they were considered accessory structures and would not encroach upon the minimum side yard requirements.

In response to a question from Mr. Hammack, Ms. Caffee stated that the existing deck did not encroach into the side yard since the subject property was a corner lot and the deck was in the rear yard.

Mr. Kohler presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants would like to enclose the existing carport, making it a garage. Mr. Kohler stated that the garage would blend harmoniously with the neighborhood, noting that it would be framed with a brick veneer. He also noted that the roofline would not be changed, nor would the footprint be expanded.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-MA-014 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEEPAK BHATTASALI AND MEI XIE BHATTASALI, TRUSTEES, SP 2010-MA-014 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 27.08 ft. from front lot line. Located at 3404 Mansfield Rd. on approx. 16,292 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 998. 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 21, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants met the six required standards set forth in Sect. 8-922 of the Zoning Ordinance.
3. The applicants are only proposing to enclose an existing carport.
4. The encroachment will be no greater than it already is for the carport.
5. The roof will remain the same.
6. The carport conversion is being done in connection with other improvements being made on the property by right.
7. There will be no detrimental impact on neighboring properties in any way.
8. The Board adopts the rationale set forth in the staff report recommending approval of this 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed garage addition as shown on the plat prepared by Mark A. Kohler, Kohler Homes, dated February 11, 2010 and signed February 12, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,657.7 square feet existing + 5,486.5(150%) = 9,144.2 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding certain legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). In particular those matters were revisions to the Bylaws of the Board of Zoning Appeals; CSI Funeral Services, Inc. v. BZA in the Circuit Court of Fairfax County; Lord v. BZA, CL-2010-197, in the Circuit Court of Fairfax County, and Lord v. BZA, CL-2009-12456. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:18 a.m. and reconvened at 9:50 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ April 21, 2010, Scheduled case of:

9:30 A.M. SHLP TYSONS RESERVE I LLC AND SHLP TYSONS RESERVE II LLC, A 2010-PR-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7965 through 8070 Crianza Place and 2121 through 2171 Tannin Place on approx. 11.48 ac. of land zoned PDH-30 and pt. H-C. Providence District. Tax Map 39-2 ((1)) 13A5 and 13A6.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff had received a letter from appellants requesting a 60-day deferral of the public hearing to facilitate ongoing settlement discussions.

Mr. Byers moved to defer A 2010-PR-001 to June 23, 2010, at 9:30 a.m., at the appellants' request. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ April 21, 2010, Scheduled case of:

9:30 A.M. CAMPUS POINT REALTY CORPORATION, A 2009-PR-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located on approx. 14.40 ac. of land zoned I-3 and HC pt. Providence District. Tax Map 39-2 ((1)) 13C. (Admin. moved from 3/31/10 at appl. req.)

Chairman Ribble noted that A 2009-PR-046 had been withdrawn.

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~ ~ ~ April 21, 2010, Scheduled case of:

9:30 A.M. MIDDLEBURG ASSOCIATES, LLC, A 2009-DR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory structure that exceeds seven feet in height and does not comply with the minimum side yard requirements for the R-3 District in violation of Zoning Ordinance provisions. Located at 1253 Ingleside Av. On approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B. (Admin. moved from 11/17/09 and 3/24/10 at appl. req.)

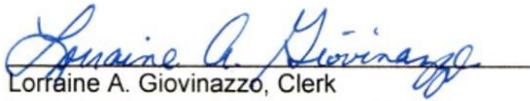
Chairman Ribble noted that A 2009-DR-037 had been withdrawn.

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As there was no other business to come before the Board, the meeting was adjourned at 9:43 a.m.

Minutes by: Suzanne Frazier

Approved on: September 17, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas Smith and V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:05 a.m. He discussed the policies and procedures of the Board of Zoning Appeals.

Mr. Hammack stated that due to changes to the agendas for May 5, 2010, and May 12, 2010, the Board would not be holding meetings on those dates.

Chairman Ribble called for the first scheduled case.

~ ~ ~ April 28, 2010, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (Admin. moved from 6/16/09, 7/14/09, and 8/11/09 at appl. req.) (Decision deferred from 9/29/09, 11/17/09, 12/15/09, and 2/24/10)

Chairman Ribble called the applicant to the podium.

Debbie Hedrick, Staff Coordinator, stated that new development conditions had been distributed to the Board. She said they were reviewed by VDOT, and the applicant was in agreement with the changes.

In response to a question from Mr. Hart, Ms. Hedrick stated that the 50 percent open space area was in compliance with the Ordinance requirements.

Mr. Hart and Ms. Hedrick discussed Development Conditions 15 and 31, with Mr. Hart suggesting language to clarify Condition 31.

Mr. Hammack referenced Development Condition 2 and asked whether it was the standard language to regulate lessees for private schools of general education. Susan Langdon, Chief, Special Permits and Variance Branch, stated that the applicant had specifically requested the proposed language so they would not have to come back before the Board if the tenant for the school changed.

Mr. Hammack and Ms. Langdon discussed the Ordinance requirements for private schools of general education, with Ms. Langdon noting that private schools alone do not require special permits. It was only when the school was associated with a church that a special permit was required. She said that most church/school applications did not designate who would run the schools. Mr. Hammack stated his concern that development conditions related to operation of church schools remain consistent.

In response to a question from Mr. Hammack, Ms. Langdon said it was the intent of Development Condition 11 to limit the number of employees on site at any one time to twelve.

Chairman Ribble asked the applicant's agent, Amber Scharn, if she agreed to the development condition changes that had been discussed. She stated that she did.

Mr. Hammack moved to approve SP 2009-SU-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

THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (Admin. moved from

6/16/09, 7/14/09, and 8/11/09 at appl. req.) (Decision deferred from 9/29/09, 11/17/09, 12/15/09, and 2/24/10) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 28, 2010; and

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

1. The applicant is the owner of the property.
2. This has been an involved application with rather difficult issues attached, in particular, related to transportation.
3. The Board was pleased that the waivers requested from VDOT came through and those issues resolved.
4. It would have been difficult to support this application without the waivers.
5. There was no real objection to the church itself, but the transportation issues were significant in this case.
6. The staff changed its recommendation from denial in its original staff report in September to approval based the revisions.

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 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, New Vision Community Church, Inc., and is not transferable without further action of this Board and is for the location indicated on the application, 14927 Lee Highway, and is not transferable to other land.
2. The private school of general education use is transferable without further action of this Board to a tenant or licensee upon issuance of a Non-Residential Use Permit (Non-RUP), and is for the location indicated on the application, 14927 Lee Highway, and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Hish and Company, dated January 30, 2009, as revised through March 24, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit and the 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 uses.
5. This special permit 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.
6. Upon issuance of a Non-RUP for Phase 1 construction, the maximum seating capacity shall be 100 worshippers, which shall include the addition of four (4) modular trailer buildings.
7. Upon issuance of a Non-RUP for Phase 2, the maximum seating capacity shall be 300 worshippers.
8. The four (4) temporary trailers depicted on the plat shall be approved for a time period not to exceed five (5) years from the date of the approval of this special permit or within 30 days of the issuance of a Non-RUP for Phase 2, whichever occurs first. Notwithstanding the special permit plat, the

applicant may modify the trailer layout shown, as long as the total square footage does not increase beyond 6,000 square feet, the number of trailers does not increase beyond four (4) and they are located within the area shown to be cleared.

9. Upon issuance of a Non-RUP Phase 2, the maximum total daily enrollment for the private school of general education shall be 90 students.
10. The maximum hours of operation for the private school of general education shall be 7:00 a.m. to 4:30 p.m., Monday through Friday.
11. Employees and/or volunteers for the private school of general education shall not exceed twelve (12) persons on site at any one time.
12. Upon issuance of a Non-RUP for Phase 3, the maximum seating capacity shall be 500 worshippers.
13. An outdoor recreation area, a minimum of 10,700 square feet in size at Phase 2 and a minimum of 13,900 square feet in size at Phase 3, shall be provided as noted on the SP Plat. During Phase 2, no more than 24 students shall occupy the outdoor recreation area at any one time, and during Phase 3 no more than 32 students shall occupy the outdoor recreation area at any one time.
14. A minimum of 50% of the site shall be preserved as undisturbed open space as depicted on the SP Plat.
15. The design of the buildings shall be in conformance with the architectural renderings included as Attachment 1 of these conditions.
16. The building heights shall not exceed forty-five feet (45') in height.
17. All parking shall be on-site, as depicted on the special permit plat.
18. A tree preservation and restoration plan shall be submitted to Urban Forest Management (UFM) for review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.
19. The limits of clearing and grading shall be no greater than that shown on the special permit plat. The proposed tree save areas and open space shall remain undisturbed. These areas shall be protected by tree protection fencing in the form of four (4) foot high, 14-gauge welded wire, attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Prominent signs shall be placed on the fencing "TREE SAVE AREA – DO NOT DISTURB" to prevent construction from encroaching on these areas. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed prior to any clearing and grading activities on the site. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, gardening or demolition activities, the Applicant's certified arborist shall verify in writing that the tree protection fencing as been properly installed.
20. The applicant shall conform strictly to the limits of clearing and grading as shown on the SP Plat, subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SP Plat, they shall be located in the least disruptive manner necessary as determined by the Urban Forest Management Division (UFMD), DPWES. A replanting plan shall be developed and implemented, subject to

approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

21. The applicant shall meet the requirements of the Tree Conservation Ordinance pursuant to County Code, Chapter 122.
22. Transitional screening shall be modified along the north, east and a portion of the western lot lines, in favor of existing vegetation.
23. The barrier requirement shall be waived along the north, east and a portion of the western lot lines.
24. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
25. 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. All parking lot lighting shall be low level bollard lighting not to exceed four (4) feet in height.
26. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
27. Stormwater Management (SWM) and Best Management Practices (BMP) shall be required in accordance with the PFM. If a modification of the PFM to permit the proposed stormwater management/best management practices as shown on the SP Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SP Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
28. An RPA delineation will be required prior to site plan approval.
29. The applicant shall dedicate those areas identified on the special permit plat, on Sheet 6 of 6, as Park Dedication Exhibit, totaling approximately 2.74 acres of land, in fee simple, free and clear of all monetary or other encumbrances, to the Fairfax County Park Authority no later than 90 days after approval of a site plan or minor site plan for the property. Once dedicated, the applicant shall keep the dedicated properties free and clear of any and all construction related or other debris. To insure that encroachments do not occur, areas previously dedicated shall be inspected by Park Authority staff to verify that the dedicated areas are clear of debris or damage associated with the construction activity. Park Authority inspection and approval of this development condition shall be required prior to bond release at each phase of development.
30. The applicant shall dedicate funds in the amount of \$5,600 to the Park Authority in lieu of construction of a natural surface trail section across the Route 29 frontage of the area to be dedicated to the Fairfax County Park Authority. These funds shall be paid to the Fairfax County Park Authority as a condition of Phase 1 site plan approval for the site.
31. Prior to issuance of the first Non-RUP, the applicant shall construct all road improvements as proposed on the special permit plat, which include an east bound third through lane across a portion of the site's frontage as shown on the special permit plat and a right turn and left turn lane into the application site, as approved by Fairfax County Department of Transportation (FCDOT) and Virginia Department of Transportation (VDOT). In addition, the applicant shall provide an escrow for completion of the third through lane to the eastern property line of the site including along the frontage of that land to be dedicated to the Park Authority. The escrow shall be for pavement and base material, but not for the cost of fill associated with raising the adjoining land to the elevation of the roadway. The applicant shall also dedicate all right-of-way and easements necessary to facilitate construction of the road improvements.
32. The uses and structures approved by this special permit shall be served by public water and public sewer service.
33. After installation of any construction safety and/or siltation fencing and prior to any site clearing or disturbance activities, the applicant shall perform a wood turtle survey with the appropriately trained

personnel from either the Fairfax County Park Authority or the Virginia Department of Game and Inland Fisheries to identify any wood turtles in the area to be disturbed and, if found, shall relocate said wood turtles to the Cub Run stream area.

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, 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 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 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

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~ ~ ~ April 28, 2010, Scheduled case of:

9:30 A.M. KEVIN M. FERGUSON AND C. NICOLE FERGUSON, A 2009-MV-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard on property in the R-E District in violation of Zoning Ordinance provisions. Located at 7408 Old Spring Dr. on approx. 1.29 ac. of land zoned R-E. Mount Vernon District. Tax Map 118-1 ((2)) 37. (Admin. moved from 10/6/09 at appl. req.) (Continued from 12/8/09) (Reconsideration granted on 2/24/10)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff had just received a letter from the appellants requesting a deferral of the public hearing, stating that the appellants had just retained counsel.

Mr. Hammack moved that the Board defer A 2009-MV-035 to June 9, 2010, at 9:30 a.m., at the appellants' request. Mr. Hart seconded the motion for purposes of discussion.

Ms. Gibb noted that the appellants' attorney, Dominic Pilli, was attorney of record previously on the matter.

Mr. Hammack, Mr. Hart, and Ms. Stanfield discussed Mr. Pilli's previous representation and both parties' refusal to accept notice via certified mail.

Mr. Byers stated that he would not support the motion since he thought the appellants and their attorney had showed disrespect to the staff, County, and the Board.

Chairman Ribble called for the vote. The motion failed by a vote of 1-4. Chairman Ribble, Ms. Gibb, Mr. Hart, and Mr. Byers voted against the motion. Mr. Smith and Mr. Beard were absent from the meeting.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ms. Stanfield presented staff's position as set forth in her memorandum dated April 19, 2010. She gave a brief history of the appeal public hearing on January 27, 2010, stating that she disputed the number of inoperable vehicles on the property. Ms. Stanfield noted that the Zoning Administrator had been upheld numerous times in the past with regard to junkyards and storage yards, and the standard language had been used in countless Notices of Violation.

Mr. Hammack said he felt there was some confusion as to the distinction between an inoperable vehicle versus a non-operative vehicle. He cited the Fairfax County Code, Chapter 110, definition of non-operative vehicle and the Zoning Ordinance definition of inoperable vehicle. He said he felt one definition was a violation of traffic laws, and the other was a zoning violation. Ms. Stanfield stated her agreement that the definitions were inconsistent and should be addressed.

Mr. Hammack, Mr. Byers, Ms. Gibb, Ms. Stanfield, and Brian Parsons, Staff Coordinator, Zoning Administration Division, discussed the six purported inoperable vehicles on the appellants' property and the status of the vehicles with regard to county tags and state licenses.

Mr. Hart stated his belief that the appellants were operating a storage yard, but did not fit the definition of a junkyard. Mr. Hammack, Mr. Hart, and Ms. Stanfield discussed the exceptions to a junkyard, with Ms. Stanfield noting that the violation would be cured if the vehicles were moved behind the fence.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the Zoning Administrator's determination pertaining to the establishment of a storage yard, and to overturn the determination pertaining to the establishment of a junkyard. Mr. Hart seconded the motion.

Mr. Hart stated that he would support the motion. He said he thought it unusual that someone would have a house with just cars and not piles of junk, and that this many cars would have dead tags. He said he felt the confusion with the definitions and the slightly different terminology in different Ordinance provisions was probably something for the work program. Mr. Hart stated that he could not conclude there were six vehicles, which was the necessary number of vehicles to be determined a junkyard, but felt the situation did fit the definition of a storage yard. Mr. Hart said because houses have garages and driveways as a permitted accessory use, it did not instantly put everyone in violation just because the Board upholds the storage yard violation. He said, under the current definitions, the Zoning Administrator has the discretion to issue a violation to someone with this many cars in the front yard.

The motion carried by a vote of 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

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~ ~ ~ April 28, 2010, Scheduled case of:

9:30 A.M. LM 734 LC TRADING AS COMSTOCK TREE FARM, C/O CHRISTOPHER CLEMENTE, A 2009-DR-047 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a commercial recreation use not permitted in a residential district, has added soil in excess of allowable area and depth, and is allowing an accessory use to remain on a vacant lot, all on property in the R-E District and in violation of Zoning Ordinance provisions. Located at 734 Leigh Mill Rd. on approx. 5.42 ac. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 79B. (Deferred from 4/14/10)

Chairman Ribble noted that A 2009-DR-047 had been withdrawn.

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As there was no other business to come before the Board, the meeting was adjourned at 10:19 a.m.

Minutes by: Suzanne Frazier

Approved on: September 17, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 19, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ May 19, 2010, Scheduled case of:

9:00 A.M. DANIEL & TAMARA FREEMAN, SP 2010-BR-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.6 ft. from side lot line. Located at 8517 Chapel Dr. on approx. 21,782 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 152.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Daniel and Tamara Freeman, 8517 Chapel Drive, Annandale, Virginia, reaffirmed the affidavit.

Mary Ann Godfrey, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction of certain yard requirements to permit construction of a 1,652 square-foot two-story addition located 11.6 feet from the eastern side lot line. The special permit was requested for the portion of the first floor addition located within 20 feet of the eastern lot line, which the applicants stated was proposed as a living area, bedroom, and bathroom for an elderly mother. She noted that no kitchen was proposed. Staff recommended approval.

Ms. Godfrey responded to Mr. Hart's questions concerning the existing drain field, and a possible hook-up connection to the sewer.

Mr. Freeman presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was requested for his 85 year old mother, and eventually his mother-in-law, age 70, who would need living assistance. Mr. Freeman said because of the well cap, the addition could not be placed on the back of the house.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-BR-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

DANIEL & TAMARA FREEMAN, SP 2010-BR-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.6 ft. from side lot line. Located at 8517 Chapel Dr. on approx. 21,782 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 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 May 19, 2010; 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 21,000 square feet, which is fairly small for an R-1 District, and that presents setback constraints that would not necessarily exist if it were a full-size lot.
3. Staff has recommended approval of this application.
4. The recommendations of staff are adopted.
5. The applicant has presented testimony indicating compliance with general standards for special permit uses as set forth in Sect. 8-006 and the additional standards for the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.
6. The Board has determined that the applicant has satisfied the six required standards set forth under that section of the Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by Scartz Surveys, dated December 1, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,424 square feet existing + 2,136 150%) = 3,560 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials shown in Attachment 1 of these conditions.

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

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

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

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~ ~ ~ May 19, 2010, Scheduled case of:

9:00 A.M. RALPH DASHNER & ALANE KELLER, SP 2010-DR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of

addition 29.3 ft. from front lot line. Located at 9901 Minburn St. on approx. 28,271 sq. ft. of land zoned R-2. Dranesville District. Tax Map 13-1 ((3)) 57.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Arif H. Hodzic, the applicant's architect and agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for a reduction of certain yard requirements to permit construction of a garage addition 29.3 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 35 feet; therefore, a modification of 5.7 feet or 16.2 percent was requested. Staff believed that the subject application was not in harmony with the Comprehensive Plan or in conformance with Zoning Ordinance provisions, and recommended denial. Ms. Caffee stated that staff believed the garage and screened porch addition could be configured in a way to be done by-right, and therefore, staff could not conclude that all standards under 8-922 had been satisfied and recommended denial.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He noted the lot's configuration as a corner lot and the design constraints due to setback regulations with having two front yards. He said he agreed with staff's position that the screened porch could be minimized, but that would diminish the open space and reduce sunlight exposure at the house's rear. Mr. Hodzic said the proposed garage would be compatible with the house's design and building materials and would be harmonious with the neighborhood.

Mr. Hodzic responded to Mr. Hart's questions concerning Mr. Hart's suggestions for different designs and configurations.

Chairman Ribble called for speakers.

Alane Keller, 9901 Minburn Street, Great Falls, Virginia, the applicant, came forward to speak. She said their proposal was designed to be energy efficient and environmentally friendly. She explained that the screened porch's location was proposed in a shaded pocket of the house that would enjoy the breezes. Ms. Keller said her neighbors supported the renovations, and a brick garage would be a major improvement.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny the application. He said staff recommended denial, and he adopted staff's rationale. Mr. Hammack seconded the motion.

Discussion ensued regarding the Board members reasons for either supporting or opposing the motion to deny.

Mr. Hart made a substitute motion to defer decision to July 14, 2010. Mr. Smith seconded the motion.

Chairman Ribble called for a vote.

The motion to defer decision to July 14, 2010, at 9:00 a.m., carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 19, 2010, Scheduled case of:

9:00 A.M. JONATHAN FISHER AND ALEXIS R. FISHER, SP 2010-DR-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 6.0 ft. from side lot line. Located at 6603 Jerry Pl. on approx. 10,759 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((21)) 46.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jonathan Fisher, 6603 Jerry Place, McLean, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval for a reduction of certain yard requirements to permit construction of a detached garage 6 feet from the western side lot line. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions and recommended approval.

Mr. Fisher presented the special permit request as outlined in the statement of justification submitted with the application. He was requesting a garage to protect his vehicles from vandalism, fallen walnuts, limbs, and sap. Mr. Fisher said there really was no other area on his lot for the garage without having to remove mature trees.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-DR-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

JONATHAN FISHER AND ALEXIS R. FISHER, SP 2010-DR-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 6.0 ft. from side lot line. Located at 6603 Jerry Pl. on approx. 10,759 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((21)) 46. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 19, 2010; 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.
3. The Board has a staff recommendation of approval.
4. The rationale in the staff report is adopted.
5. This is a difficult lot to work with.
6. It is not a very big lot, and with the topography and the trees, there really is not much of a place to put any kind of garage anyway.
7. This is a very small detached garage.
8. It is in the back corner where it will not impact anybody.
9. Given the existing vegetation around it, there will not be any significant visual impact on anybody.
10. It is the logical place to put a garage because it is at the driveway side of the house, and at the other side you would have to have massive grading and grade changes and trees coming out, given what is in the photographs, the retaining walls and such that are there.
11. This is also going near where the shed is now, but the shed is coming out; the garage will be further away from the lot line than the shed is; that actually lessens whatever impact there is now.
12. Unlike some others, this is really about the only place you could put it.
13. It is going to be harmonious.
14. No one is going to be able to see it.

15. The Board has determined that the application meets all the criteria in the Sect. 8-922 motion.

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 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 and size of a detached garage as shown on the plat prepared by L.S. Whitson, Sam Whitson Land Surveying, Inc., dated September 10, 2009 submitted with this application and is not transferable to other land.
2. The accessory structure shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. Prior to approval of the final inspection for the garage, the frame shed including the foundation/flooring and the existing arbor shall be removed.

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

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

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

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~ ~ ~ May 19, 2010, Scheduled case of:

9:00 A.M. ASHWINI & REETA S. KUMAR, SP 2010-MV-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.5 ft. from rear lot line. Located at 8530 Wild Spruce Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((26)) 33.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Reeta S. Kumar, 8530 Wild Spruce Drive, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction of certain yard requirements to permit construction of a sunroom addition to be located 13.5 feet from the rear lot line. A minimum rear yard of 25.0 feet is required, therefore, a modification of 11.5 feet or 46 percent was requested. Staff recommended approval.

Ms. Kumar presented the special permit request as outlined in the statement of justification submitted with the application. She said they wanted to replace an existing two-tiered deck with a deck and sunroom, and because of the lot's shape, there was no other logical place to build the sunroom. She said their neighbors and homeowners' association supported the proposal.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2010-MV-015 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Discussion ensued regarding the necessity and specific language for Development Condition 5.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ASHWINI & REETA S. KUMAR, SP 2010-MV-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.5 ft. from rear lot line. Located at 8530 Wild Spruce Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((26)) 33. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 2010; and

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

1. The applicants are the owners of the land.
2. In this case, it is a relatively small irregularly-shaped lot.
3. As the applicant noted, this is the most logical location for the sunroom addition.
4. The sunroom addition will replace an existing structure on the site.
5. The Board agrees with the rationale in the staff report recommending approval.
6. There is no other logical location on the lot for this addition.
7. There is homeowners' association approval noted in the staff report as well as some support from neighbors.
8. It is in conformance with the Comprehensive Plan.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a sunroom addition (187 square feet), as shown on the plat prepared by Merestone Land Surveying PLLC, dated January 26, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,987 square feet existing + 7480.5 square feet (150%) = 12,467.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor

area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. If determined necessary by the Department of Public Works and Environmental Services (DPWES) staff, the loading planes for the foundation shall be more than five feet from the storm drain pipes in the easements along the eastern and the southern boundaries of the parcel.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 19, 2010, Scheduled case of:

9:00 A.M. SULIMAN ALSHUAIBI, SP 2010-PR-017 Appl. under Sect(s). 8-914, 8-922, and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 18.2 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of addition 24.2 ft. from front lot line and to permit fence greater than 4.0 feet in height to remain in a front yard. Located at 8229 Madrillon Estates Dr. on approx. 8,543 sq. ft. of land zoned R-4. Providence District. Tax Map 39-1 ((36)) 15.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ron Swindoll, the applicant's agent, Ameritech Construction, 2841 Hartland Road, Suite 306, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The application consisted of three requests. The first request was for approval to permit a reduction of certain yard requirements to permit construction of a sunroom addition to be located 24.2 feet from a front lot line. The second request was approval to permit a reduction of minimum yard requirements based on an error in building location to permit an existing addition, a deck with lattice, to remain 18.2 feet from a front lot line. The final request was to permit an existing 6-foot high fence to remain in the front yard facing George Washington Road, which served as the applicant's rear yard on this through lot. Ms. Hedrick noted that Staff does not make recommendations on errors, but Staff did recommend approval of the sunroom addition.

Ms. Hedrick responded to Mr. Beard's question concerning the presence of an easement, its recordation, and its vacation in 1986. She said staff believed that the easement no longer existed.

In response to Mr. Beard's question concerning the lattice, Ms. Hedrick explained the Zoning Ordinance definition of when lattice work was considered an addition on a deck, and concurred with Mr. Beard's statement that if a deck had handrails and underneath it was open, it was not an addition.

Mr. Swindoll came forward to give the justification for the proposal.

In response to Mr. Hammack's question, discussion ensued regarding a Hold Harmless Provision; the easement; a title search; the deed; and a reference to the easement's vacation.

For further clarification of the easement matter, Susan C. Langdon, Chief, Special Permit and Variance Branch, said Ms. Hedrick had consulted and verified with the Department of Public Works & Environmental Services (DPWES) about the easement, because staff had questioned the presence of an easement when as they saw the plat. She said that DPWES had not wanted another development condition. Mr. Hart said he thought the matter would continue to be an issue, and perhaps the information should be recorded in the land records.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2010-PR-017 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Hammack said he would abstain because he thought the issue should be resolved before voting on it.

Chairman Ribble called for a vote.

The motion carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SULIMAN ALSHUAIBI, SP 2010-PR-017 Appl. under Sect(s). 8-914, 8-922, and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 18.2 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of addition 24.2 ft. from front lot line and to permit fence greater than 4.0 feet in height to remain in a front yard. Located at 8229 Madrillon Estates Dr. on approx. 8,543 sq. ft. of land zoned R-4. Providence District. Tax Map 39-1 ((36)) 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 May 19, 2010; and

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

1. The applicant is the owner of the land.
2. The issue of the decks, soon to be the sunroom, was a mistake in good faith that these folks made when they bought the house; apparently this was done by a previous owner.
3. The fence situation, this is a unique property insofar as the front and the back yard are really front yards.
4. This is a heavily trafficked road to the rear, and this has been an existing fence, and it is within the parameters of allowance.
5. The deck has been considered an addition, as the Board discussed, because of the lattice situation, and the sunroof room will encompass the existing deck and minimally protrude over its dimensions.
6. The Board has determined that the applicant has met all applicable standards of the referenced section.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This special permit is approved for the location and size of a sunroom addition (168 square feet), addition (deck with lattice) and existing fence, as shown on the plat prepared by Dominion Surveyors Inc., dated December 18, 2009, as revised through April 27, 2010, as submitted with this application and is not transferable to other land.
- 3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,430 square feet existing + 8,145 square feet (150%) = 13,575 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
- 4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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. Smith seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 19, 2010, Scheduled case of:

9:30 A.M. EXXON MOBIL CORPORATION, A 2009-SU-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a quick service food store on property in the C-8, SC and H-C Districts in conflict with the development conditions of Special Exception SE 93-Y-059 in violation of Zoning Ordinance provisions. Located at 13825 Lee Hy. On approx. 22,886 sq. ft. of land zoned C-8, SC and H-C. Sully District. Tax Map 54-4 ((1)) 104. (Admin. Moved from 7/7/09 and 12/15/09 at appl. req.)

Chairman Ribble noted that A 2009-SU-019 was administratively moved to July 14, 2010, at the applicant's request.

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~ ~ ~ May 19, 2010, After Agenda Item:

Request for Additional Time
Trustees of Mount Pleasant Baptist Church, VC 2002-MA-060

Chairman Ribble noted that staff recommended additional time to July 1, 2014.

In response to Mr. Hammack's question concerning the purpose of the Ordinance that extended additional time to 2014, Susan C. Langdon, Chief, Special Permit and Variance Branch, said the State of Virginia passed the bill to extend special permits and special exceptions, and perhaps they did so because of the economic downturn so that applicants would not have to come back in or possibly have their application expire. Ms. Langdon explained staff's procedure when applicants requested more time.

Ms. Langdon responded to Mr. Hart's question concerning the applicant's variance and the reason they had asked for additional time. She explained that the church also had a special permit, which had been extended by the Ordinance change, so staff recommended extending the time for the variance to 2014 in order to not impact the church's proposed addition.

Chairman Ribble called for a motion.

Mr. Hart moved to approve additional time to July 1, 2014. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Susan C. Langdon, Chief, Special Permit and Variance Branch, reminded the Board that the May 26, 2010, meeting was cancelled, and that there was no scheduled meeting for June 2, 2010. June 9, 2010 was the next scheduled meeting.

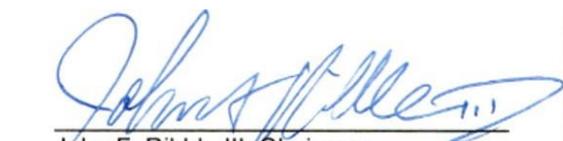
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As there was no other business to come before the Board, the meeting was adjourned at 10:20 a.m.

Minutes by: Paula A. McFarland

Approved on: September 27, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 9, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 9, 2010, Scheduled case of:

9:00 A.M. SARESH SHAH, SP 2010-MA-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6413 Columbia Pk. on approx. 18,475 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((3)) 4. (Admin. moved from 4/21/10 at appl. req.)

Chairman Ribble noted that SP 2010-MA-011 had been administratively moved to August 4, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 9, 2010, Scheduled case of:

9:00 A.M. DONOVAN L. HUMPHRIES, SP 2010-MA-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.3 ft. from side lot line. Located at 5315 Dublin Ave. on approx. 14,167 sq. ft. of land zoned R-3. Mason District. Tax Map 80-2 ((2)) 222.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Don Lawson, 7429 Foxleigh Way, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-MA-023, subject to the proposed development conditions.

Mr. Lawson presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed carport added 192 feet to the principal structure, would be built in the character of the existing development, and would not adversely impact the use and/or enjoyment of any adjacent property.

Mr. Hart and Ms. Caffee discussed a notation on the plat which inferred that the property was in a floodplain, with Ms. Caffee stating that it was probably a mistake by the engineer. She said the property was not located in a floodplain.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-MA-014 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONOVAN L. HUMPHRIES, SP 2010-MA-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.3 ft. from side lot line. Located at

5315 Dublin Ave. on approx. 14,167 sq. ft. of land zoned R-3. Mason District. Tax Map 80-2 ((2)) 222. 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 9, 2010; and

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

1. The applicant is the owners of the property.
2. The applicant met the six required standards set forth in Sect. 8-922 of the Zoning Ordinance.
3. The applicant proposes to build a carport over an existing driveway immediately adjacent to his residence.
4. There is no additional impervious surface.
5. It is a modest addition to the development that already exists on the property.
6. The staff recommends approval, and the Board adopts the recommendations contained in the staff report.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 and size of a proposed carport addition as shown on the plat prepared by Paul A. Garcia, dated and signed March 13, 2010, submitted with this application and is not transferable to other land.
2. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ June 9, 2010, Scheduled case of:

9:00 A.M. JOHN G. PROVOST, SP 2010-BR-021 Appl. under Sect(s). 8-924 of the Zoning Ordinance to permit certain additions to an existing single family detached dwelling to permit construction of second story addition 8.6 ft. from the front lot line of a pipestem lot. Located at 5957 Burnside Landing Dr. on approx. 9,600 sq. ft. of land zoned PRC. Braddock District. Tax Map 77-4 ((7)) 10.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Provost, 5957 Burnside Landing Drive, Burke, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-BR-021, subject to the proposed development conditions.

Mr. Provost presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to add two rooms above the existing garage with no change to the existing footprint of the home.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-BR-021 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN G. PROVOST, SP 2010-BR-021 Appl. under Sect(s). 8-924 of the Zoning Ordinance to permit certain additions to an existing single family detached dwelling to permit construction of second story addition 8.6 ft. from the front lot line of a pipestem lot. Located at 5957 Burnside Landing Dr. on approx. 9,600 sq. ft. of land zoned PRC. Braddock District. Tax Map 77-4 ((7)) 10. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 2010; and

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

1. The applicant is the owner of the property.
2. The present zoning is PRC.
3. The area of the lot is 9,600 square feet.
4. Staff recommends approval, and the Board adopts its rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a second story addition (479 square feet), as shown on the plat prepared by Stephen L. Moore Land Surveying, Inc., dated March 1, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-924 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the

dwelling that existed at the time of the first expansion (2,564 square feet existing + 3,846 square feet (150%) = 6,410 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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.

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~ ~ ~ June 9, 2010, Scheduled case of:

9:00 A.M. RAFAEL GONZALEZ, SP 2010-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 accessory storage structure to remain 3.3 ft. from side lot line. Located at 5908 Atteentee Rd. on approx. 16,842 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (63) 13.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Rafael Gonzalez, 5908 Atteentee Road, Springfield, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-LE-022, subject to the proposed development conditions.

In response to a question from Mr. Hart, Mike Adams, Zoning Enforcement Branch, said his office had received a complaint about the shed being too close to the lot line, and a subsequent Notice of Violation had been issued to the applicant.

Mr. Gonzalez presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had built the shed in its current location so it would be directly opposite his neighbor's shed, and did not realize it required a special permit. Mr. Gonzalez explained the height of the shed, stating that it was located in a drainage area so he built it on a platform thereby not inhibiting the water runoff. He stated that it would be very expensive to move the shed, noting that it was constructed with concrete pillars and metal framing.

In response to a question from Mr. Hart, Mr. Gonzalez said the shed contained no electricity or plumbing. Mr. Hart and Mr. Gonzalez discussed the possibility of moving the shed, with Mr. Gonzalez stating that it would first have to be detached from the base and a crane would be necessary to physically move it.

When Mr. Hart asked the applicant about possibly landscaping around the shed, Mr. Gonzalez said he had recently erected a six-foot wooden fence in front of it.

In response to a question from Mr. Hammack, Mr. Gonzalez stated that his neighbor's shed was immediately adjacent to the shed on Lot 12.

Chairman Ribble and Mr. Gonzalez discussed his previous use of building permits when working on construction jobs, with Mr. Gonzalez explaining that he normally worked under a contractor, who would pull the permits.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SP 2010-LE-022 to July 14, 2010, at 9:00 a.m. He said the application, as presented, did not meet Subsection 3 of 8-006, which dealt with the location, size, and height of building structures and the nature and extent of screening, buffering, and landscaping not hindering or discouraging the use of adjacent or nearby land and/or buildings or impairing the value thereof. Mr. Hart said he would like to see photographs of the new fencing the applicant recently installed. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 9, 2010, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Company, VC 01-V-187

Ms. Gibb moved to approve 12 months of additional time. Mr. Hammack seconded the motion.

Mr. Hart, Mr. Byers, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the number of requests for additional time by the applicant. Mr. Hart said the variance had been approved approximately nine years ago, and he did not understand why the applicant had not been able to record the plat. Ms. Langdon stated that staff would not support another request for additional time.

The motion carried by a vote of 5-2. Mr. Hart and Mr. Byers voted against the motion. The new expiration date was January 31, 2011.

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~ ~ ~ June 9, 2010, After Agenda Item:

Request for Additional Time
Jerold and Nancy Jurentkuff, VC 99-H-191

Susan Langdon, Chief, Special Permit and Variance Branch, pointed out the language contained on page 2 of the staff memo, noting that staff may not support any further additional time requests due to the number of years which had lapsed without commencement of construction.

Mr. Smith moved to approve 30 months of additional time.

Mr. Hammack seconded the motion, which motion carried by a vote of 6-1. Mr. Byers voted against the motion. The new expiration date was September 14, 2012.

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~ ~ ~ June 9, 2010, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Sosena Tayena and Slaiman Almassri

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that it was the Zoning Administrator's position that the appeal submission was incomplete and not timely filed.

In response to questions from Mr. Hammack and Mr. Hart, Ms. Stanfield stated that the filing was deficient because a copy of the Notice of Violation (NOV) had not been included with the documents filed. She said the appeal was not timely since it had not been filed within 30 days from the date of the NOV.

Since there was no specific requirement mentioned in Sect. 18-304 regarding the inclusion of the NOV with the appeal documentation, Mr. Hart asked if there was another section of the Ordinance which required it or if there were court cases which dictated its inclusion. Ms. Stanfield said there were not, but it had always been the Zoning Administrator's policy.

Mr. Hart and Ms. Stanfield discussed the chronology of the determination by the Zoning Administrator and subsequent time period for filing the appeal. Ms. Stanfield stated that although the NOV letter was served by the sheriff on May 18, 2010, the commencement date for the time period was the date the letter was typed, April 23, 2010. Mr. Hart said his understanding of circuit court deadlines was that the commencement date began the day the sheriff delivered the papers, not the day the letter left the clerk's office. Ms. Stanfield stated that her understanding was the Zoning Enforcement Branch had always used the date of the NOV letter, but she did not know if it had ever been challenged in court.

Michael W. Tompkins, 201 North Union Street, Suite 140, Alexandria, Virginia, the appellants' attorney, stated that the NOV was referenced in the appeal letter, and there was nothing in the Ordinance directing him to include it with the appeal itself. He said it was his understanding that the 30-day deadline commenced with service by the sheriff.

Ms. Gibb moved to accept the appeal. She stated that the statute did not state that a copy of the NOV was required with an appeal submission. Ms. Gibb noted that this type of problem had come up before during her 12 years on the Board, where mail can take a while before it gets out of the County system, and thus cuts into time for an appellant to respond. She noted that there had been testimony that the appellants had received the NOV on May 18, 2010, so they were within the 30-day timeframe. Mr. Smith seconded the motion.

Mr. Hart said he would support the motion, noting that the Board was bound by the state Code and Ordinance.

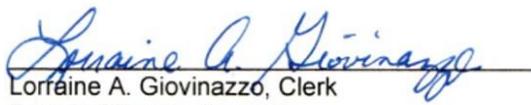
The motion carried by a vote of 7-0.

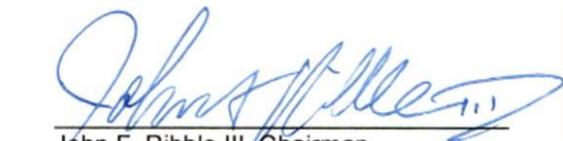
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As there was no other business to come before the Board, the meeting was adjourned at 10:16 a.m.

Minutes by: Suzanne Frazier

Approved on: October 8, 2014


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 16, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. He congratulated Mr. Hammack on his reappointment to the Board of Zoning Appeals for another five-year term.

Chairman Ribble noted that the only two cases scheduled for the June 23, 2010 meeting had been administratively moved. Mr. Hammack moved to cancel the June 23, 2010 meeting. Mr. Beard and Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no further Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ June 16, 2010, Scheduled case of:

9:00 A.M. MOHAMMED FAROKHZAD, SP 2010-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.6 ft. from side lot line. Located at 9817 Mill Run Dr. on approx. 1.47 ac. of land zoned R-1. Dranesville District. Tax Map 13-3 ((3)) 13.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mohammed Farokhzad, 9817 Mill Run Drive, Great Falls, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report.

Mr. Farokhzad presented the special permit request as outlined in the statement of justification submitted with the application. He said he purchased the property ten years ago, contracted to have the home built eight years ago, and had been unaware of any violation. A recent survey of his neighbor's property revealed that a small corner portion of the property line did not match with the records. Mr. Farokhzad said he was informed of the violation when he had applied for a permit for a Jacuzzi. He said he contacted the company who surveyed his property when he purchased it and was told that the company did not have a laser gun at that time, which they attributed to the slight error. Mr. Farokhzad said he had his property surveyed twice and found the neighbor's survey was correct.

In response to questions from Mr. Hammack, Mr. Farokhzad said the neighbor's property had been sold, and the new neighbor had no problem with the location of the addition.

In response to Mr. Beard's question, Mr. Farokhzad said the filing fee for the special permit application was \$875.

Mr. Hammack and Ms. Langdon discussed the requirement for wall checks on original houses, but not necessarily for additions, and at the time it was considered a deck and showed on the plat that it met the minimum required side yard.

Ms. Langdon responded to Mr. Hart's questions concerning the drawings, specific measurements, and clarified the documents contained in Appendix 4. Mr. Hart pointed out a large crack in a wall shown in a photograph and suggested the applicant have the structural integrity of the wall checked.

Chairman Ribble called for speakers; there was no response. He noted that the record contained four letters of support.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-DR-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

MOHAMMED FAROKHZAD, SP 2010-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.6 ft. from side lot line. Located at 9817 Mill Run Dr. on approx. 1.47 ac. of land zoned R-1. Dranesville District. Tax Map 13-3 ((3)) 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 16, 2010; 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 Sect. 8-006, General Standards for Special Permit Uses; and Sect. 8-914, Provisions for Approval of Reduction to Minimum Yard Requirements Based on Error in Building Location.
3. The Board has determined that the applicant has satisfied the requirements listed in Subsection A through G of that Code Section; in particular under B that the non-compliance was done in good faith.
4. The applicant has testified that the construction was done by a contractor; they were unaware of a violation at the time the construction was done, and it did not show up until a neighbor did a new survey on the adjacent property, and determined that there was a mistake in one of the points in the property description.
5. The mistake was discovered several years later.
6. Given the size of the lot, allowing it to remain would not be detrimental to the use and enjoyment of the other property in the vicinity as well.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 existing building addition shown on the plat prepared by William E. Ramsey, P.C., dated March 22, 2010, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, all applicable permits and/or final inspections shall be obtained for the hot tub and swimming pool enclosure and the detached accessory storage structure or the structure shall be removed.

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. Ms. Gibb was absent from the meeting.

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~ ~ ~ June 16, 2010, Scheduled case of:

9:00 A.M. JAMES O. YOUNTS III, SP 2010-SP-025 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.2 ft. and bay window 13.7 ft. from rear lot line. Located at 7413 Carath Ct. on approx. 7,840 sq. ft. of land zoned R-5 (Cluster). Springfield District. Tax Map 88-4 ((12)) 18.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James O. Younts III, 7413 Carath Court, Springfield, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. A memorandum was distributed at the hearing clarifying the permitted extension for the bay window. Staff recommended approval of SP 2010-SP-025, subject to the proposed development conditions.

Mr. Younts presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would add approximately 410 square feet to the back of the house, but the front of the house would remain unchanged. Mr. Younts said, in addition to the ten required notifications, he also informed the head of the homeowners association and the architectural review board with no objections from either, and his adjacent neighbors supported the remodeling.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-SP-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

JAMES O. YOUNTS III, SP 2010-SP-025 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.2 ft. and bay window 13.7 ft. from rear lot line. Located at 7413 Carath Ct. on approx. 7,840 sq. ft. of land zoned R-5 (Cluster). Springfield District. Tax Map 88-4 ((12)) 18. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 2010; and

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

1. The applicant is the owner of the land.
2. The application meets all the submission requirements as set forth in Sect. 8-922.
3. Staff recommends approval.
4. The rationale of staff is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition and bay window as shown on the plat prepared by Joseph W. Bronder, DiGiulian Associates, P.C. Land Surveyors dated September 30, 2009 and signed through March 16, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,997 square feet existing + 4,495.5 (150%) = 7,492.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

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

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

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~ ~ ~ June 16, 2010, Scheduled case of:

9:00 A.M. KAREN A. AMBROSE, SP 2010-SU-026 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.3 ft. from side lot line and to permit an accessory dwelling unit. Located at 14804 Sun Meadow Ct. on approx. 10,126 sq. ft. of land zoned PDH-3, AN and WS. Sully District. Tax Map 43-4 ((5)) 67.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Karen Ambrose, 14804 Sun Meadow Court, Centreville, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-SU-026 for the accessory dwelling unit, subject to the proposed development conditions.

Ms. Ambrose presented the special permit request as outlined in the statement of justification submitted with the application. She said her parents were in their 80s, and after researching prospective housing, she wanted them to live with her. The violation for the shed was discovered when she applied for the accessory dwelling unit permit. She said she had reviewed the neighborhood guidelines before constructing the shed, but had not realized she should have checked with the County. She responded to Mr. Hart's questions concerning the shed's location and it not having electricity or plumbing, and she explained the entrance to the accessory dwelling.

Ms. Hedrick responded to Mr. Hart's question concerning the pool, patio, and a by-right permit.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SU-026 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN A. AMBROSE, SP 2010-SU-026 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.3 ft. from side lot line and to permit an accessory dwelling unit. Located at 14804 Sun Meadow Ct. on approx. 10,126 sq. ft. of land zoned PDH-3, AN and WS. Sully District. Tax Map 43-4 ((5)) 67. 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 16, 2010; and

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

1. The applicant is the owner of the land.
2. With respect to the shed, the applicable standards have been met.
3. The shed itself is relatively small.
4. The separation from the property line is not insignificant.
5. There really is not anywhere else to put the shed the way the trees are; if the choice is to have the shed where it is or to cut down the trees or have no shed at all, the best of those options is to leave it where it is.
6. The shed does not seem to be creating a negative impact for anybody.
7. With respect to the accessory dwelling unit, the Board has a favorable staff recommendation.
8. The rationale in the staff report is adopted.
9. It does not seem that the way this is designed with the door in the rear, that there is going to be significant disturbance to the neighbors with doors slamming and lights coming on, and that sort of thing.
10. With the imposition of the development conditions, any of the potential impacts have been sufficiently mitigated.
11. The applicant has presented testimony indicating compliance with the general standards in Sect. 8-006 and Sect. 8-914.
12. The application meets the additional standards for the use contained in the Zoning Ordinance, including all of the standards in the Sect. 8-914 motion.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. This approval is granted to the applicant only, Karen A. Ambrose, and is not transferable without further action of this Board, and is for the location indicated on the application, 14804 Sun Meadow Court (10,126 square feet), and is not transferable to other land.

2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC, dated November 17, 2009, as revised through March 30, 2010, and approved with this application, as qualified by these development conditions.
3. A copy of this special 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. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 850 square feet, and the layout shall be as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. Parking shall be provided on site as shown on the special permit plat.

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.

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

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~ ~ ~ June 16, 2010, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that, according to the conditions specified in Special Permit Amendment SPA 81-A-022-8, the expiration date for the mausoleums and columbariums approved with SPA 81-A-022-4 and extended by SPA 81-A-022-5 shall continue to remain in effect. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 10/7/08, 1/13/09, 3/24/09, 5/19/09, 5/12/09, 7/28/09, 11/3/09, and 3/24/09 at appl. req.)

9:30 A.M. CALVARY MEMORIAL PARK, INC. (T/A FAIRFAX MEMORIAL PARK) AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-064 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a grading plan cannot be approved because dirt stockpiling shown on the grading plan is not in conformance with Special Permit SPA 81-022-08. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 2/3/09, 5/19/09, 5/12/09, 7/28/09, 11/3/09, and 3/24/09 at appl. req.)

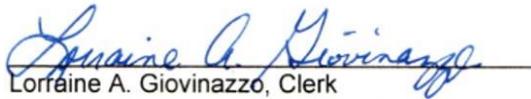
Chairman Ribble noted that A 2008-BR-040 and A 2008-BR-064 had been withdrawn.

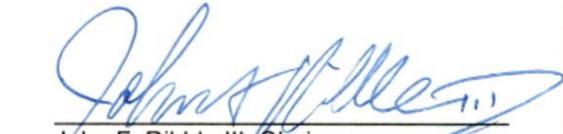
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As there was no other business to come before the Board, the meeting was adjourned at 9:40 a.m.

Minutes by: Paula A. McFarland

Approved on: October 8, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 30, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals.

Mr. Byers extended his appreciation and thanks on behalf of himself and his wife to those officers and staff at the Lee District Police Station who participated in the June 26th infant seat installation and safety inspection at the station. He felt it was an invaluable service rendered by the police to the Fairfax County community.

Mr. Byers offered the Board's thanks and appreciation to Shannon Caffee, Staff Coordinator. He noted that today's hearing would be her last as she was moving to Texas and said she would be missed.

Mr. Byers also wished his wife a happy birthday.

As there were no further Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ June 30, 2010, Scheduled case of:

9:00 A.M. LI FU TRUSTEE OF THE LI FU REVOCABLE TRUST, SP 2010-HM-031 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from rear lot line. Located at 8623 Coral Gables Lane on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 29-3 ((14)) 1.

Chairman Ribble noted that SP 2010-HM-031 had been administratively moved to July 14, 2010, at 9:00 a.m., for notices.

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~ ~ ~ June 30, 2010, Scheduled case of:

9:00 A.M. ARMANDO ESTRADA FERNANDEZ, SP 2010-PR-028 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3416 Monarch Lane on approx. 11,445 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-1 ((27)) 5.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Armando Estrada Fernandez, 3416 Monarch Lane, Annandale, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-PR-028, subject to the proposed development conditions.

In response to a question from Mr. Hammack, Ms. Caffee stated that the construction underneath the deck was not part of the accessory dwelling unit (ADU), noting that there was no access to the basement from there.

Mr. Hammack and Ms. Caffee discussed the necessity of a building permit for the construction below the deck. Ms. Caffee said she had checked the street file, but could find no permits for prior construction.

Mr. Hart and Ms. Caffee reviewed the exterior of the house, specifically the location of the door for the ADU and walkway to the back of the house. They also discussed the structure that had been built under the deck.

In response to a question from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, stated that if the application was approved, one of the proposed development conditions required that all applicable permits be obtained.

Mr. Fernandez presented the special permit request as outlined in the statement of justification submitted with the application. He said he was a retired, widowed, veteran who had planned to have his mother come live with him in one unit and have another unit as a rental. However, for medical reasons, his mother could not move, so he wanted to keep one unit for income purposes. Mr. Fernandez said he had not received any complaints from his neighbors, noting that the only protests were coming from residents living a couple of blocks away.

In response to a question from Mr. Hammack, Mr. Fernandez stated that a friend helped him build the two ADUs four years ago, and he had asked his friend to obtain a building permit.

Mr. Hart and Mr. Fernandez discussed the room under the deck, with Mr. Fernandez reiterating that there was no access from the room to the basement, that it essentially was just a shed.

Chairman Ribble called for speakers.

Melvin Reichling, 3409 Monarch Lane, Annandale, Virginia, came forward to speak in opposition to the application. He said he felt the character of the neighborhood would be adversely affected if the application was approved. Mr. Reichling questioned whether there was really a separate entrance on the back of the house as he had never seen it lit.

Mr. Hart, Mr. Hammack, and Mr. Reichling discussed traffic on Monarch Lane when the ADUs were occupied, with Mr. Reichling stating that he was not aware of any extra cars interfering with traffic.

In his rebuttal, Mr. Fernandez pointed out the photograph contained in the staff report which showed a back entrance with lighting.

Chairman Ribble closed the public hearing.

Stating that he wanted to view the property, Mr. Hammack moved to defer decision on SP 2010-PR-028 to July 14, 2010, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-2. Chairman Ribble and Mr. Beard voted against the motion.

Mr. Fernandez stated that he would be out of town on July 14, 2010. Ms. Langdon suggested the July 28, 2010 meeting at 9:00 a.m. As July 28, 2010 was agreeable to the Board and the applicant, it was accepted without objection.

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~ ~ ~ June 30, 2010, Scheduled case of:

9:00 A.M. TIMOTHY D. KELLY, SP 2010-MV-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 6.5 ft. from side lot line and 1.7 ft. from the rear lot line and accessory structures to remain 3.9 ft. and 2.6 ft. from side lot line and 0.3 ft. from rear lot line. Located at 1604 Old Stage Rd. on approx. 12,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 4.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Timothy D. Kelly, 1604 Old Stage Road, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart expressed concern about flammable materials in a structure located so close to the house and asked if it was possible for the County to require one of the walls to be changed into flame retardant material. Ms. Hedrick said she was unsure, but the applicant would have to comply with whatever the County required.

Mr. Kelly presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the garage/workshop and garden shed were present when he purchased the property in March of 2008 and recorded with the deed in the Land Records. Mr. Kelly said the garage/workshop was not long enough to house his 15-foot 1962 Criss-Craft boat and 22-foot metal trailer, so he elongated it in the spring of 2009. He said the boat was constructed of wood and could not be kept outside since it would deteriorate. He stated that no hazardous substances were stored in the garage/workshop or garden shed. He said he spoke to his rear neighbors in 2009 about elongating the garage and enclosing the trailer.

Chairman Ribble, Mr. Beard, and Mr. Kelly discussed the Notice of Violation that was issued for the garage/workshop and garden shed, with Mr. Kelly stating that when he purchased the house in 2008, he was unaware the structures had not gone through the permit process.

Mr. Byers read from a letter submitted by Shawn and Cathleen Bassett, neighbors of the applicant, which stated that Mr. Kelly continued the expansion even though he had been told by them that it needed County approval. In response, Mr. Kelly stated that he thought he was bringing the structure into compliance by implementing the renovation. He said the timing of his discussion with the Bassetts was towards the end of the project.

In response to a question from Chairman Ribble, Mr. Kelly said the project took approximately four to five months to complete.

Mr. Hart and Mr. Kelly discussed the location of the playhouse on the property and its possible relocation, with Mr. Kelly noting that it weighed about 8,000 to 9,000 pounds and would be extremely difficult to move.

Chairman Ribble called for speakers.

Wolfgang Maier, 8502 Fort Hunt Road, Alexandria, Virginia, spoke in support of the application, stating that he could see the garage from his kitchen window, and it was more attractive than the previous structure.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve the garden shed, but deny the garage/workshop structure and playhouse. Mr. Hammack seconded the motion.

Mr. Hart stated his support of the motion.

Chairman Ribble said his issue was not knowing when the garage was built, since there were similar structures on the same street that were built before 1978 and were grandfathered.

Mr. Hammack, Mr. Byers, Mr. Hart, and Ms. Hedrick discussed the original dimensions of the garage and the approximate time it would take to reduce the size of the garage, with Ms. Hedrick pointing out that the original dimensions had not been documented.

Mr. Hammack made a substitute motion to defer decision on SP 2010-MV-029 to July 14, 2010, at 9:00 a.m., in order to obtain the dimensions of the original garage. Mr. Hart seconded the motion, which carried by a vote of 7-0. Mr. Hart requested that the record remain open for additional written comments.

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~ ~ ~ June 30, 2010, Scheduled case of:

9:00 A.M. TIMOTHY D. KELLY, VC 2010-MV-002 Appl. under Sect(s). 10-102 of the Zoning Ordinance to permit an accessory storage structure greater than 200 sq. ft. in size. Located at 1604 Old Stage Rd. on approx. 12,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 4 (Concurrent with SP 2010-MV-029).

Chairman Ribble noted that VC 2010-MV-002 had been withdrawn.

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~ ~ ~ June 30, 2010, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hwy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. (Continued from 5/5/09) (Decision deferred from 8/11/09, 11/17/09, and 4/14/10) (Admin. moved from 2/10/10 due to inclement weather)

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. (Continued from 5/5/09) (Decision deferred from 8/11/09, 11/17/09, and 4/14/10) (Admin. moved from 2/10/10 due to inclement weather)

Chairman Ribble noted that A 2009-PR-004 and A 2009-PR-007 had been deferred for decision only.

Ms. Gibb gave a disclosure and indicated that she would recuse herself from the public hearing.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, provided a status update since the Board last heard the matter on April 14, 2010, noting that as of yesterday, there were still pieces of equipment on the property.

In response to a question from Mr. Hart, Bruce Miller, Senior Zoning Inspector, stated that the shipping containers currently on the property seemed to be residual containers from the last inspection. He stated that the dump truck was also there at that inspection, but was unsure if the roll-off container or trailer were present at that time.

Brian Kelly, 5812 Three Penny Drive, Fairfax Station, Virginia, stated that he had tried to move the equipment off the property, but had been delayed because he had been caring for his gravely ill wife. He stated that he could not remove what remained in the time scheduled by the County. Mr. Kelly stated that he felt Mr. Thompson's rights were being trampled, stating that the uses should have been grandfathered in years ago. Mr. Kelly said 90 percent of his belongings had been removed from the Thompson property.

Alfred Thompson, the appellant, spoke about the history of the property and said there had been retail uses on the property since 1922 or '23.

Ralph Thompson, 9074 Loreleigh Way, Fairfax, Virginia, read a letter into the record which described the history of the property, noting that there had been an adjacent auto repair facility, LeeHigh Auto Body, which stood as a nonconforming use for many years. Mr. Thompson said that since before World War I, the overflow of vehicles from that operation had been temporarily stored on the subject property. He asked the Board to rule in Mr. Thompson's favor and allow him, at ninety-four years of age, to live his remaining years in peace and harmony.

Mr. Hart said there had been some unusual circumstances surrounding this case, but he felt the Board had been extraordinarily patient, sometimes over the staff's objections. He asked if appellants were asking for another deferral. Mr. Kelly reiterated that he needed additional time to remove his material goods from the property.

Vice Chairman Hammack assumed the chair.

Mr. Hart, Vice Chairman Hammack, and Mr. Kelly discussed the items remaining on the property, a roll-off container, three C-containers, and one trailer, and Mr. Kelly said he could have the property cleared by

December. Mr. Kelly said the truck did not belong to him, and he did not believe it was operable because it had been vandalized. He said the containers had been brought to the site empty and then loaded with scrap material and axles which needed to be removed.

Dave Pounder, owner of the truck, said it had not been removed because it was not road worthy due to the vandalism, and he did not have the \$1000 to \$1500 to have it towed. Mr. Pounder questioned why the property had not been grandfathered into a commercial zone. Vice Chairman Hammack stated that the Board had allowed a number of continuances so Mr. Thompson could retain an attorney to establish a continual commercial use on the property, but he had not done so, and the burden was on the appellant to document grandfathered status.

Chairman Ribble resumed the chair.

In response to a question from Mr. Hart, Mr. Pounder said he was still agreeable to moving the truck from the property and hoped his finances would improve so he could remove it this summer.

Alfred Thompson III, son of the appellant, stated that there had been commercial uses on the property for at least the last 55 or 60 years. He noted that his father had spent over \$125,000 in attorney fees over the years to keep the property intact and away from developers. Mr. Thompson questioned where the complaints had originated since the property was screened from the surrounding townhouses by vegetation. He said the property was currently being used to raise tomatoes.

Peter Baker, 6568 Wittingham Avenue, Alexandria, Virginia, stated that he had known the family for many years and repaired trucks and cars on the property. He confirmed the surrounding vegetative screen and said it would be difficult to discern any activity on the property. Mr. Baker questioned the R-1 zoning for the farmland.

Ms. Stanfield noted that the R-1 District did not preclude agricultural uses.

Mr. Smith said that although the appeals had been before the Board several times with a great deal of extenuating circumstances, there had been significant progress. He said the Board was struggling because they wanted to do what was right for Fairfax County, while also recognizing the hardship of the appellants. Mr. Smith stated that he was inclined to allow one last deferral, but noted that the next time the cases came up for hearing, a decision would be made. He said while he sympathized with staff that these were open and shut cases, the Board was trying to be as understanding as possible under the extenuating circumstances. Mr. Smith moved to defer decision on A 2009-PR-004 and A 2009-PR-007 to October, but noted on the record it would be the absolute last deferral. Mr. Beard seconded the motion.

Mr. Beard, Mr. Hart, and Mr. Miller discussed the next steps in the process if the Board upheld the Zoning Administrator's decision. Mr. Beard stated that since the items on the property were not Mr. Thompson's, he would support the motion for a deferral. Mr. Hart and Mr. Hammack said they would support a very short deferral.

Mr. Smith amended the date stated in his motion to August 4, 2010, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Ms. Gibb recused herself from the hearing.

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~ ~ ~ June 30, 2010, Scheduled case of:

9:30 A.M. SHLP TYSONS RESERVE I LLC AND SHLP TYSONS RESERVE II LLC, A 2010-PR-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7965 through 8070 Crianza Place and 2121 through 2171 Tannin Place on approx. 11.48 ac. Of land zoned PDH-30 and pt. H-C. Providence District. Tax Map 39-2 ((1)) 13A5 and 13A6. (Deferred from 4/21/10 at appl. req.) (Admin. moved from 6/23/10)

Chairman Ribble noted that A 2010-PR-001 had been administratively moved to July 28, 2010, at 9:30 a.m., for ads.

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~ ~ ~ June 30, 2010, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by T-Mobile Northeast LLC

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented the staff's position as outlined in the memorandum dated June 21, 2010. She stated that it was the position of the Zoning Administrator that the appeal was not timely filed. Ms. Stanfield said that during the 2232 Review process, David Marshall, Chief, Facilities Planning Branch of the Planning Division, advised the appellant on March 1, 2010, that the proposed use did not meet the applicable Zoning Ordinance requirements. She said the filing criteria required the appeal be filed within 30 days of March 1, 2010, and it was received on June 9, 2010.

In response to a question from Mr. Hammack, Ms. Stanfield stated that Mr. Marshall was not an administrative officer of the Zoning Administrator.

Frank Sterns, 20110 Ashbrook Place, Ashburn, Virginia, said the appeal was of the May 10, 2010 letter from the Zoning Administrator, and it was timely filed on June 9, 2010. He said he believed he was awaiting a final decision from staff, pointing out the e-mail requests for information going back and forth between their respective offices. Mr. Sterns said he did not think the 30-day clock should have begun based on an e-mail transmission.

Discussions ensued regarding the e-mail transmissions, the County's position that Lorrie Kirst, Deputy Zoning Administrator for Appeals, Zoning Administration Division, had made a determination that it would not be an allowed use, and Mr. Marshall's authority to act on behalf of the Zoning Administrator. Mr. Sterns said the e-mail did not include the appeal language, and for that reason, it was not a final determination. He said the 30 days should have started when the interpretation was finalized. Ms. Kirst stated that an appeal had been discussed during the 2232 process. Mr. Smith said the e-mails were very informal.

Mr. Beard moved to accept the appeal. Mr. Smith seconded the motion, which carried by a vote 6-0. Mr. Byers was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:31 p.m.

Minutes by: Suzanne Frazier

Approved on: October 22, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, July 14, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers and Thomas Smith were absent from the meeting.

Chairman Ribble called the meeting to order at 9:03 a.m. He asked if there were any Board Matters to bring before the Board. Chairman Ribble wished a happy birthday to his wife. As there were no more Board matters, he discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. LI FU TRUSTEE OF THE LI FU REVOCABLE TRUST, SP 2010-HM-031 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from rear lot line. Located at 8623 Coral Gables Lane on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 29-3 ((14)) 1. (*Admin. moved from 6/30/10 for notices.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2010-HM-031, subject to the proposed development conditions.

There was discussion regarding specific sketches included in the staff report, and the screen porch.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said his clients were trying to build a two-story structure and the existing by-right deck protruded further than what was requested for the addition. He said because the property was zoned R-3 Cluster, there were setback problems placing an addition anywhere on the lot.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-HM-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

LI FU TRUSTEE OF THE LI FU REVOCABLE TRUST, SP 2010-HM-031 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from rear lot line. Located at 8623 Coral Gables Lane on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 29-3 ((14)) 1. (*Admin. moved from 6/30/10 for notices.*) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2010; 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 six required standards set forth under that Code Section; in particular, the applicant wishes to construct an addition 16.8 feet from the rear lot line over an area that is already an existing deck.
3. The construction will result in a net less impervious surface.
4. There will be only a small further intrusion into the rear yard line than presently exists.
5. Staff has made a favorable recommendation.
6. The rationale set forth by the staff is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by Scartz Surveys, dated March 3, 2009, and revised February 23, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,039 square feet existing + 3,039 (150%) = 4,558.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition and deck shall be consistent with the architectural renderings and materials shown in Attachment 1 of these conditions.

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

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

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. RALPH DASHNER & ALANE KELLER, SP 2010-DR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 29.3 ft. from front lot line. Located at 9901 Minburn St. on approx. 28,271 sq. ft. of land zoned R-2. Dranesville District. Tax Map 13-1 ((3)) 57. (*Decision deferred from 5/19/10.*)

Chairman Ribble noted that SP 2010-DR-016 had been withdrawn.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. JANETTE SCHAEFFER, SP 2010-SP-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.1 ft. from rear lot line. Located at 6808 Marleigh Ct. on approx. 8,520 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((5)) 23.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Derek John Oldham, the applicant's agent, 23757 Clarks Meade Drive, Clarksburg, Maryland, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2010-SP-033, subject to the proposed development conditions.

Mr. Oldham presented the special permit request as outlined in the statement of justification submitted with the application. He said the small sunroom was for the benefit of the applicant's mother so she could enjoy the outdoors without the inconvenience or discomfort from humidity and bugs. He said there were no residences to the rear of the property and the sunroom would have no impact there.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SP-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

JANETTE SCHAEFFER, SP 2010-SP-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.1 ft. from rear lot line. Located at 6808 Marleigh Ct. on approx. 8,520 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((5)) 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 July 14, 2010; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This is a very difficult lot to place an addition by-right; there really is not much area on the lot in which an addition could be placed by-right.
5. The lot is fairly small.
6. The lot has a very narrow frontage, maybe 50 feet, or less.
7. The lot is very shallow, probably less than 100 feet.

8. To place the house on the lot so that the sides of it are legal, the house was shifted back to the rear, almost to the building line.
9. The house is being put in the logical place at the back of the property.
10. The house is at the basement level, and it is kind of down in the dip.
11. It should not have any visual impact on anybody.
12. It is also backing up on an Eiffel Tower's easement.
13. To the extent this would have any impact by going so far into the minimum rear yard, it is already impacted by the row of towers; it should not bother anybody.
14. There is significant tree vegetation on both sides of the easement, or so it appears from the photographs.
15. There is not going to be significant problem with allowing this.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed sunroom addition as shown on the plat prepared by Laura A. Scott, Laura Lee Scott Surveys, Inc. dated March 26, 2010 and signed April 26, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,469 square feet existing + 3,703.5 (150%) = 6,172.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. Prior to final inspection for the one-story addition, the trellis/arbor above the existing deck shall be removed.

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. TIMOTHY D. KELLY, SP 2010-MV-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 6.5 ft. from side lot line and 1.7 ft. from the rear lot line and accessory structures to remain 3.9 ft. and 2.6 ft. from side lot line and 0.3 ft. from rear lot line. Located at 1604 Old Stage Rd. on approx. 12,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 4. (Decision deferred from 6/30/10)

Chairman Ribble called the case noting it had been deferred for decision.

In response to Chairman Ribble's question of the deferral, Deborah Hedrick, Staff Coordinator, said the motion to defer for decision only was due to staff's revised development conditions, which were distributed at the previous meeting. She clarified each of the revised conditions.

Discussion ensued regarding the reduction in size of the garage, building permits, fire code requirements, and whether there may be a visual outside difference to the structure.

Ms. Gibb moved to approve-in-part SP 2010-MV-029 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Hart commented on the application's difficulties, noting concern over the obvious visual impact on the next-door neighbor, and the probable fire code issues.

Chairman Ribble called for a vote.

The motion carried by a vote of 4-1. Mr. Hart voted against the motion. Mr. Byers and Mr. Smith were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY D. KELLY, SP 2010-MV-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 6.5 ft. from side lot line and 1.7 ft. from the rear lot line and accessory structures to remain 3.9 ft. and 2.6 ft. from side lot line and 0.3 ft. from rear lot line. **(THE BOARD APPROVED THE LOCATION OF THE GARAGE/WORKSHOP AND SHED B ONLY)**. Located at 1604 Old Stage Rd. on approx. 12,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 4. (Decision deferred from 6/30/10). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2010; and

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

1. The applicant is the owner of the land.
2. The playhouse is going to be moved; it is not approved.
3. The applicant has presented testimony indicating partial compliance with the standards set forth in Sect. 8-006.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

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

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

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

- 1. This special permit is approved in-part for the location of the accessory structure (garage/workshop) and accessory storage structure (Shed B) only as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated November 20, 2009 as revised through May 17, 2010, as submitted with this application and is not transferable to other land.
- 2. Within six (6) months from the date of approval of this special permit, the garage/workshop shall be reduced in size to a maximum of 252 square feet, shown as "Shed" on Attachment 1 (approximately 21 feet x 12 feet size). All applicable permits and final inspections shall be obtained.
- 3. The accessory structure (playhouse) shall be reduced in height or relocated in compliance with Zoning Ordinance requirements.
- 4. Notwithstanding the potential changes to the garage/workshop structure which may be required to meet fire code requirements, the exterior appearance adjacent to the northern side lot line shall not be significantly changed.

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 4-1. Mr. Hart voted against the motion. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. RAFAEL GONZALEZ, SP 2010-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 accessory storage structure to remain 3.3 ft. from side lot line. Located at 5908

Atteentee Rd. on approx. 16,842 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (63) 13. (Decision deferred from 6/9/10.)

Chairman Ribble called the case noting that it was deferred for decision only.

Deborah Hedrick, Staff Coordinator, explained that the applicant had provided additional information, photographs, petitions in support, and justification for the appearance of the accessory storage structure.

Mr. Beard moved to approve SP 2010-LE-022 for the reasons stated in the Resolution.

Chairman Ribble seconded the motion.

Mr. Hammack noted his reservations for approving the structure as it existed. He made suggestions to reduce the height and bring it into compliance.

In response to Chairman Ribble's question of the reason for the deferment, Ms. Hedrick said it was for the applicant to review it and see if he could reduce the height or relocate it to bring it into compliance. The applicant's response was provided to the Board.

Mr. Beard noted that the applicant's letter spelled out the options and addressed the various issues.

Mr. Hart commented on the shed's height, lattice base, and several design improvements that served to make it look better, but made it much taller and imposing. He noted his reservations about the impact on the next-door neighbor, and whether there was a way to camouflage the shed.

At the suggestion of Mr. Hart for a development condition, Mr. Beard requested staff's recommendation for language that addressed plantings for screening and buffering.

Discussion ensued regarding an area on which to put plantings and appropriate language for the development condition.

Mr. Beard said he amended his motion to reflect staff's proposed development condition.

Chairman Ribble said he accepted the amended motion. He then called for a vote. The motion carried by a vote of 4-1. Mr. Hammack voted against the motion. Mr. Byers and Mr. Smith were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAFAEL GONZALEZ, SP 2010-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 accessory storage structure to remain 3.3 ft. from side lot line. Located at 5908 Atteentee Rd. on approx. 16,842 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (63) 13. (Decision deferred from 6/9/10). 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 July 14, 2010; and

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

1. The applicant is the owner of the land.
2. The applicant has complied with Sect. 8-006, in particular the good faith issue.
3. This is in harmony with the proximity.
4. It is noted that there are many letters of support, specifically the neighbors in the proximity.

5. The applicant shall provide vegetative screening around the shed where possible.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 existing detached accessory storage structure as shown on the plat prepared by Dominion Surveyors, Inc., dated June 22, 2009, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the detached accessory storage structure or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.
3. The accessory structure shall not be converted into livable space.
4. A minimum of three (3) evergreen shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the southern side of the accessory storage structure and a minimum of five (5) Holly (Ilex) trees, a minimum of 24 inches in height at time of planting, shall be planted along the western side lot line, between the existing fencing and the rear of the accessory storage structure. This plant material shall be kept mulched and watered and maintained in good health.

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.

Chairman Ribble seconded the motion, which carried by a vote of 4-1. Mr. Hammack voted against the motion. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. LAUREN A. FOLEY-PRESTON, TRUSTEE OF THE LAUREN A. FOLEY LIVING TRUST, 19 Dec. 05, SP 2010-MV-030 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3804 Quisenberry Dr. on approx. 11,967 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((23)) 18.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lauren Preston, 3804 Quisenberry Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-MV-030, subject to the proposed development conditions.

There was discussion regarding discrepancies in the plat.

Vice Chairman Hammack assumed the Chair.

Ms. Preston presented the special permit request as outlined in the statement of justification submitted with the application. The reason for the mother-in-law suite was an accommodation for her husband's recently widowed elderly mother, an immigrant from Norway, who required more living assistance than what they could provide outside their home. Ms. Preston said they applied for the special permit in order to have an electric cook top in the kitchenette area. She addressed the concerns listed in the letters of several neighbors. She assured that the addition was harmonious and compatible with the neighborhood and noted that it had increased their tax assessment.

Discussion ensued regarding the approval being granted to the applicant and succeeding the successor of her trust, not the property itself, pertaining development conditions, specifics of an accessory dwelling unit requirements, and recordation in the land records.

Chairman Ribble reassumed the Chair, and as there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-MV-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

LAUREN A. FOLEY-PRESTON, TRUSTEE OF THE LAUREN A. FOLEY LIVING TRUST, 19 Dec. 05, SP 2010-MV-030 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3804 Quisenberry Dr. on approx. 11,967 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((23)) 18. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2010; 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Lauren A. Foley-Preston, Trustee, Lauren A. Foley Living Trust dated December 19, 2005 and is transferable without further action of this Board only to successor trusts, and is for the location indicated on the application, 3804 Quisenberry Drive (11,967 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Sastro & Associates, LLC, dated November 22, 2009, as revised through March 15, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special 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.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 805 square feet, and the layout shall generally be as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. Parking shall be provided on site as shown on the special permit plat.

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.

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. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. BRANDON B. OR MARNI M. PLASTER, SP 2010-SP-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.4 ft. front side lot line such that side yards total 13.4 ft. Located at 8413 Greeley Blvd. on approx. 10,538 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 175.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Brandon B. Plaster, 8413 Greeley Boulevard, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-SP-032, subject to the proposed development conditions.

Ms. Hedrick responded to Mr. Hart's questions concerning an easement, the recordation, and its vacation.

Mr. Plaster presented the special permit request as outlined in the statement of justification submitted with the application. He said the neighbors supported the request, and that he was confident he could comply with the spirit and intent of the Ordinance and all the conditions of development.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SP-032 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRANDON B. OR MARNI M. PLASTER, SP 2010-SP-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.4 ft. from side lot line such that side yards total 13.4 ft. Located at 8413 Greeley Blvd. on approx. 10,538 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 175. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2010; and

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

1. The applicants are the owners of the land.
2. We have a staff recommendation of approval.
3. The rationale in the staff report is adopted.
4. This is the logical side of the property to put a garage.
5. The adjacent property is a park.

6. There are no structures in the immediate vicinity.
7. There are some large trees nearby.
8. A garage would be in keeping with the rest of the neighborhood.
9. A two-car garage is not going to bother anybody on the last lot next to the park.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a garage addition (574 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated December 18, 2008, as revised through June 3, 2010, as submitted with this application and is not transferable to other land. Notwithstanding the note on the plat, the sanitary sewer easement vacation has already been vacated in Deed Book 20401 at Page 1885.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,082 square feet existing + 3,123 square feet (150%) = 5,205 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The limits of clearing and grading for the proposed addition shall be determined in consultation with staff from the Park Planning Branch, Fairfax County Park Authority. Following this determination and prior to commencement of construction, the applicant shall employ a certified arborist to root prune along the limits of clearing and grading adjacent to all proposed land disturbing activity. Root pruning shall be done with a trencher or vibratory plow to a depth of eighteen (18) inches. Tree protection fencing and silt fence or super silt fence shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area. If tree protection fencing is used, it shall be erected at the limits of clearing and grading in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet.
6. The Park Authority will not assume any liability to damage done to the applicant's property by these trees becoming hazardous as a result of the construction activities.
7. The applicant shall not extend landscaping, footpaths, compost, debris piles or other private use features onto parkland and no downspouts or corrugated pipe shall be run in any way that causes erosion on the adjacent park property.

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

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

diligently prosecuted. The Board of Zoning Appeals may grant additional time 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 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. HENDRIK VAN VOORTHUIZEN, SP 2010-DR-037 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 23.1 ft. from the front lot line and 8.6 ft. from side lot line. Located at 6831 Lemon Rd. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((26)) 53.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2010-DR-037, subject to the proposed development conditions.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants were elderly and wanted the carport in order to completely convert a non-functioning garage into a functional useable space. The current master bedroom was located on the second floor, but the proposed floor plan would put the kitchen, master bedroom, and access to their vehicles in one concentrated area. He explained the new layout, and noted that they had attempted to reduce the structure's size, but because of the room needed in order to have wheelchair mobility and radius around two vehicles, a reduction was not feasible. Mr. Ahrens said the proposal was designed to minimize any eye-sore; there were similar structures in the neighborhood; and they did their best to conform to the Zoning Ordinance.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-DR-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

HENDRIK VAN VOORTHUIZEN, SP 2010-DR-037 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 23.1 ft. from the front lot line and 8.6 ft. from side lot line. Located at 6831 Lemon Rd. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((26)) 53. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2010; and

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

1. The applicant is the owner of the land.
2. Staff has recommended approval.
3. The applicant's agent has provided testimony describing the applicant's physical need for this addition.
4. The photographs provided show that it is compatible with the neighborhood.
5. The testimony indicated that they would make the addition have as little impact on the side yard as possible.

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 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 and size of the carport addition as shown on the plat prepared by Scartz Surveys, dated February 22, 2010, submitted with this application and is not transferable to other land.
2. Building permits for the carport addition shall be obtained prior to construction and all final inspections shall be obtained.
3. The carport addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

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

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

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. *(Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09.) (Admin. moved from 3/3/10 and 5/26/10 at appl. req.)*

Chairman Ribble noted that SP 2009-SU-066 had been administratively moved to August 11, 2010, at 9:00 a.m., at the applicant's request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said that was correct, and she believed it had been subsequently moved into September.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:30 A.M. EXXON MOBIL CORPORATION, A 2009-SU-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a quick service food store on property in the C-8, SC and H-C Districts in conflict with the development conditions of Special Exception SE 93-Y-059 in violation of Zoning Ordinance provisions. Located at 13825 Lee Hy. On approx. 22,886 sq. ft. of land zoned C-8, SC and H-C. Sully District. Tax Map 54-4 ((1)) 104. (*Admin. moved from 7/7/09, 12/15/09, and 5/19/10 at appl. req.*)

Chairman Ribble noted that A 2009-SU-019 had been withdrawn.

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The meeting recessed at 10:20 a.m. and reconvened at 10:30 a.m.

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~ ~ ~ July 14, 2010, Scheduled case of:

9:30 A.M. LM 734 LC TRADING AS COMSTOCK TREE FARM, C/O CHRISTOPHER CLEMENTE, A 2010-DR-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a commercial recreation use not permitted in a residential district, has added soil in excess of allowable area and depth, and is allowing an accessory use (a garage) to remain on a vacant lot, all on property in the R-E District and in violation of Zoning Ordinance provisions. Located at 734 Leigh Mill Rd. on approx. 10.43 ac. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 79B and 79A (now known as 79C).

Chairman Ribble called the applicant to the podium.

Ms. Gibb indicated that she would recuse herself from the public hearing.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure that his law firm had represented an unpaid supplier for the property, but as far as he knew, all involvement with the property was prior to the appellant's acquisition and the issues presented in the staff report. Mr. Hart indicated he did not believe his ability to participate in the case would be affected.

Michael Congleton, Department of Code Compliance, made staff's presentation. Staff recommended the Board uphold the determination of the Zoning Administrator.

There was discussion regarding the appellant's grading plan for the unconstructed single-family dwelling; the reasons for the reissuing of the notice of violation for the property; the determination that the motocross track was an unpermitted commercial recreation use, because it was not explicitly listed in the Zoning Ordinance as a permitted use in the R-E District; the consolidation of the two subject lots; the appellant's building permit application for the garage structure conversion being held up by the pending zoning violation on the property; and an accessory structure becoming unpermitted following the removal or destruction of the principal use.

There was additional discussion regarding previous cases or determinations that could provide precedence or direction; whether the motocross track was a zoning issue, since no structure was built; and staff's interpretation that the track was the principal use since the property had been regraded purposefully for the use as a track on a permanent basis and there was no principal dwelling.

Staff stated the appellant had the option to submit a proposal to build a principal dwelling on the property, and build a track for friend and family use. This proposal would be reviewed by staff on a case-by-case basis.

In response to Board questions, the following was discussed: the surface area and construction of the dirt track, the area to be disturbed by the building of the new proposed dwelling, the permitted uses as laid out in the Zoning Ordinance, and the limitations presented by the type of district in which the property exists. Staff corrected a previous statement by clarifying staff's understanding that the garage was constructed in 1986 rather than 1967.

Grayson Hanes, the appellant's attorney, came forward to present. He explained the appellant's desire to comply with the Zoning Ordinance, and the procedural hindrances preventing compliance. He said the motocross track on the subject property was not a commercial use.

It was clarified that certain submitted documents were depicting another property with a commercial motocross track, not the subject property.

Chris Clemente, 10029 Windy Hollow Road, Great Falls, Virginia, came forward to speak. He explained the intent of the submissions which demonstrated the difference in operation between the subject property and Budds Creek, another property motocross track. Mr. Clemente discussed his desire to comply with Fairfax County regulations, his limited ability to address community concerns, discrepancies regarding the history and permits for the existing and demolished structures, the accuracy of the most recently submitted site plan, and his building plans. In response to questions, he explained why he had not already built a house on the property, and his vision for the future of the property.

Mr. Clemente played a video for the Board which demonstrated the use on his property. There was discussion regarding the appellant's response to the allegation regarding the addition and disturbance of dirt on the property, the steps taken following the original issuance of the notice of violation, staff's conclusions resulting from inspections of the property and meetings with the appellant, staff's attempts to offer alternative solutions to the appellant, details regarding permitted accessory uses, the existing track being a principle use, procedural hindrances, details about the accuracy and compliance of the submitted grading plan, what was needed to clear all active violations and issues, and the history of structures on the property based on appellant testimony and staff evidence.

Staff presented aerial photographs which demonstrated the subject garage did not exist before 1986.

Chairman Ribble called for speakers.

Jeffrey Parker, 747 Leigh Mill Road, Great Falls, Virginia, came forward. He said the motorized use should not be permitted in a residential district, and that the noise and dust was a disturbance to neighbors.

At the direction of the Chairman, the clerk administered the oath to David Rummler, 9505 Georgetown Pike, Great Falls, Virginia, who swore or affirmed that his testimony would be the truth.

Mr. Rummler expressed his opinion that the appeal be denied, as the track was not a residential use, and the activity produced excessive noise.

Shawn Khorshidi, 9603 Georgetown Pike, Great Falls, Virginia, and Louise Root, 734 Leigh Mill Road, Great Falls, Virginia, came forward. They expressed their discontent with the activity on the property as it resulted in excessive noise and dirtiness which negatively impacted the residential neighborhood.

At the direction of the Chairman, the clerk administered the oath to Jennifer Goudy, 746 Leigh Mill Road, Great Falls, Virginia, who swore or affirmed that her testimony would be the truth.

Ms. Goudy provided testimony of personal observance of the changes on the property since 1991, which she felt had been negatively impacted by the activity on the property. Though she supported the building of a quiet family home, she did not believe the use of the dirt bikes should continue.

In response to Board questions, Ms. Goudy explained the location of her property, and her personal observance of large trucks bringing dirt onto the subject property.

The following speakers also came forward: Michelle Rosati, representative of Rubin LLC, 748 Leigh Mill Road, Great Falls, Virginia; William D. Hume, no address given; Tom Keating, no address given; and Andrew Darling, 907 Leigh Mill Road, Great Falls, Virginia. Their main points included detailed agreement with the

Zoning Administrator's interpretation and application of the Zoning Ordinance, the inability to have an accessory use that was not subordinate in use to the tree farm, the question before the Board being the accuracy of the violation on the date of its issuance, the approved grading plan not including additional areas of disturbance, the excessive use of the track by the appellant, the negative impact on the community, the auditory nuisance, the track was still a primary use even though it was not a professional track, and the degradation of surrounding property values.

Mr. Hanes came forward. The most recent grading plan was distributed to the Board, and they reviewed it.

Mr. Hanes discussed the attempts to submit a full grading plan, the efforts to rectify the violation and comply with the Zoning Ordinance, the absence of any intent to remove dirt from the property, the tree farm being installed due to misinterpretation by the appellant that it would serve as an adequate principal use, and the existing track not being accurately classified as a motocross track.

Mr. Clemente refuted the negative claims made by his neighbors against his character and actions, and insisted he desired to fully comply.

Mr. Congleton explained the issues being dealt with, including that there was a violation which was conceded by the appellant, and the issue with the determination of the use of the property was not adequately refuted due to lack of any possible alternative determinations. The conversion of the tool shed into a dwelling was an issue which would be dealt with in a different venue.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Given all provided testimony and submissions, he said he felt the track was not an appropriate use for an R-E district and that the Zoning Administrator's determination should be upheld.

Prior to the vote, Mr. Hart explained his reasons for supporting the determination of the Zoning Administrator. Mr. Hammack seconded the motion, which carried by a vote of 4-0-1. Ms. Gibbs recused herself from the hearing. Mr. Byers and Mr. Smith were absent from the meeting.

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~ ~ ~ July 14, 2010, After Agenda Item:

Request for Additional Time
Chesapeake Healthcare Corporation, VC 00-H-027

Ms. Gibb moved to approve 12 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting. The new expiration date was June 14, 2011.

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~ ~ ~ July 14, 2010, After Agenda Item:

Request for Additional Time
Cub Run Baptist Church/Cub Run Primitive Baptist Church, VC 97-Y-058

Ms. Gibb moved to approve 48 months of additional time. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting. The new expiration date was July 1, 2014.

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~ ~ ~ July 14, 2010, After Agenda Item:

Request for Additional Time
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

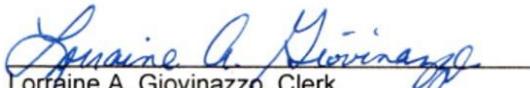
Ms. Gibb moved to approve 12 months of additional time. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting. The new expiration date was May 25, 2011.

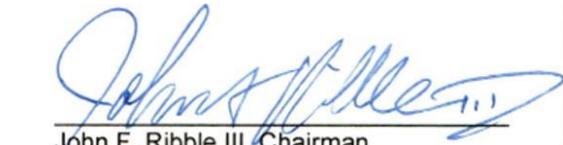
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As there was no other business to come before the Board, the meeting was adjourned at 1:20 p.m.

Minutes by: Paula A. McFarland/Mary D. Padrutt/Emily J. Armstrong

Approved on: September 27, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, July 28, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Lord appeal, Civil Action No. 90-12456 in the Circuit Court for Fairfax County, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

The meeting recessed at 9:03 a.m. and reconvened at 9:27 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Beard were not present for the vote.

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Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, he called for the first scheduled case.

~ ~ ~ July 28, 2010, Scheduled case of:

- 9:00 A.M. HIEU TRINH & MAI-HOUNG TRAN, SP 2010-BR-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in the minimum yard requirements based on error in building location to permit open deck to remain 2.2 feet from the rear lot line and reduction of certain yard requirements to permit construction of addition 13.5 ft. from rear lot line. Located at 9610 Jenny La. on approx. 11,486 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((18)) 4 (Concurrent with VC 2010-BR-004).
- 9:00 A.M. HIEU TRINH & MAI-HOUNG TRAN, VC 2010-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9610 Jenny La. on approx. 11,486 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((18)) 4 (Concurrent with SP 2010-BR-035).

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William A. Reames, 10595 Furnace Road, Lorton, Virginia, reaffirmed the affidavit.

Mary Ann Godfrey, Staff Coordinator, made staff's presentation. Ms. Godfrey stated that staff recommended approval of SP 2010-BR-035, subject to the proposed development conditions.

In response to a question from Mr. Hammack regarding the small area in the upper right-hand corner of the plat, designated as a slate patio, Ms. Godfrey said that area was not included in the special permit or variance application, but that the applicant's agent could best address whether or not that patio still existed.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the rear yard on the property and what constituted coverage with regard to the 30 percent requirement. Ms. Langdon noted that the 15-foot building restriction line on the plat was incorrect, and should be 25 feet.

In response to a question from Mr. Hammack, Ms. Langdon stated that under the PDH-3 category, the house was originally allowed to encroach into the 25 foot rear yard setback requirement.

Mr. Reames presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He addressed Mr. Hammack's concern about the small slate patio, noting that it was not set in mortar, and could be removed in a matter of minutes. Mr. Reames said the sunroom would be well within the confines of the existing patio and mounted lower than the first level overhang, so as to be minimally intrusive. He also pointed out that there were exceptional amounts of vegetation around the proposed addition, so that it would be barely visible from surrounding properties. Mr. Reames said that if the applicants were required to demolish the existing concrete pad, it would probably impact the neighboring property as far as water runoff and drainage.

In response to a question from Mr. Hart, Ms. Godfrey noted that only a building permit for the retaining wall was found in the street file. There was no explanation for the patio location.

Mr. Hart and Mr. Reames discussed alternatively locating the sunroom on the left side of the house, with Mr. Reames noting that there were no available exits to utilize for the sunroom in that location.

In response to a question from Mr. Hammack, Ms. Godfrey said she did not know what the building permit was referencing when stating that there was 832.35 square feet of additional impervious surface. She said she would have to check with someone in the Permits Department.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-BR-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

HIEU TRINH & MAI-HOUNG TRAN, SP 2010-BR-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in the minimum yard requirements based on error in building location to permit open deck to remain 2.2 feet from the rear lot line and reduction of certain yard requirements to permit construction of addition 13.5 ft. from rear lot line. Located at 9610 Jenny La. on approx. 11,486 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((18)) 4. (Concurrent with VC 2010-BR-004). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2010; and

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

1. The applicants are the owners of the property.
2. The applicant has satisfied the six specific standards set forth in Sect. 8-922.
3. There is a favorable recommendation from the staff.
4. The addition of the sunroom does not increase any impervious surface on the site.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed deck (slate patio) and sunroom addition as shown on the plat prepared by Scartz Surveys, dated February 17, 2010, and revised through July 6, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the dwelling that existed at the time of the first expansion (3,991 square feet existing house + 483 square feet garage) $4,474 (150\%) = 6,711$ permitted) regardless of whether such addition complies with the minimum yard requirement is the subject of subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack then moved to approve VC 2010-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

HIEU TRINH & MAI-HOUNG TRAN, VC 2010-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9610 Jenny La. on approx. 11,486 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((18)) 4 (Concurrent with SP 2010-BR-035). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants have satisfied the nine required standards for variance applications.
3. This patio has existed for quite some time and appears to have been installed at no fault of the property owners.
4. It appears, based on the testimony, this is a large house allowed to be constructed in a PDH-3 category.
5. The way that the house is sited on the property, it results in a relatively small backyard compared to the rest of the property.
6. Functionally, the percentage in excess of the 30% rear yard requirement does not require a lot of square feet because of the way the minimum rear yard is required.
7. The rest of the house has a good deal of screening and lacks impervious surface, which helps counterbalance any excess coverage.
8. The building permit in 1998 may have inadvertently permitted the installation of that yard, in particular where it indicates the 832.35 square feet of additional impervious surface.
9. This is the old variance application form. I think the standard we apply now is a little less stringent under the Code than that set forth in this particular 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 as distinguished from a special privilege or convenience sought by the applicant.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above 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 greater than 30 percent minimum rear yard coverage for the deck (slate patio) as shown on the plat prepared by Scartz Surveys, dated February 17, 2010, revised through July 6, 2010, submitted with this application and is not transferable to other land.
2. Notwithstanding what is shown on the plat, the little patio in the upper right of the plat shall be removed.

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 including requirements for building permits.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 28, 2010, Scheduled case of:

9:00 A.M. ARMANDO ESTRADA FERNANDEZ, SP 2010-PR-028 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3416 Monarch Lane on approx. 11,445 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-1 ((27)) 5. (Decision deferred from 6/30/10)

Chairman Ribble reminded the Board that this case was for decision only.

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the Board had deferred the decision on the matter, because one of the Board members wanted to visit the site. She also pointed out that revised development conditions had been distributed to the Board, with the only change being the requirement for recordation of the conditions in the Land Records of Fairfax County.

In response to a question from Mr. Byers, Mr. Fernandez stated that he had received a copy of the revised development conditions and agreed with them.

Mr. Hammack moved to approve SP 2010-PR-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

ARMANDO ESTRADA FERNANDEZ, SP 2010-PR-028 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3416 Monarch Lane on approx. 11,445 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-1 ((27)) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2010; and

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

1. The applicant is the owner of the property.
2. There is a favorable recommendation from the 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant amount the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval for the accessory dwelling unit is granted to the applicant only, Armando Estrada Fernandez, and is not transferable without further action of this Board, and is for the location indicated on the application, 3416 Monarch Lane (11,445 square feet), and is not transferable to other land.
3. This special permit is granted only for the purpose(s), structures and/or use(s) indicated on the house location survey plat prepared by John T. Monaghan, dated June 11, 1980 and recertified on March 10, 1987, as qualified by these development conditions.
4. A copy of this special 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.
5. 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 which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. All applicable permits and final inspections required for the accessory dwelling unit, including the kitchen, shall be approved prior to occupancy of the unit.
7. The accessory dwelling unit shall contain a maximum of 422 square feet with a maximum of one bedroom as depicted on the floor plan included as Attachment 1 to these conditions.
8. 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.
9. 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the

property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

11. Parking shall be provided on site as shown on the special permit plat.

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.

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

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~ ~ ~ July 28, 2010, Scheduled case of:

9:00 A.M. ST. ALBAN'S EPISCOPAL CHURCH, SPA 81-M-008-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-M-008 previously approved for a place of worship and nursery school to permit change in permittee, addition of a child care center and modification of development conditions. Located at 6800-A Columbia Pike on approx. 6.0 ac. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((1)) 10.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lynne J. Strobel, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Mr. Hart and Ms. Gibb made disclosures, but indicated that they did not believe their ability to participate in the case would be affected.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Ms. Hedrick said staff recommends approval of the application with adoption of the proposed development conditions.

Lynne Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said there had previously been an approved nursery school which operated within the church, but unfortunately that use had not been active for a number of years. Ms. Strobel stated that the applicant was simply proposing to reactivate that prior use, adding the component of before and after school care. She felt the nursery school would be an asset to the community, providing a quality nursery school option to Fairfax County residents. Ms. Strobel asked that the Board approve the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 81-M-008-04 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. ALBAN'S EPISCOPAL CHURCH, SPA 81-M-008-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-M-008 previously approved for a place of worship and nursery school to permit change in

permittee, addition of a child care center and modification of development conditions. Located at 6800-A Columbia Pike on approx. 6.0 ac. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((1)) 10. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 2010; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-2 and HC.
3. The area of the lot is 6.0 acres.
4. The staff recommends approval and the Board adopted the staff's rationale.

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 the Zoning Ordinance.

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

1. This approval is granted to the applicant only, St. Alban's Episcopal Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6800 A Columbia Pike (6.0 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit plat Jarrett Surveys, Inc., dated May 23, 1989, as amended by Charles F. Dunlap dated June 24, 2010, and approved with this application, as qualified by these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. Other by-right, special permit uses may be permitted on the lot without a special permit amendment, if such uses do not affect this special permit use.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity for the sanctuary shall be limited to a total of 252 seats.
6. Parking shall be provided as shown on the special permit plat. All parking for the uses shall be on-site.
7. The hours of operation for the nursery school shall be limited to 8:30 a.m. to 12:00 p.m. (Noon) Monday – Friday for three (3) year olds; 8:30 a.m. to 2:30 p.m. Monday – Friday for four (4) year olds.
8. The hours of operation for the child care center shall be limited to 7:30 a.m. to 8:30 a.m. and 12:00 p.m. (Noon) to 5:30 p.m. Monday – Friday.

9. The total maximum daily enrollment for the child care center/nursery school shall be limited to sixty (60) children daily.
10. The existing vegetation along all lot lines shall be deemed to satisfy Transitional Screening 1 requirements.
11. The existing fencing shall be deemed to satisfy the barrier requirements.

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 by the issuance of a new Non-Residential Use Permit (Non-RUP). 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 a vote of 7-0.

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~ ~ ~ July 28, 2010, Scheduled case of:

9:00 A.M. JEAN-PHILLIPPE KRUKOWICZ AND BENEDICTE A. KRUKOWICZ, VC 2010-MA-003
Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 25 percent front
yard coverage. Located at 6532 Spring Valley Dr. on approx. 27,961 sq. ft. of land zoned
R-2. Mason District. Tax Map 71-4 ((7)) 68.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

W. Steven Paleos, the applicant's agent, 609 Wingate Drive, Frederick, Maryland, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. Ms. Johnson said that a representative from the Department of Code Compliance was present to answer questions.

In response to a question by Ms. Gibb, Ms. Johnson said a Notice of Violation had been issued on the property based upon a complaint that had been received.

Mr. Hart and Ms. Johnson discussed the building permits issued in 2002 and 2003, and compared the driveway configurations on the accompanying plats to the one submitted with this variance request. It was noting that the size and shape of the driveway had changed considerably.

Mr. Paleos presented the variance request as outlined in the statement of justification submitted with the application. He explained that the applicants had been surprised that the driveway was a nonconforming use. He stated that he had checked the street file, and found that the driveway had not been included in that request. Mr. Paleos felt the issue was one of ingress and egress, noting that there was a significant line of sight problem on Spring Valley Drive when backing out of the applicant's driveway. He said the driveway was in harmony with the neighborhood, and well screened from the street. Mr. Paleos confirmed that the height of the shed had been reduced, and was now in conformance with Ordinance requirements.

In response to a question from Ms. Gibb, Ms. Johnson said that the front yard surface area covered by the driveway was calculated on the plat as 32.2 percent. She stated that the Notice of Violation had estimated that approximately 553 square feet would need to be removed.

Mr. Hart asked if the applicants would be willing to remove the parking space, which was the stubbed area on the left side of the driveway. Mr. Paleos stated that they would prefer not to, given the cost, construction noise, and expense involved.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2010-MA-003 for the reasons stated in the Resolution.

Mr. Byers said he would not support the motion because an undue hardship had not been demonstrated, nor did he believe that removal of a portion of the driveway would effectively prohibit or unreasonably restrict all reasonable use of the subject property. He felt there were other options available that could bring the property into compliance with the Zoning Ordinance.

Mr. Hart felt the Ordinance language was added to address complaints in older residential areas of the County where numerous tenants living in one residence were paving their front yards to provide additional parking spaces. He said the subject property did not fall into that category, was an upgraded property, and beautifully maintained.

Chairman Ribble called for the vote. Ms. Gibb did not feel she could cast a vote without knowing the size of the driveway.

Ms. Johnson noted that Danny Forshee, Code Compliance Division, was now present, and had the dimensions of the driveway.

Mr. Forshee said the main driveway was approximately 18-feet wide and approximately 58-feet long, large enough to accommodate two-way traffic. He said the parking stub pad to the left of the driveway measured about 9 x 15 feet.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEAN-PHILLIPPE KRUKOWICZ AND BENEDICTE A. KRUKOWICZ, VC 2010-MA-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 25 percent front yard coverage. Located at 6532 Spring Valley Dr. on approx. 27,961 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 68. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2010; and

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

1. The applicants are the owners of the property.
2. This is a difficult situation.
3. To a limited extent, the property does meet the criteria for a variance applicable now.
4. There is a topographic condition, in that there is a difficult slope and site distance problem from the driveway or entrance of this property into the street.
5. Vehicular access is complicated such that it is very difficult to back out up the hill with the blind spots in this configuration.
6. The Standards in 18-404 have been satisfied in that the property was acquired in good faith and, in fact, the driveway was in this configuration when the applicants acquired it.

7. The Board is not dealing with an error in building location, however, and the standards are a little different.
8. The Board found that subsections 2E and 2F were both satisfied, particularly the slope of the front yard between the house and the street, and the connection between the driveway and the street or the conditions facing the street for vehicular access.
9. Subsection 3 has been satisfied.
10. Subsection 4 has been satisfied to the extent that the entire driveway would have to be reduced to 25% given the applicants' acquisition of the property in this condition, and would be an undue hardship.
11. Subsection 5 has been satisfied.
12. Subsection 6A and 6B have been satisfied.
13. To the extent that on a property like this, in this configuration, if you had to get rid of the circular driveway, unless there was a different turnaround problem, you are restricting vehicular access in and out to a dangerous condition with people having to back up the hill at a blind spot.
14. There is a hardship with this property. The applicants bought the house like this, with the circular driveway. If they had to get rid of the circular driveway, it would make it very difficult to get in and out. The Board did not think this was a convenience sought by them.
15. This would not have any effect on adjacent properties or the character of the zoning district.
16. The variance is in harmony with the intended spirit and purposes of the Ordinance.
17. The Board could not remember the last time a variance about a driveway had been before them, but given this unique situation and these conditions, those applicable standards have been met.
18. The house does not need the stubbed portion of the driveway for the purpose of ingress and egress which is really the primary impetus for the variance. Even though it may have been like that, it is contributing to the appearance that the front yard is excessively paved, which is what the Board assumes drove the complaint in the first place.
19. The function of that portion of the driveway would actually be a convenience under Subsection B, rather than Subsection A.
20. The hardship the applicants have is that they cannot back out, not that they do not have an extra parking space on the driveway.
21. This is, in fact, a fairly long driveway and several cars could easily be parked in it without creating a significant problem.
22. In order to meet the standards, the Board could not conclude that the parking space stub would be within the scope of Section 18-404, Subsection 6.
23. Historically, even if someone had looked at these plats, it was not clear, certainly not in the 2003 plat, which arguably contributes to the confusion, the plat with Mr. Shoup's signature does not have the parking space on it, but it does have a circular driveway, even if that was the way it was built.
24. Although it might be possible to narrow the driveway in some way, it would be more trouble than it is worth and at this point would not be appropriate.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above 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 maximum size of the driveway in the front yard as qualified by Condition 3 and as shown on the plat prepared by Joseph W. Bronder, Land Surveyor, DiGiulian Associates, P.C., dated April 29, 2010 and signed May 3, 2010, as submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this variance, the 10.5 foot high shed shall be removed, moved or reduced in height to meet the requirements as outlined in Sect. 10-104 of the Zoning Ordinance.
3. Notwithstanding what is depicted on the plat, the parking space stub to the north of the driveway shall be removed and the area re-vegetated within 180 days of approval of this variance.

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 including requirements for building permits.

Mr. Smith seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hammack voted against the motion.

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~ ~ ~ July 28, 2010, Scheduled case of:

9:00 A.M. RICHARD BOTTOMLEY, SP 2010-DR-038 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 12.0 ft. from side lot line. Located at 148 River Park La. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 4-3 ((9)) 19.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard Bottomley, 148 River Park Lane, Great Falls, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of the application, subject to the revised proposed development conditions, dated July 28, 2010.

Mr. Bottomley presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the placement of the new garage was pushed towards the western side lot line due to the existence of a septic field on the property. Mr. Bottomley said he intended to continue utilization of the existing attached garage, with the two garages sharing a common turnaround area.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-DR-038 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD BOTTOMLEY, SP 2010-DR-038 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an accessory structure 12.0 ft. from a side lot line. Located at 148 River Park La. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 4-3 ((9)) 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 July 28, 2010; and

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

1. The applicant is the owner of the property.
2. There is a favorable staff report.
3. From the pictures and drawings, it appears there will be little impact on the neighbors.
4. It will be consistent with the architecture of the existing home and was kept to the minimum needed for the new garage.

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 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 and size (approximately 509.33 square feet) of the accessory structure (detached garage), as shown on the plat prepared by Delta Consultants, Inc., dated November 4, 1993, revised by Robert W. Mobley, Architect, through May 14, 2010, submitted with this application and is not transferable to other land.
2. Building permits for the accessory structure (detached garage) shall be obtained prior to construction.
3. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the proposed garage location and the limits of clearing and grading at the southern and western property boundary.

Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas.

4. A minimum of five (5) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the southern foundation of the detached garage.

5. The accessory structure (detached garage) shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. The accessory structure shall not be converted into livable space.

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

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

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

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~ ~ ~ July 28, 2010, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, and 5/26/10 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to December 15, 2010, at 9:30 a.m., at the appellants' request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellants had filed a special exception application which, if approved, would remedy the violation.

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~ ~ ~ July 28, 2010, Scheduled case of:

9:30 A.M. ADIL AL-BOTABEEKH AND BABYLON TAVERNA, INC., A 2010-MA-006, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a commercial recreation use located in the C-6 and CRD Districts without an approved Group 5 Special Permit or a valid Non-Residential Use Permit for the use in violation of Zoning Ordinance provisions. Located at 3811E South George Mason Dr. on approx. 2,400 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 5.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jill Cooper, Staff Coordinator, presented staff's position. She explained that due to numerous complaints from the police department and Supervisor Gross' office regarding several uses in the Build America Skyline shopping center, an investigation of the entire shopping center was initiated in November of 2009. Ms. Cooper continued that on December 1, 2009, the Virginia Indoor Clean Air Act went into effect requiring restaurants that did not meet certain Health Department requirements to be smoke-free, stating that several establishments in the shopping center then abandoned their Health Department food permits, including Aladdin Café. She said that an inspection was conducted in December of 2009 which confirmed that no food

was being stored or prepared on the premises and that it was being operated solely for the consumption of tobacco with water pipes. Ms. Cooper stated that an inspection on April 7, 2010 revealed that Aladdin Café was still operating under a Non-Residential Use Permit (Non-RUP) for an eating establishment while the only use continued to be providing tobacco products for consumption on the premises. She said that based on prior determinations, this type of establishment was typically described as a hookah bar, and was a commercial recreation use, which required approval of a Group 5 special permit in the C-6 district. On April 20, 2010, a Notice of Violation (NOV) was issued for operating a commercial recreation use without a special permit or Non-RUP. Ms. Cooper noted that the appellants had tried on two occasions to obtain a building permit for interior alterations in order to try to comply with the Virginia Indoor Clean Air Act, but neither had been approved, because the Ordinance stated that no building permits may be issued for property which violates the Zoning Ordinance.

Ms. Cooper said the primary basis of the appeal was that a hookah bar use did not bear any similarity to any of the other commercial recreational uses. However, she noted that the Ordinance stated that when an existing use was not specifically set forth, the Zoning Administrator was required to interpret the Ordinance in order to identify the classification that is most similar to the use in question. Ms. Cooper said the Zoning Administrator felt a hookah bar fell under Paragraph 7 of Section 8-501, which required special permit approval. She asked that the BZA uphold the determination of the Zoning Administrator as set forth in the NOV. Ms. Cooper said that Chip Moncure from the Department of Code Compliance and Kevin Crisler from the Health Department were present and available to answer questions.

Mr. Beard and Ms. Cooper discussed the definition of an eating establishment, noting that there must be food on the premises at any given time.

Ms. Gibb asked what the appellant had to do in order to comply with the NOV. Ms. Cooper replied that they had to vacate the premises, stop using the tobacco products, and return to an eating establishment, or obtain a special permit, since the principal use was the hookah bar. Ms. Gibb and Ms. Cooper discussed how to establish the principal use of the property, with Ms. Cooper stating that on the inspection date, the hookah bar was the only use.

In response to Ms. Gibb's question whether a hookah bar could be an accessory use to the principal use of an eating establishment without a special permit, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the County would have to look into it, since that question had not been raised to date.

Mr. Hart and Chip Moncure, Inspector with the Department of Code Compliance, discussed photos in the staff report and the definition of an eating establishment under Section 20-300.

In response to a question from Mr. Smith, Ms. Stanfield stated that the County would need to look at a specific proposal for a hookah bar to determine whether it could be considered an accessory use to an eating establishment.

Vice Chairman Hammack assumed the chair.

The appellants' agent, John Farrell, 11350 Random Hills Road, Fairfax, Virginia, presented the arguments forming the basis of the appeal. He questioned whether or not the Zoning Administrator's office had the authority under the Zoning Ordinance to regulate smoking in an eating establishment. Mr. Farrell said the Aladdin Café was clearly an eating establishment and had been for seven years. He noted that the restaurant patrons smoked hookah pipes, which were water pipes that use American tobacco. He then presented one for inspection. He also presented the Board with a copy of the menu used at the restaurant. When the laws changed last year which prohibited smoking in restaurants unless there were two separate HVAC systems and a physical divide between the two, the appellants were advised by a Health Department official that they were to stop serving food, which they did. Little did they know that by complying with instructions from the Health Department, they would run afoul of the Zoning Administrator. Mr. Farrell said the appellants applied for a building permit to construct a wall, so that the smoking and non-smoking areas would be physically divided. However, the Zoning Administrator prohibited issuance of the permit, since the property was under an NOV.

Mr. Farrell contended that the Zoning Administrator did not have the authority to regulate smoking in an eating establishment, pointing out that the General Assembly determined that smoking would be regulated

by the Health Department. He referenced Page 2 of the NOV, which addressed how the appellants were to cure the violation, quoting that they were to cease all use, consumption, or sale of tobacco products. He again reiterated that Zoning Administrator had no authority to ban the use of tobacco in any eating establishment, and noted that the Zoning Administrator had conceded such.

Mr. Farrell also disputed a contention by staff that no effort had been made by the appellants to demonstrate that hookah smoking was an accessory use. He said he offered copies of monthly receipts from the restaurant, which showed the dramatic drop off in revenue when they were forced to stop selling food.

Mr. Farrell presented a video tape, recorded five days earlier, showing the 22 at the restaurant, the kitchen facility, the wait staff, and patrons.

In summary, Mr. Farrell asked that the Board overturn the ruling of the Zoning Administrator as to the extent of the absolute prohibition on tobacco.

Mr. Beard and Mr. Farrell discussed whether the restaurant lost its right to function as a restaurant after it ceased operation, with Mr. Farrell pointing out that the statute defines abandonment of a use as cessation for two years, and it had been only a couple of months.

Chairman Ribble resumed the Chair.

Mr. Hammack stated his concern that restaurants, like steak houses, which provide rooms for smoking, would now be in violation of the Ordinance and would require a special permit for commercial recreational uses. Ms. Cooper said that would be within the context of a full-service eating establishment, which Aladdin Café did not appear to be. She stated that on the day of the inspection, there did not appear to be any eating or food preparation.

In response to a question by Mr. Hammack, Ms. Cooper said that the inspection was occasioned by complaints, and that they had not reviewed smoking rooms or lounges for every establishment that had one.

In response to questions from Mr. Beard regarding the complaints received, Mr. Moncure said they had gotten calls concerning the different uses conducted in the businesses at the Build America complex. He said there was an ongoing investigation of a number of the different businesses there, as far as their actual use, what they were permitted to do under the Zoning Ordinance, and what they actually had become. Mr. Moncure commented that some of the businesses had changed their uses based on what they had found through the investigations.

In response to a question from Ms. Gibb, Mr. Moncure said they had found office spaces where tenants were conducting markets and other retail-types of establishments, along with other violations similar to the appellants. He said that in all cases he had investigated, NOVs had been issued.

Mr. Farrell commented that it was for the Board of Supervisors to decide if smoking in a restaurant required a special permit, and that it could not be done by interpretation alone.

Mr. Hart and Mr. Farrell discussed the status of the establishment at the current time, whether it could be re-inspected for a restaurant use, and if it could be allowed to build the dividing wall. Mr. Farrell said that the appellants' application for a building permit was frozen because of the NOV, so he needed a favorable ruling from the Board to proceed and cure the violation.

In response to a question from Mr. Hart, Ms. Stanfield stated that there was nothing specific in the Zoning Ordinance which addressed the use, consumption, and/or sale of tobacco products with related paraphernalia. However, she said that, since it was deemed to be the principal use of the property at the time of inspection on April 7, 2010, the appellants were asked to cease all uses of tobacco. For it to be considered an accessory use, staff would have to take a look at a specific request, which Ms. Stanfield said had yet to be submitted.

In response, Mr. Farrell said there was no violation of an eating establishment offering tobacco for consumption, which was the point of the appeal. He said if the Zoning Administrator had no authority to regulate tobacco, then there was no zoning violation prohibiting the issuance of a building permit.

Mr. Hammack and Ms. Stanfield discussed smoking in restaurants. When Mr. Hammack questioned what was wrong with smoking water pipes if the appellants complied with the Health Department regulation of separate ventilation systems, Ms. Stanfield stated that staff felt the water pipe use was a specific use which needed to be regulated separately, because it was a principal use in addition to the eating establishment use.

Mr. Farrell wanted to acknowledge those people in the audience who were present in support the appellants, and asked them to stand and be recognized in lieu of testifying.

Ms. Gibb and Ms. Stanfield discussed the NOV letter and the options given by staff to cure the alleged violation. Ms. Gibb felt that in the past, the County had tried assisting people to stay in business and comply with the Zoning Ordinance. Yet in this instance, the County refused to issue a building permit, which would appear to bring the appellants into compliance. Ms. Stanfield reiterated that a specific proposal to smoke water pipes as a secondary use had not been submitted to staff for consideration.

Mr. Farrell alleged that he had a specific conversation with Ms. Stanfield as to what the appellant would have to do to demonstrate that water-pipe smoking was an accessory use, and offered the aforementioned receipts as proof. He said staff recommended that he advise his clients not to spend any more money on that business.

In response to a question from Mr. Hart, Ms. Stanfield said that the Zoning Administrator was not conceding that her requirement to cease all use, consumption, and/or sale of tobacco products was in error. She said that in this case, the Zoning Administrator interpreted it to mean a hookah pipe, and she had the authority to do so.

In closing, Ms. Cooper said that in the past, the Board has based its determinations on the conditions on the date of inspection in the NOV. At that time, she said it was operating solely as a smoking establishment through the use of water pipes, and based on previous determinations, it was deemed a commercial recreation use.

Mr. Farrell said the question should have been what needed to be done to insure the use and consumption of tobacco products are accessory, however, there was no interest in that conversation by staff. He said the question now was whether the Zoning Administrator had the power to prohibit all use of tobacco products, and clearly the answer was no. Mr. Farrell stated for that reason, the appeal should be sustained.

Mr. Smith said the core issue for him was the accessory use question. Based on earlier testimony that a hookah bar might be an accessory use to an eating establishment, he felt the NOV was premature and overly broad. He asked why a dialogue with the appellant regarding the hookah bar as an accessory use had not taken place. In response, Ms. Stanfield noted that normally when there was a use determination, there was a submission in writing, and it should be accompanied by a floor plan. She said that was what the staff had been looking for.

Chairman Ribble closed the public hearing.

Mr. Smith moved to overturn the determination of the Zoning Administrator. As he referenced in his last question, he had changed his view on this issue because of the question of accessory use. It seemed to him that the County put these appellants into a Catch 22 position. They could not get a building permit, because there was a pending zoning violation. They could not cure the zoning violation, because they could not get a building permit. Mr. Smith felt the provisions in the NOV were overly broad in the sense of prohibiting all use, consumption, and/or sale of tobacco products and related paraphernalia. He hoped that a dialogue would take place on what was an appropriate accessory use for a hookah bar relative to an eating establishment. Mr. Smith said that there had been no denial that this had previously been an eating establishment and, with the enactment of the Virginia Indoor Clean Air Act, the appellants tried to adjust by making the appropriate modifications to the structure with the required ventilation. The problem came when the building permit was submitted, but could not be issued because of the pending zoning violation. Mr. Smith felt it was nonsensical that the County was not able to proceed and process the permit. He said everyone seemed to acknowledge that smoking is an appropriate accessory use to an eating establishment, so why would the County not process the building permit. Mr. Smith reiterated that the NOV seemed premature and overly broad, and on that basis, he made the motion to overturn the Zoning Administrator.

Mr. Beard seconded the motion. He did not think it was the County's intent, but said this felt like a discriminatory action. Mr. Beard agreed with Mr. Smith that the appellants had been placed in a Catch 22 situation, and felt Mr. Smith quite succinctly and adequately addressed where the Board should come from on this matter. He wholeheartedly supported the motion.

Mr. Hart said he was somewhat conflicted about the motion. Based on what was presented, he agreed that the April 20, 2010 letter, second bullet on page 2, was plainly wrong. Mr. Hart said there did not appear to be any authority in the Zoning Ordinance to prohibit the use, consumption, or sale of tobacco products and paraphernalia. He thought the letter was in error and went much too far. Mr. Hart said the Board may have lost sight of the April 7, 2010 inspection, which he thought was really the issue before them, even though that seemed to have been overtaken by events. He said the more typical pattern in a case like this would have been for the public hearing to be deferred and some of these discussions take place. Mr. Hart said he was having trouble discarding the conclusions in the beginning of the NOV letter about the use standing alone if it was not an eating establishment. He felt that portion of the letter was largely correct. Mr. Hart was satisfied with the evidence presented on the state of affairs as of the date of the inspection, which was, the restaurant did not fit the eating establishment definition in the Ordinance, noting it was some other kind of use. He felt it was a stretch to put it under a commercial recreation use, along with archery ranges, bowling alleys, and firing ranges, which seemed to be entirely different activities. Mr. Hart felt the use of the water pipes was principally being objected to, and he suspected that the Ordinance had not previously contemplated that use. Mr. Hart said that it might be something for the work program.

Mr. Hart stated his agreement that the Zoning Administrator should be overturned at least in part. He said given the state of affairs before the Board, he would support the motion, although he was not entirely sure he agreed with everything in it. He felt the use of tobacco products was the issue being decided and the motion was correct on that.

Ms. Gibb also stated her support of the motion. She said she was not concerned about the April 7, 2010 date, because the purpose of the NOV letter was to tell the appellants that they were doing something wrong and how they might bring the property into compliance, and/or telling them that they could appeal. Ms. Gibb saw the problem as the County being incorrect in what they told the appellants to do to bring the property into compliance.

Mr. Hammack stated his support of the motion.

The motion carried by a vote of 6-0. Mr. Byers was not present for the vote.

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~ ~ ~ July 28, 2010, Scheduled case of:

9:30 A.M. SHLP TYSONS RESERVE I LLC AND SHLP TYSONS RESERVE II LLC, A 2010-PR-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7965 through 8070 Crianza Place and 2121 through 2171 Tannin Place on approx. 11.48 ac. Of land zoned PDH-30 and pt. H-C. Providence District. Tax Map 39-2 ((1)) 13A5 and 13A6. (Deferred from 4/21/10 at appl. req.) (Admin. moved from 6/23/10 and 6/30/10)

Mr. Hart and Ms. Gibb made disclosures, but indicated that they did not believe their ability to participate in the case would be affected.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Cathy Belgin, Senior Zoning Coordinator, Zoning Administration Division, presented staff's position as set forth in the Memorandum to the Board of Zoning Appeals, dated July 19, 2010. She provided the background on the appeal, noting that the appellants, in conjunction with RZ 2003-PR-008, had dedicated a 25-foot right-of-way along the property's I-495 frontage in anticipation of the High Occupancy Toll (HOT) Lanes construction project. Subsequent to the dedication, an additional 35-feet in width had been condemned along the property's I-495 frontage for the HOT Lanes project. Ms. Belgin stated that, in response to an inquiry in

2009 by the appellants regarding whether the condemnation would have any impact on the appellants' ability to build the approved number of units, the Zoning Administrator had issued a determination that if the property owner received monetary compensation for the condemnation, density credits could not be granted. She also noted that a similar determination was made in 1991, which stated that both the value of any improvements of the land dedicated and any residual damages resulting from the determination were an integral part of the value of the dedication. There was no distinction between these types of compensation with regard to receipt of density credit. In summary, Ms. Belgin said the plain language of the Zoning Ordinance clearly stated that no monetary compensation can be received by a landowner, if the landowner also wants density credit for the area dedicated, noting that it was the appellants' choice to either receive density credit or monetary compensation. She asked that the Board uphold the determination of the Zoning Administrator.

In response to a question from Mr. Beard, Ms. Belgin stated that there had been several recent determinations stating that property owners could receive compensation for easements, which would not affect their ability to retain density credits. Mr. Beard confirmed his understanding that if the Virginia Department of Transportation (VDOT) constructed a noise wall, it would not affect the density credits, but if the funds to build the wall were conveyed, then it would affect the density credits.

Mr. Hart and Ms. Belgin discussed the status of the condemnation, with Ms. Belgin noting that the land had been condemned, but with previous determinations stating it could be reversed and the appellant able to obtain density credits, the matter was still unresolved.

In response to a question from Mr. Hart, Scott Wynn, Assistant County Attorney, stated that he was unaware of any recent case law which addressed the condemnation/density credit issue.

Lynne Strobel, Esquire, the appellants' agent, 2200 Clarendon Boulevard, Arlington, Virginia, presented the arguments forming the basis for the appeal. She introduced Evan Pritchard from her office who had done a great deal of work on the appeal and was available to answer questions. Ms. Strobel reviewed the history of the property, from the rezoning in March of 2004 to the condemnation by VDOT in October of 2009, and the subsequent determination by the Zoning Administrator on December 17, 2009, that the Zoning Ordinance did not permit the receipt of any monetary compensation if a density credit was to be granted. She commented on the effect the condemnation had on the property, specifically the removal of existing mature vegetation, the necessity to relocate trails and recreation areas, and, most importantly, a greatly elevated noise impact. Ms. Strobel said the appellant was seeking receipt of density credit for the land area condemned, but also monetary compensation for damages to the remaining property, including the construction of a noise barrier. She noted that the engineering firm of VIKA, Inc., had estimated the cost to said barrier to be over \$800,000.

Ms. Strobel read from Section 2-308, noting that the text only referred to the land dedicated being exchanged for monetary compensation, pointing out that nothing in the text precluded compensation for damages. She also quoted the Virginia Constitution which guaranteed that private property would not be taken or damaged for public use without payment of compensation, noting that the Virginia Code also makes the distinction between land taken and damaged. Ms. Strobel said the Fairfax County Zoning Ordinance and the determination by the Zoning Administrator must be consistent with those rights and definitions. Therefore, the appellants were entitled to the value of the actual physical taking, as well as the residual damages that were a result of the taking. In summary, Ms. Strobel asked that the Board find the Zoning Administrator's determination to be in error.

In response to a question from Mr. Beard, Ms. Strobel stated that the appellants were entitled to damages which resulted from the taking of land by VDOT, not their previous dedication. She noted that the dedication was proffered as part of the rezoning application, and had been planned for. She clarified that there was a difference between the act of physically taking the property, for which the appellants would not be compensated, and damages to the residue.

Mr. Wynn commented that he agreed with Ms. Strobel's reading of the Virginia Constitution and Virginia Code as to a developer's rights to compensation for land taken. However, he said when property is needed for public use, the Board of Supervisors gave developers an option in the Zoning Ordinance to donate land to the County for no monetary compensation of any kind, and in exchange, receive density credit for it. Mr. Wynn said this was not a requirement, but a choice. He said that the Zoning Administrator interpreted this to mean that when a developer wanted to dedicate or donate property to the County for public use, the developer cannot receive compensation of any kind in exchange for that dedication, not for the property itself

and not for any damage to the residue. If they did receive any such money, it would constitute money compensation in exchange for the conveyance, thereby negating the allowance of any density credit.

Mr. Beard, Ms. Strobel, Mr. Pritchard, and Mr. Wynn discussed the appellants' desire to unwind the condemned 35-feet by VDOT, and then dedicate it to the County in exchange for density credit, but also receive monetary compensation for damages to the residue. Mr. Wynn disputed Ms. Strobel's interpretation of the plain language in the Ordinance. Mr. Pritchard commented that the appellants simply disagree as to the one natural interpretation of the plain language.

Ms. Gibb, Ms. Strobel, and Mr. Pritchard discussed the condemnation process, specifically how an evaluation was made to determine a monetary amount for the land taken and damages to the residue. Ms. Gibb questioned why this issue had not been brought up previously in condemnation cases. Mr. Pritchard made reference to an earlier case where the landowner had unused density on their property, however, they believed the taking by VDOT was not going to be severe enough to justify going forward with an appeal and they took the compensation. Ms. Strobel felt this appeal had gone forward since the dollar amounts in the appellants' case had been elevated by the size and scope of the project and the impact on the residents.

Mr. Hart asked about the status of the condemnation, with Mr. Pritchard stating that the Certificate of Take had been filed, but the Petition had yet to be recorded.

Responding to a question from Mr. Hart, Ms. Strobel and Mr. Pritchard said that if they were not able to receive the density credit, the Zoning Administrator would deem the property noncompliant, a term which is not even defined in the Zoning Ordinance. Mr. Pritchard explained the impact of the property being deemed noncompliant, stating that if it was ever necessary to rebuild on the property, i.e., in the event of a casualty, they would not be allowed to replace all the housing units, but only the number based on the current land area post-taking.

Mr. Hart, Ms. Strobel, and Mr. Pritchard discussed the option of resolving the matter in court. Mr. Pritchard stated that the appellants chose to bring the matter before the Board, because it was not clear how the appellants could be fairly compensated in court. The court's track record with other condemnations in terms of what the case law recognizes, understands, and provides for was not clear.

Mr. Wynn commented that the matter before the Board was not about condemnation, but whether the appellants could receive a density credit under the Zoning Ordinance if they voluntarily donate the property to the County and receive monetary compensation in return for that dedication. He said the Zoning Administrator's position was that the Zoning Ordinance clearly stated that the appellants could not. Mr. Wynn added that the Zoning Ordinance did not distinguish between receiving compensation for the dedication or compensation for damages to the residue.

Ms. Strobel stated her disagreement with Mr. Wynn's position, noting that the County compartmentalizes dedications by determining that developers can get compensation for easements if they take the reservation of density credit. She further noted that the County had already made a distinction between dedication of land and the granting of easements and how they can be compensated.

Chairman Ribble called for speakers.

John Farrell, 11350 Random Hills Road, Fairfax, Virginia, spoke in support of the appeal. He disagreed with the County's reliance on the Masterson case, and agreed with the appellants' reluctance to take the case to court, also noting the court's poor track record with condemnation decisions.

In her final comments, Ms. Belgin said that in the event of a casualty, the appellants would have the option to rezone the property to the newly created Tysons Corner Planned District.

In response to Ms. Strobel's comments, Mr. Wynn said that land dedications and easements were not the same, and should not be compensated as such.

In closing, Ms. Strobel felt that the Ordinance differentiated between compensation for dedicated land area and compensation for damages. She then deferred to Mr. Pritchard for his final comments. He reiterated that the main issue was financial damage, which impacted the land not being dedicated. Mr. Pritchard said for the

same reason the County compensates easements because they are not affected by a density credit, the same distinction applied between damages to the residue and a density credit.

Ms. Gibb and Mr. Wynn discussed the wording in Section 2-308(3), which stated that a conveyance could not be made in exchange for monetary compensation. Mr. Wynn brought up the distinction between monetary compensation and services in kind, regarding VDOT building the noise wall.

As there were no further speakers, Chairman Ribble closed the public hearing.

Mr. Beard said that the subject matter was a choice, and the appellants had apparently chosen to have it a little bit both ways. He realized this was about one entire issue, and the ramifications of it. Mr. Beard thought Mr. Farrell made a significant point about putting a value on future occurrences at the property, but said that was not the issue before the Board. He said the Board was to decide if there was to be compensation for residual property damage and how that played into the issue of condemnation. Therefore, Mr. Beard moved to uphold the determination of the Zoning Administrator.

Mr. Hammack seconded the motion. He said he had great sympathy for the argument made by the appellants, but felt they had the choice of either going through the condemnation process and having the opportunity to prove damages to the residual property, or unwinding the condemnation and dedicating the property for a density credit. Mr. Hammack was unsure if the density credits were more valuable than the possible damages that the appellants could prove, but felt that the Zoning Ordinance was clear. The Board was obligated to uphold the determination of the Zoning Administrator.

Mr. Hart said he would support the motion, and noted his agreement with Mr. Beard's and Mr. Hammack's statements. He said it was a difficult decision. Since the issue did not appear to have been tested previously, there was no prior guidance from the court. He felt it ultimately may be a matter for the court to decide. Mr. Hart stated that based on the plain language of the Ordinance, the determination of the Zoning Administrator should be upheld.

The motion carried by a vote of 6-0. Mr. Byers was not present for the vote.

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~ ~ ~ July 28, 2010, After Agenda Item:

Request for Additional Time
Trustees of Laurel Grove Baptist Church, VC 2007-LE-004

Ms. Gibb moved to approve forty-eight (48) months of additional time.

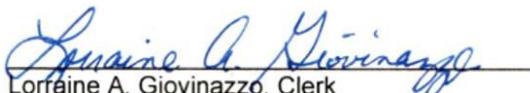
Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote. The new expiration date was July 1, 2014.

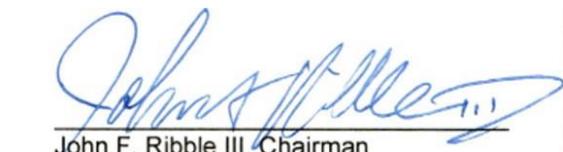
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As there was no other business to come before the Board, the meeting was adjourned at 1:40 p.m.

Minutes by: Suzanne L. Frazier

Approved on: August 3, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, August 4, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart;; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

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

~ ~ ~ August 4, 2010, Scheduled case of:

9:00 A.M. SARESH SHAH, SP 2010-MA-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6413 Columbia Pk. on approx. 18,475 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((3)) 4. (*Admin. moved from 4/21/10 and 6/9/10 at appl. req.*)

Chairman Ribble noted that SP 2010-MA-011 had been indefinitely deferred.

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~ ~ ~ August 4, 2010, Scheduled case of:

9:00 A.M. HELEN MCGUIRE, SP 2010-SU-034 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2787 Marshall Lake Dr. on approx. 36,111 sq. ft. of land zoned R-1. Sully District. Tax Map 36-2 ((14)) 13.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Helen L. McGuire, 27878 Marshall Lake Drive, Oakton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-SU-034 for the reasons outlined in the staff report, subject to the proposed development conditions.

Questions and discussion ensued between Board members and staff concerning Development Condition 6, the recreation room's size, limitation on the size of the apartment, clarification of the rooms depicted on the layout, the issue of a sink in the basement, and a set of stairs along with the rooms it accessed.

Ms. McGuire presented the special permit request as outlined in the statement of justification submitted with the application. She commented on the matter of the aging process, availability of retirement and nursing homes, the exploding financial burden of aging today, and her intent to take care of her mother, who she wanted to be cared for with respect and dignity.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack commented on what he found were several confusing and unclear portions of the plat, and clarification of the floor plan.

Susan C. Langdon, Chief, Special Permit and Variance Branch, noted that staff was fine if the applicant were to use the entire basement, and the rooms depicted as studies had proper egress, even if used as bedrooms. Staff could change Condition 6 to a maximum of perhaps 1,630 square-feet, which would take into account the entire basement, include the bathroom, closets, and the kitchen. With all of that, it would still be under the 35 percent.

In response to a question from Mr. Hammack of a scenario if the house were sold and the new owner used the area as an accessory dwelling unit, Ms. Langdon said the area still met the 35 percent, the new owners could use the entire basement, and there was the development condition stipulating that if the house were sold, the permittee would have to be changed.

Mr. Hammack said he thought the area of the accessory dwelling unit should be delineated on the plat, and then moved to defer decision of SP 2010-SU-034 for the applicant to present a revised plat.

Mr. Hart seconded the motion.

In response to a question from Mr. Beard of whether an applicant could have the rooms and kitchen anywhere he wanted, and why it was an issue, Ms. Langdon said that generally a basement was bigger than the 35 percent, and staff was very specific where the bedroom and kitchen portion were incorporated into an accessory dwelling unit. Ms. Langdon said, in this case, that did not matter.

Ms. Gibb said she agreed with Mr. Beard's comments, that she too, did not see why a revised plat was an issue.

Mr. Hart noted his reservations and concerns over the issues raised by Mr. Hammack.

Mr. Beard said he did not think the BZA made its decisions predicated on what might happen. Staff had explained the situation and why they took a different approach in this particular case. Mr. Beard said he was comfortable with that and suggested that the Board not defer decision, but rather decide the case that day.

Chairman Ribble called for a motion on the deferral.

The motion failed by a vote of 2-4. Ms. Gibb, Mr. Beard, Mr. Hart, and Mr. Smith voted against the motion. Mr. Byers was absent from the meeting.

At Mr. Hart's suggestion, Ms. Langdon marked up the drawing to indicate each room so there would be no confusion.

Ms. McGuire said Ms. Langdon's marked up plat was what she intended to do.

Chairman Ribble called for a motion.

Mr. Hammack moved to approve SP 2010-SU-034 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HELEN MCGUIRE, SP 2010-SU-034 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2787 Marshall Lake Dr. on approx. 36,111 sq. ft. of land zoned R-1. Sully District. Tax Map 36-2 ((14)) 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 2010; 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Helen L. McGuire, and is not transferable without further action of this Board, and is for the location indicated on the application, 2787 Marshall Lake Drive (36,111 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Stephen L. Moore Land Surveying, Inc., dated June 26, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special 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.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,630 square-feet, and the layout shall be as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. Parking shall be provided on site as shown on the special permit plat.

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.

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

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~ ~ ~ August 4, 2010, Scheduled case of:

9:00 A.M. DAVID C. O'DONNELL, SP 2010-MV-036 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.8 ft. from a side lot line and to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from a side lot line and 30.6 ft. from front lot line. Located at 7728 Tauxemont Rd. on approx. 20,036 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 8.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David Charles O'Donnell, 7728 Tauxemont Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval for the reasons outlined in the staff report, subject to the revised proposed development conditions.

Discussion ensued over the concerns expressed by John Culbertson, President of the Tauxemont Community Association, regarding one of the community's well facilities and its close location to the applicant's proposed construction. Ms. Hedrick said she coordinated with Site Review Department and Building Permits Department for the Development Condition 5 language, whereby the Health Department would make a determination whether the addition was too close to the well cap. The applicant would then have to satisfy the Health Department's requirements as applicable.

Mr. O'Donnell presented the special permit request as outlined in the statement of justification submitted with the application. He said he was familiar with the well; listed its components; noted that the community was served by three wells; and, he had taken measurements of the distance from his addition and the well cap. Mr. O'Donnell said he thought the community had changed the tax site identification of the well property to that of a park for tax purposes in order to save money. He said he would provide adequate protection for the well. He also noted that according to a survey in the late 90s, he was told the water was 10,000 years old. Mr. O'Donnell explained the present parking for his two automobiles, and the need for an adequate garage that would accommodate his vehicles.

Mr. O'Donnell said he agreed with staff's revised development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-MV-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

DAVID C. O'DONNELL, SP 2010-MV-036 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.8 ft. from a side lot line and to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from a side lot line and 30.6 ft. from front lot line. Located at 7728 Tauxemont Rd. on approx. 20,036 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 8. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 2010; 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 both of these items.
3. The Board has a favorable staff report on the addition.
4. Although the shed is quite close to the side line, based on the photographs, it is sufficiently screened with vegetation that it is not going to matter.
5. The shed is placed in a little cluster of other sheds, which appear to be as close or closer to the property lines on two other lots in that little corner. That corner is going to be like a little shed area, so moving this shed further away would not really change anything.
6. With respect to the addition, the house is oddly placed, almost in a corner of the lot and at an angle.
7. The house was built in 1941 but it is unclear whether the house was built before or after the adoption of the Ordinance in 1941; and, it is going to be difficult to add to this house off the back or the side in such a way that there would not be some conflict with some minimum yard requirement.
8. This is the logical side of the house to put a garage.
9. The way the addition is configured, the room is closer to the house than either the corner of the garage would be or the back side of the house would be so that the addition itself is less of an extension than either this garage or the rest of the house existing is; it is all logical.
10. What happens with the Health Department, the Board doesn't know, but the applicant is comfortable with that and it appears that if there is a problem with the well, he is going to have to make the additions smaller. With the garage at 18.3 feet, that's a very narrow garage to get two cars in and open the door, if it is a two-car garage. The Board does not know what is going to happen if there is some issue with the Health Department, but that may be just a difficult constraint with this lot.
11. With the imposition of the development conditions as revised, the Board has covered the contingency about the Health Department and the well so that we are not going to have any impact on the water supply for the subdivision.
12. With the other development conditions, any significant impacts have been mitigated.
13. The addition appears to be attractive and in keeping with the rest of the design of the house and the neighborhood.
14. It is an older neighborhood, but it is certainly appropriate to add garages to houses; nobody is going to be negatively impacted.
15. The closeness also is on a side of the property where there is this narrow strip between the house and the street; there is not anyone else there on that side, in fact it appears that the lot might even be larger, so it is not going to bother anyone.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (873 square feet) and accessory storage structure, as shown on the plat prepared by Dominion Surveyors Inc., dated March 2, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,666 square feet existing + 3,999 square feet (150%) = 6,665 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Notwithstanding what is depicted on the plat, the proposed addition shall be located not less than the minimum distance required from the well cap located on Lot 8A, as determined by the Fairfax County 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.

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 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ August 4, 2010, Scheduled case of:

9:00 A.M. ALI LATIF, VC 2010-LE-005 Appl. under Sect(s). 3-307 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1.

Chairman Ribble noted that VC 2010-LE-005 had been administratively moved to September 15, 2010, at 9:00 a.m. for ads.

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~ ~ ~ August 4, 2010, Scheduled case of:

9:30 A.M. LANDSCAPE CONSTRUCTION SERVICES, INC., A 2009-MV-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a storage yard and has erected structures on property in the C-8 District without the approval of a site plan, Building Permits, or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. on approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (*Admin. moved from 9/15/09 and 1/13/10 at appl. req.*) (*Continued from 3/31/10.*)

Chairman Ribble noted that A 2009-MV-024 had a pending withdrawal.

Jill Cooper, Staff Coordinator, Zoning Administration, said that was correct. The appellant indicated the tenant would vacate the property and at that time, the appellant would withdraw the appeal. She said staff had not yet received a formal request for a withdrawal, and asked the Board to dismiss the appeal.

Mr. Beard moved to dismiss A 2009-MV-024. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ August 4, 2010, Scheduled case of:

9:30 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (*Admin. moved from 9/15/09 and 1/13/10 at appl. req.*) (*Continued from 3/31/10.*)

Chairman Ribble noted that A 2009-MV-025 had a deferral request.

Jill Cooper, Staff Coordinator, said that was correct. She said the appellant requested a deferral to allow time to bring the property into compliance. Staff conducted a site visit, and found the tenant had vacated the property with significant progress being made cleaning up the site. Ms. Cooper said staff supported the appellant's request for an additional two months.

Chairman Ribble asked if there was anyone who wished to speak on the issue of the deferral.

Alejandro Bertoldo, 9300 Castle Hill Road, Springfield, Virginia, came forward to speak. He said he was present to voice his support for Mr. Espina's deferral request. He said in June the tenant vacated the property, and he concurred that significant progress was made to bring the property into compliance with the site plan. Mr. Bertoldo said there were a few matters remaining, but they were being addressed.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, suggested a deferral date to November 3, 2010.

Chairman Ribble called for a vote.

Ms. Gibb moved to defer A 2009-MV-025 to November 3, 2010, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ August 4, 2010, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a

junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09, 11/17/09, 4/14/10, and 6/30/10) (Admin. moved from 2/10/10 due to inclement weather.)*

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09, 11/17/09, 4/14/10, and 6/30/10) (Admin. moved from 2/10/10 due to inclement weather.)*

Chairman Ribble noted the two cases were heard concurrently, and were decision only.

Ms. Gibb recused herself.

Chairman Ribble asked whether there were any changes to the properties.

Bruce Miller, Property Maintenance and Senior Inspector, Zoning Enforcement Branch, replied that several shipping containers were removed; however, there remained two other shipping containers, a dump truck, a trailer loaded with scrap material, and a small amount of scrap metal on the ground.

Chairman Ribble clarified that all the cited items were to have been removed by today's date. He called for a motion.

Mr. Smith commented that the cases were deferred quite a number of times. He said there was some discussion of grandfathered uses, but the zoning violations in the late 80s and early 90s were related to construction vehicles and storage of mulch, logs and such, and were cleared. Mr. Smith said he had not found a compelling case or further evidence to support a grandfathered use. He said what he heard from the appellants was that the items would be removed. He recognized that significant effort was done to remove the items, and realized a fair amount of effort was expended to do so, but he thought the Board was at the point where the issue was whether all was completely removed. Mr. Smith noted that at this point, the items were not removed as was evidenced by Mr. Miller's testimony and the photographs presented. He found the situation, under the Zoning Ordinance, met the definition of a junk yard, which was prohibited in a residential district. Mr. Smith said he recognized that by the Board's decision to uphold the Zoning Administrator's determination there would be an enforcement mechanism, and he presumed there still were opportunities to remove the equipment before enforcement. Mr. Smith said he thought the time-frame had gotten shorter, that it seemed staff was left no choice, and acknowledging that although there were extenuating circumstances, he thought the Board must be sensitive to the requirements of the Zoning Ordinance.

Mr. Smith moved to uphold the Zoning Administrator's determination on A 2009-PR-004. Mr. Hart seconded the motion.

Mr. Hart made several observations and commented on facts of the case. He said a commercial use had operated on the site prior to the Zoning Ordinance implementation, and that activity continued to the present. He noted there was evidence of agricultural product sales but the property's use today was not commercial, as it was prior to the Ordinance adoption. He listed the items and activities he did not consider were associated with an agricultural use of the property. He noted the site had largely been cleaned up, which may make enforcement action moot, and everyone had come a long way since the case was first heard. Mr. Hart listed several of the extenuating circumstances which the Board recognized, the age of Mr. Thompson, the passing of his wife, and the razing of the house after a suspected arson fire. He said it seemed everyone hoped the violations would be cleared, but since they were not, it was appropriate that the Board make a decision. Mr. Hart said he thought wherever the case went from here was up to the Zoning Administrator to the extent that the cleanup could continue, and that would take care of it. Mr. Hart also noted that Mr. Thompson had paid taxes on the property, and, although recognized, it did not change the Board's role in this. He said the area had changed a great deal since the 1920s, which was not the fault of Mr. Thompson's. Tax assessment perhaps was something for the Board of Equalization or Board of Supervisors, but it did not entitle an owner to expand the spectrum of permissible uses on a property. Mr. Hart said he thought what remained on the site fell within the definition of a storage or junk yard, and the

determination of the Zoning Administrator was correct. The appellants had not met the burden of showing that the property's uses cited in the violation letters were the same in terms of the amount or character of whatever commercial activity was associated with an agricultural use of many years ago. It did not translate to what there was now. Therefore, Mr. Hart stated, the Zoning Administrator was correct and he supported the motion.

Chairman Ribble called for a vote.

The motion carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Byers was absent from the meeting.

Mr. Smith then addressed A 2009-PR-007. He said the dump truck belonged to a Mr. Pound, but the remaining materials, shipping containers, scrap materials, and trailer, were attributed, at least partially, to Mr. Kelly.

Mr. Smith moved to uphold the Zoning Administrator's determination on A 2009-PR-007. Mr. Hart seconded the motion.

Mr. Hart said for the same reasons he gave for Mr. Thompson's case, he would support the motion to uphold the Zoning Administrator.

Chairman Ribble called for a vote.

The motion carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Byers 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 10:10 a.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, August 11, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ August 11, 2010, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 (change in development conditions)

Chairman Ribble noted that SPA 95-V-031-04 had been administratively moved to September 22, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 11, 2010, Scheduled case of:

9:00 A.M. SIRINIVAS S. BUDDHAVARAPU, SP 2010-SU-040 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.5 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 18.3 ft. from the rear lot line. Located at 4480 Shady Point Pl. on approx. 10,228 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 44-2 ((20)) 125.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John R. Pohzehl, the applicant's agent, 8212 Kerfoot Drive, Gainesville, Virginia, reaffirmed the affidavit.

Mary Ann Godfrey, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions.

In response to a question from Chairman Ribble, Ms. Godfrey said the special permit application did not arise from a complaint.

Mr. Hart stated his concern about the play equipment being only 6.9 feet from the side lot line, and asked staff whether it was proper to proceed with the public hearing, since it had not been advertised for a side lot special permit. Ms. Godfrey and Susan Langdon, Chief, Special Permit and Variance Branch, both felt the Board could proceed with the public hearing, with Ms. Langdon noting that the application had been accepted by the Application Acceptance Branch.

Mr. Pohzehl presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the addition would provide a sunroom on the lower level and a study room and master bedroom on the upper level. Mr. Pohzehl said the existing deck would be removed and a smaller one constructed in the least obtrusive location on the lot. He asked that the Board approve the application.

Mr. Hart stated his concern about the location of the play equipment, asking Mr. Pohzehl whether it could be shifted from its current location. Mr. Pohzehl said that it was not permanently attached to the ground and could be moved if needed. He also stated that the applicant would have to level the ground on the other corner of the property to relocate it there, because the topography slopes away from the house.

Ms. Langdon stated that a minimum of 8.0 feet was required by the Zoning Ordinance, so it would have to be moved a little more than one foot.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SU-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

SIRINIVAS S. BUDDHAVARAPU, SP 2010-SU-040 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.5 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 18.3 ft. from the rear lot line. Located at 4480 Shady Point Pl. on approx. 10,228 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 44-2 ((20)) 125. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 2010; and

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

1. The applicant is the owner of the property.
2. With respect to the addition, there is a favorable staff recommendation, and the Board adopts the rationale in the staff report.
3. The placement of the addition is probably the best place on this lot.
4. The corner of the addition is about the same distance from the rear line as the back corner of the house and the deck. They are all about the same because the house is set at an angle to the lot line.
5. Based on the photographs and drawings, the proposed addition is not significantly different from other homes in the neighborhood.
6. The proposed addition will not have a significant negative impact on anyone.
7. With respect to the play set, it is a closer call.
8. In the photographs, the play set is sticking up with a canvas-like archway top piece on it.
9. The play set is a little close on the left-hand side, and it sounds like maybe that was not part of what was advertised in the application.
10. Based on the testimony about the topography, it would be acceptable to leave the play set roughly where it is, but the applicant may have to shift the left side of it about a foot, or take a foot off it.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed accessory structure (child's play equipment) and two-story addition as shown on the plat prepared by AVW & Associates, dated March 12, 2010, submitted with this application and is not transferable to other land. Notwithstanding what is shown on the plat, the accessory structure shall comply with the applicable side yard requirements with respect to the southeast property line.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the dwelling that existed at the time of the first expansion (3,724 square feet existing house + 440 square feet garage) 4,164 (150%) = 6,246 permitted) regardless of whether such addition complies with the minimum yard requirement is the subject of subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 11, 2010, Scheduled case of:

9:00 A.M. CHABAD LUBAVITCH OF NORTHERN VIRGINIA, INC., SPA 95-P-066 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-P-066 previously approved for synagogue with private school of general education to permit child care center and nursery school and change in permittee. Located at 9124 Little River Tnpk. on approx. 4.77 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((1)) 50.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm was involved with a previous application in the neighborhood, and even though it was 15 years earlier, this approval was still in place, and he recused himself from the public hearing.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ben Danforth, the applicant's agent, 6045 Wilson Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 95-P-066, subject to the proposed development conditions.

Mr. Danforth presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the applicant did not request any physical changes to the facility, nor were they asking for an increase in the number of students, but simply wanted to diversify the age of the students to better serve the community. Mr. Danforth discussed the subject of property maintenance, which has been raised by the neighborhood, and noted that the synagogue was currently conducting a fundraiser to obtain funds for continual upkeep for the grounds. He said the property maintenance would be performed within the next six to twelve months.

Chairman Ribble called for speakers.

Shalom Deitsch, 3992 White Clover Court, Fairfax, Virginia, rabbi for the synagogue, and Erica Statman, 3908 Prince William Drive, Fairfax, Virginia, came forward in support of the application. Rabbi Deitsch said he understood maintenance of the property was an issue, but hoped the fundraising would bring in enough capital to have the property maintenance completed in six to twelve months. Ms. Statman said she had been a direct neighbor of the synagogue for more than seven years and there had been no adverse effects on her property or the neighborhood.

Mr. Hammack and Mr. Danforth discussed the parking lot and traffic flow in the parking lot, with Mr. Danforth noting that there were no directional traffic signs painted on the asphalt, only freestanding signs.

Mr. Hammack noticed that the parking lot was full of orange traffic cones on a daily basis, and asked why they were necessary. Rabbi Deitsch responded that the cones were mainly used during summer camp at the synagogue, but suggested that they could have them removed after children were dropped off in the morning and again picked up after leaving in the afternoon. Mr. Hammack felt that arrows painted on the asphalt would do a pretty good job of getting people in and out, and Rabbi Deitsch said he would do whatever the Board asked.

In response to a question from Mr. Beard, Rabbi Deitsch said he was aware of the neighbors concerns about property maintenance, and following the planned landscaping upgrades, he would ask the maintenance crew to keep an eye on the condition of the grounds.

There being no further speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 95-P-066 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHABAD LUBAVITCH OF NORTHERN VIRGINIA, INC., SPA 95-P-066 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-P-066 previously approved for synagogue with private school of general education to permit child care center and nursery school and change in permittee. Located at 9124 Little

River Tnpk. on approx. 4.77 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((1)) 50. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 2010; and

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

1. The applicant is the owner of the property.
2. There is a favorable staff recommendation, and the Board adopts their rationale generally.
3. The school has been there for a number of years.
4. It was very controversial initially.
5. The impact has been minimal on the neighborhood.
6. No traffic issues have arisen from the school.
7. It provides a good service for the community.
8. Any traffic flow problems could be eased somewhat if the Board requires directional signage to be painted on the lot surface.

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 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, Chabad Lubavitch of Northern Virginia, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 9124 Little River Turnpike (4.77 acres), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Tri-Tek Engineering dated July 2, 2010, and approved with this application, as qualified by these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. Other by-right, special permit uses may be permitted on the lot without a special permit amendment, if such uses do not affect this special permit use.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a new Non-RUP for the private school of general education and summer camp, the maximum daily enrollment shall not exceed a total of thirty-nine (39) students. The private school of general education may include grades kindergarten through eighth grade. The operation of the private school of general education and the summer camp shall not overlap. There shall be a maximum of eight (8) teachers and three (3) staff associated with such uses.
6. Upon issuance of a Non-RUP for the child care center/nursery school, the maximum daily enrollment shall be limited to sixty (60) children.

7. The maximum hours of operation for the private school of general education, summer camp, and child care center/nursery school shall be from 8:30 a.m. to 3:30 p.m., Monday through Friday. Use of the facility for aftercare shall be limited to the summer camp and may extend until 4:30 p.m. Weekend and evening use of the facilities for extracurricular activities shall be permitted on a limited basis provided there is no adverse impact on the surrounding community.
8. The number of students using the outdoor recreation area at any one time shall not exceed the square foot requirements for the recreation areas stipulated by Zoning Ordinance, Sect. 8-307, which requires 200 square feet per child in grades kindergarten through 3 and 430 square feet per student in grades 4 through 12.
9. Indoor recreation space shall be provided in accordance with the provisions of Chapter 30 of the Code. 9.
10. The maximum number of seats in the main area of worship for the synagogue shall be 125. There may be one (1) employee or rabbi associated with the use of the synagogue. Except for the use of an office by the rabbi, the use of the facility as a synagogue shall not overlap or conflict with the use of the property as a private school of general education, summer camp or child care center / nursery school including the parking requirements of the school.
11. All parking for the uses shall be on-site as shown on the special permit plat. The applicant shall obtain approval of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the private school of general education and child care center/nursery school uses to permit the shared uses of the parking lot for all uses on site. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the private school of general education, or child care center/ nursery school shall be reduced to meet the parking requirements as determined by DPWES.
12. All access to the subject property shall be from Prince William Drive. The entrance shall be designated "Entrance Only" and the exit shall be designated "Exit Only" and appropriate signage shall be installed accordingly. The entrance and exit shall be provided in accordance with the Virginia Department of Transportation (VDOT) standards. The existing curb cut located on Skyview Lane shall remain closed. Traffic directional signage indicating ingress and egress shall be painted in the parking lot to assist traffic flow.
13. Transitional Screening and Barriers shall be modified and shall be provided as follows:
 - Northern lot line: the existing vegetation as shown on the special permit plat shall be maintained and shall satisfy the transitional screening requirement. A row of evergreen trees shall be provided as shown on the special permit plat in order to supplement the existing vegetation. A six-foot high board-on-board fence shall be provided and maintained along the edge of the transitional screening yard adjacent to Lot 38 as depicted on the special permit plat.
 - Eastern lot line: a six foot high chain link fence shall be provided and maintained along the eastern property line as shown on the special permit plat. A row of evergreen trees shall be provided and maintained between the chain link fence and the lot line.
 - Western lot line adjacent to Prince William Drive: the existing vegetation as shown on the special permit plat shall be maintained and shall satisfy the transitional screening requirement. The barrier requirement shall be waived.
 - Southern lot line: the existing vegetation shall be maintained and supplemental evergreen plantings shall be provided and maintained which will screen the parking, pool and tennis court area. The barrier shall be modified to allow the existing fences to remain.
 - All plantings shall be of a size, type and species as determined by the Urban Forest Management Division, (UFMD), DPWES.

- All plant material, including trees, shall be maintained in a healthy condition and any dead, dying or hazardous material shall be replaced as needed. Dead or hazardous material shall be removed from the site.
14. Interior and peripheral parking lot landscaping shall be provided and maintained in accordance with the provisions of Sect. 13-201 and 13-202 of the Zoning Ordinance.
 15. Best Management Practices shall be provided to the satisfaction of the Director, DPWES. If on-site stormwater management facilities are required, such facilities shall be located in the northeast corner of the site, and shall not encroach into the required transitional screening yards.
 16. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 17. The maximum Floor Area Ratio (FAR) for the structure shall not exceed 0.06. The maximum building height shall not exceed 36.5 feet.
 18. There shall be no pole-mounted signs associated with this use. Building mounted and freestanding signs shall be permitted in accordance with Article 12, Signs.
 19. Any trash dumpster located on the property shall be screened by a board-on-board fence; or, with plantings which shall completely screen the view of the dumpsters, subject to the approval of DPWES.
 20. The pool, tennis courts and ballfields shall be used by the private school of general education, child care center/nursery school and synagogue and shall not be open for organized community use without amendment of this special permit.
 21. There shall be no overlap of activities between the private school of general education, summer camp, or child care center/nursery school and the scheduled religious services of the synagogue.
 22. All fencing on the property, including around the tennis court, basketball court, swimming pools and perimeter, shall be maintained and kept in good repair with missing links and/or boards replaced and rust cleaned and/or fencing painted or replaced. The basketball and tennis courts, swimming pools, walkways, and parking lot surfaces shall be kept weed and/or grass and brush free and maintained in good repair.

These development conditions 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 by the issuance of new Non-Residential Use Permit(s) (Non-RUP). 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 4-0-1. Mr. Byers abstained from the vote. Ms. Hart recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 11, 2010, Scheduled case of:

9:00 A.M. MAHEDERE-SEBEHAT LEDETA LEMARIAM ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ARLINGTON, VIRGINIA, SP 2010-MA-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4214 Pine La. on approx. 4.54 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 64.

Chairman Ribble noted that SP 2010-MA-041 had been administratively moved to September 22, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 11, 2010, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, and 7/14/10 at appl. req.)

Chairman Ribble stated that SP 2009-SU-066 had been administratively moved to September 15, 2010, at 9:00 a.m., at the applicant's request.

Susan Langdon, Chief, Special Permits and Variance Branch, noted that the public hearing had been subsequently moved to the November 3, 2010, meeting at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 11, 2010, Scheduled case of:

9:30 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, and 2/24/10)

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, and 2/24/10)

Chairman Ribble called the next two cases.

Mr. Hart made a disclosure and indicated his ability to hear the case might be affected. He recused himself from the public hearings.

Chairman Ribble stated that one of the Board members had requested that these cases be deferred until the Board's first meeting in September.

Mr. Hammack moved to defer decision on A 2008-SU-008 and A 2008-SU-037 to September 15, 2010, at 9:30 a.m.

Mr. Byers seconded the motion, and asked if the appellants' had any objection to the deferral.

John Kidwell, appearing on behalf of John Curran, counsel for Cronan Family, LLC, indicated his agreement with the deferral.

Frank McDermott, counsel for Danella Construction Company of Virginia, Inc., said he did not object to the deferral.

The vote 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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~ ~ ~ August 11, 2010, Scheduled case of:

9:30 A.M. ROBERT L. WISEMAN, A 2010-SP-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and a storage yard, is allowing excessive outdoor storage, has exceeded the 30% minimum rear yard coverage, and has erected an accessory fence in the side and rear yards that exceeds the 7 foot height restriction, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 5959 Colchester Rd. on approx. 1.5 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 1. (Admin. moved from 8/11/10 for ads)

The public hearing for A 2010-SP-004 was administratively deferred to September 22, 2010, due to ads. Chairman Ribble did not make an announcement.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 a.m.

Minutes by: Suzanne L. Frazier

Approved on: August 3, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, September 15, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

~ ~ ~ September 15, 2010, Scheduled case of:

9:00 A.M. SCOTT AND PATRICIA BIRKHEAD, TRUSTEES, SP 2010-PR-043 (50% reduction)

Chairman Ribble noted that SP 2010-PR-043 had been administratively moved to October 6, 2010 at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:00 A.M. SANDRA H. CASMEY, TRUSTEE, SP 2010-HM-042 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1811 Horseback Trail on approx. 29,312 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((2)) 10.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sandra H. Casmey, 1811 Horseback Trail, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval of SP 2010-HM-042 for the reasons as outlined in the staff report and with adoption of the Proposed Development Conditions dated September 8, 2010.

Ms. Hedrick responded to Mr. Hart's question concerning drawings in the staff report. She clarified the accessory dwelling unit's measurements and dimensions, and said the drawings were to be incorporated into the application.

At the request of Chairman Ribble for further clarification, Ms. Casmey explained there was a doorway that was not depicted on the hand drawing, and there was a complete separation between the master bedroom and the great room, which were connected by the hallway. She said there would be a pocket door opening into the primary dwelling for an outdoor entrance on the side.

Ms. Hedrick responded to Mr. Hammack's question concerning the 30 percent measurement statute, and how staff calculated gross floor area.

Ms. Casmey presented the special permit request as outlined in the statement of justification submitted with the application. An accessory dwelling would afford herself, daughter, son-in-law, and grandchild to live together. Her husband needed full-time care, and her daughter and son-in-law travelled frequently, often at very short notice. She said the living arrangement allowed immediate care-giving without disrupting their day-to-day living. Ms. Casmey said packing up and moving to her children's home was exhausting.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to SP 2010-HM-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

SANDRA H. CASMEY, TRUSTEE, SP 2010-HM-042 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1811 Horseback Trail on approx. 29,312 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((2)) 10. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2010; and

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

1. The applicant is the owner of the land.
2. The rationale set forth in the staff report is adopted.
3. The Board 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Sandra H. Casmey, Trustee, and is not transferable without further action of this Board, and is for the location indicated on the application, 1181 Horseback Trail (29,312 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Dominion Surveyors Inc., dated March 1, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special 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.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,120.5 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.

7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. Parking shall be provided on site as shown on the special permit plat.

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.

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 7-0.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:00 A.M. GLENDA WILLIAMS & ROBERT L. WILLIAMS, SP 2010-BR-044 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of open deck 14.6 ft. from side lot line. Located at 8602 Forest St. on approx. 16,800 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 69.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Glenda Williams, 8605 Forest Street, Annandale, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance provisions, and for the reasons outlined in the staff report, staff recommended approval, subject to the Proposed Development Conditions dated September 8, 2010.

Vice Chairman Hammack assumed the Chair.

Ms. Williams presented the special permit request as outlined in the statement of justification submitted with the application. She said they renovated their house, and now sought to replace a deck that was there when they purchased their home. She said they wanted to extend the new deck a little farther to the length of the back of the house to match the renovation. The width of the new deck would remain the same as the original one. Ms. Williams said their house and deck were built before the current Zoning Ordinance setback requirements were adopted; therefore, they were non-conforming. She said the non-conformance had no

adverse effect on the neighborhood, and, in fact, would be in character with their neighborhood, and compatible with their house. There was a precedence for their type deck in the neighborhood. Ms. Williams said they believed the new deck met all the requirements of the Zoning Ordinance's Article 8, Special Permits, and the deck would match their house's siding, and have some wood on it. She listed each of the special permit standards and how their proposal met the requirements.

Chairman Ribble resumed the Chair, and as there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-BR-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

GLENDIA WILLIAMS & ROBERT L. WILLIAMS, SP 2010-BR-044 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of open deck 14.6 ft. from side lot line. Located at 8602 Forest St. on approx. 16,800 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 69. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2010; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the application meets all the submission requirements set forth in 8-922.
3. Staff recommends approval.
4. The Board adopts staff's rationale.

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 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 and size of an open deck (approximately 237.5 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 9, 2010, as submitted with this application and is not transferable to other land.
2. The open deck shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. Building permits and approved final inspections shall be obtained for the deck.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, 7/14/10, and 8/11/10 at appl. req.)

Chairman Ribble noted that SP 2009-SU-066 had been administratively moved to November 3, 2010, at 9:00 a.m., at the applicant's request.

In response to Chairman Ribble's question of why the case was deferred so often, Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant was working on transportation issues with the Virginia Department of Transportation.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:00 A.M. ALI LATIF, SP 2010-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 open deck to remain 0.0 ft. from a side lot line and 25.3 feet from the front lot line. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1. (Concurrent with VC 2010-LE-005)

9:00 A.M. ALI LATIF, VC 2010-LE-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1. (Concurrent with SP 2010-LE-051) (Admin. moved from 8/4/10 for ads)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure that on the affidavit for the applicant the law firm of the attorney listed represented an adverse party to a case that his law firm was currently working on, which was to be heard in the Circuit Court of Loudon County. That case had nothing to do with this special permit request, and he indicated he did not believe his ability to participate in the case would be affected.

Alif Latif, 6404 Hanover Avenue, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Ms. Johnson said it should be noted that both the concrete patio and driveway encroached into County easements, and County staff indicated that each may remain in those areas; however, if staff must access the easement facilities for maintenance, the County would not be responsible for repairing or replacing the patio or driveway. Ms. Johnson said revised Proposed Development Conditions were distributed that morning to address the encroachment issue.

Ms. Johnson responded to Mr. Hart's questions regarding interference with a storm drainage easement, where water and mud collected. The matter was brought to staff's attention, because of a complaint, and a notice of violation was issued.

Laura Ferramosca, Property Maintenance Inspector, Department of Code Compliance, addressed Mr. Hart's questions on the complaints that brought staff's attention to the violations. As she had not been sworn in, she was administered the oath. Ms. Ferramosca said there were complaints about outdoor storage and multiple occupancy, and noted that for the past six years the property was cited for violations.

At Mr. Hart's request for further clarification, Ms. Johnson explained specific areas on the plat, the driveway, the front yard's impervious surface, the patio's size and location, an original swimming pool since filled in and covered over with concrete, and the 30 percent coverage matter.

Ms. Langdon responded to Mr. Hammack's questions concerning the approval of previous plats for the property.

Aaron D. Neal, Esquire, the applicant's attorney and agent, McNamee, Hosea, Jernigan, Kim, Greenan, & Lynch, P.A., 6411 Ivy Lane, Suite 200, Greenbelt, Maryland, presented the special permit and variance requests as outlined in the Statement of Justification submitted with the application. He said the house, built in 1954, had several renovations over the years. He said the owner at that time, Mr. Torres, applied for a permit in 2005 to expand the house, add a second floor addition, expand the concrete patio, fill-in the pool with concrete, and add the concrete driveway on the side. A variance was obtained to permit a 6.2-foot fence to remain in the rear yard. He said he believed the rear yard coverage, the 30 percent rule, came into effect in 1978. After the renovations, it appeared that Mr. Torres began to rent out rooms illegally. The first complaint, from a neighbor, cited a number, 15 or more, trash bags left outside in the front yard. Violations were issued for the trash bags, rooming house, and 30 percent coverage of the rear and side yards. The property transferred four times and eventually bought by Mr. Latif, who was completely unaware of the numerous violations.

Mr. Neal continued that in 2009, Mr. Latif received a notice of violation for the 30 percent yard coverage, and immediately researched ways to correct the violation. Mr. Neal said it would cost \$8,000 to \$10,000 to remove the excess concrete from the patio and the driveway, and Mr. Latif was concerned about how dangerous it was to back out into a very busy street. Mr. Neal noted there was no street parking. He submitted that although the patio encroached the property lot line, it was not visible to passersby. Mr. Latif had no knowledge of the issues when he purchased the property; it was purchased and maintained in good faith; it was a corner lot; and, it had a unique condition due to the expansion of the house and Old Keene Mill Road. The expansions resulted with the rear yard becoming smaller. Mr. Neal stated that Mr. Latif's hardship was monetary, in addition to the basic use of his property, and the safety concern of having to back out into a busy street. Mr. Latif was not asking for a special convenience, but only to use his property as when purchased, and in the most appropriate way under the circumstances.

Mr. Neal responded to Mr. Hart's questions concerning the plats for the patio signed off by Mr. Shoup and Ms. McLane, and how the patio was approved where there was a stipulation that it could not go into the easement.

Mr. Neal responded to Mr. Beard's question of the neighbor's way of entering and exiting their property. It was noted that the neighbors, too, had a turn-around area behind their house in order to exit facing the road.

Ms. Johnson responded to Mr. Hart's question of if the Board approved the driveway and denied the patio, what Mr. Latif must do to make his property come into compliance.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2010-LE-005, subject to the Revised Proposed Development Conditions, dated September 15, 2010. Mr. Smith seconded the motion.

In response to Mr. Hammack's question concerning Mr. Hart's motion, and whether it included the portion of the driveway that extended into the sanitary easement, Mr. Hart noted that Development Condition 2 indicated the matter would be left to the Department of Public Works and Environmental Services (DPWES). Mr. Hart said his motion included all of the driveway, as DPWES would sort it out later.

Mr. Beard commented that he thought the outfall in the County was a continual problem, and all were sensitive to the impervious conditions of properties. He said he thought the site looked horrible to him, but a

reasonable use of the property would be denied, because of the location on intersecting streets with no on-street parking. He thought that brought into play the unique parking situation. Mr. Beard said he would support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI LATIF, VC 2010-LE-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1. (Concurrent with SP 2010-LE-051) (Admin. moved from 8/4/10 for ads) 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 15, 2010; and

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

1. The applicant is the owner of the land.
2. On the record before the Board, the applicant has satisfied the required standards for variances.
3. Most of the driveway was shown roughly in its current location on the 1980 plat, which was approved with the variance for the fence.
4. Given the long history of the driveway being roughly in that location and the condition of the property with the next-door neighbor's driveway being almost right next to it, the driveway per se is not bothering anyone.
5. It appears that what looks like the side yard for this house for technical reasons is a rear yard, and there are many homes that have a driveway along the side that for whatever reason, it counts as the rear yard for this lot, and that may also be driving some of the conclusions about the percentages.
6. The extraordinary condition about this lot is that there is no street parking on either Old Keene Mill Road or Hanover Avenue, both very busy streets. This lot, in order to have off-street parking, has to have something.
7. With the topography, it would be worse to pave over more of the front yard, which would be more visible and less of a residential appearance, looking more like a parking lot in front of the house instead of what it is now, which is sort of an alley along the side, and it is more separated from the street.
8. Having identified that exceptional condition, in looking at the standards of 18-404, authorization of the variance will not be a substantial detriment to adjacent property.
9. What has changed on the lot is that there is now a giant house on it. The driveway itself is not what is causing the impact.
10. It will not change the character of the zoning district to grant the variance. If the variance were denied and they have to pave more of the front yard, that would be of more detriment to the neighbors.
11. With a case-by-case review, on a lot like this where, for technical reasons, the side yard is counted as a rear yard, where there has been a driveway there for 30 years, for the most part, except for the last few feet of it, the next-door neighbor has a very similar situation, and there is no on-street parking, it is a close call, these are difficult cases to grant, but the applicant has met the standard.
12. The amendment to the variance statute by the General Assembly, the Board does not need a total taking, the Board does not need for all reasonable beneficial uses of the property to be taken, but there is reasonable use that is interfered with, with the 30 percent requirement on a lot like this.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above 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 rear yard coverage to remain on the property as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated May 7, 2008, as revised through July 15, 2010, as submitted with this application and is not transferable to other land.
- 2. Within 6 months of approval of this special permit, the applicant shall obtain written approval from the Department of Public Works and Environmental Services (DPWES) for the concrete drive to remain within the storm sewer easement and sanitary sewer easement or the drive or portions thereof shall be removed from the easement(s). If required by DPWES, the applicant shall execute a Hold-Harmless Agreement related to the easement(s) in a form acceptable to the County Attorney's Office.

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 including requirements for building permits.

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

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Before Mr. Hart made his motion on the special permit SP 2010-LE-051, Ms. Langdon clarified that the required side yard was 12 feet; therefore, the patio would have to be brought back 7 feet from the side lot line to be in conformance.

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Mr. Hart moved to deny SP 2010-LE-051 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Beard said he would echo his previous remarks in opposition to the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI LATIF, SP 2010-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 open deck to remain 0.0 ft. from a side lot line and 25.3 feet from the front lot line. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1. (Concurrent with VC 2010-LE-005) 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 15, 2010; and

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

1. The applicant is the owner of the land.
2. The Board has seen many cases before where someone buys a piece of property with an improvement already on it, and they are difficult to resolve.
3. Although the paperwork is confusing, it is clear that the patio was never approved to go into the sanitary sewer easement, and it was clear on the 1980 plat that the patio was much smaller and was really just in the area around the swimming pool.
4. Both of the plats that Mr. Shoup and Ms. McLane signed said that there would be no construction in the easement.
5. It is confusing on the drawings exactly what was happening on the lot. There is so little space and so many things being added, but under any reading of any of the plats before the Board, the patio was not ever approved to go to that extent.
6. From the photographs on the application, the cumulative effect of the much larger house on the lot and the driveway approved by the BZA, the patio at this extent in the back yard is overwhelming.
7. Basically, much of the lot is now covered over with pavement.
8. The function of the patio does not do anything to help with the off-street parking.
9. The patio is not needed, and although inconvenient to remove a portion of it, it is still a huge patio, several times larger than the patios on many homes, and there will be plenty of room for using outdoor space that is not standing in the mud.
10. Under 8-006, Numbers 2 and 3, the Board must conclude that the proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations and the proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted Comprehensive Plan, but when essentially the back yard is paved up to the fence, it is not necessarily in compliance with those two standards. It does not have a residential appearance. It looks like a parking lot behind a commercial building. Ordinarily, there is a separation between a deck, a patio, a shed, or whatever, and the property line.
11. At this extent, it is so long, probably in excess of 50 feet.
12. The Board looks at these cases one at a time and uses its best judgment given these standards. It does not have a residential appearance, and coupled with the driveway and the increased size of the house, it is too much.
13. The Board cannot conclude that the required standards for the special permit have been satisfied.
14. The granting of this special permit would impair the intent and purpose of the Zoning Ordinance and be detrimental to the use and enjoyment of other property in the immediate vicinity.

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 the additional standards for this use as contained in the Zoning Ordinance.

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

Mr. Smith seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Byers was not present for the vote.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:30 A.M. SOSENA TAYENA AND SLAIMAN ALMASSRI, A 2010-MA-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing the operation of a commercial recreation use located in the C-6 and CRD Districts without an approved Group 5 Special Permit or a valid Non-Residential Use Permit for the use in violation of Zoning Ordinance provisions. Located at 3813D South George Mason Dr. on approx. 2,400 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 23.

Chairman Ribble noted that A 2010-MA-007 had been administratively withdrawn.

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~ ~ ~ September 15, 2010, Scheduled case of:

9:30 A.M. JOLANDA N. JANCZEWSKI, A 2008-SP-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a Riding/Boarding Stable on property in the R-C and WS Districts without an approved special permit nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15. (Admin. moved from 10/28/08 at appl. req.) (Deferred from 12/9/08 at appl. req.) (Continued from 7/14/09 and 12/1/09)

Chairman Ribble noted that A 2008-SP-046 had been withdrawn.

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~ ~ ~ September 15, 2010, Scheduled cases of:

9:30 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, and 8/11/10)

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, and 8/11/10)

Chairman Ribble called the two cases.

Mr. Hart noted that since he had recused himself on these two public hearings, he would recuse himself from the decisions.

Chairman Ribble noted that the two cases had been deferred for decision at the request of one of the BZA members. Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct.

In response to Ms. Gibb's question regarding staff's suggestion for a two-month deferral, Ms. Stanfield said a deferral date to November 17, 2010, was acceptable to both appellants. She clarified it would not be the completion of a sale within the two-month time frame, but rather moving forward in that direction after an approval of the site plan.

Francis A. McDermott, Esquire, Hunton & Williams, LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, agent for the appellant, Danella Construction Co., came forward. He said his client would not be able to settle in two months. They put out an offer, there was a counter offer, back and forth discussions, and meetings with the parties. Danella hoped to come to terms, and then would go forward and take over prosecution of the site plan approval. If unable to come to terms, Danella would withdraw from the property. He added that both parties mutually hoped to come to an agreement/contract. Mr. McDermott said settlement was contingent upon approval of the site plan, and until that approval they would not close on the property. He said at that point, they would have to get a further deferral, but if there was not an agreement on a purchase price, Danella would inform the Board, begin the process to relocate, sign a lease, move, and vacate the Cronan site. Mr. McDermott said his client, and he personally, did not feel comfortable continuing to drag this out, and if there was nothing concrete, they would not continue to spin their wheels, but instead would relocate.

Chairman Ribble asked Mr. Curran if he wanted to speak to this.

J. Charles Curran, Curran, Kidwell, Kent & Curran Kidwell, Kent & Curran, PC, Woodson Square, 9695C Main Street, Fairfax, Virginia, agent for the Cronan Family, LLC, came forward. He said he concurred exactly with what Mr. McDermott said, that at the point that a contract agreement was not reached within the two months, the Board would be advised.

At Mr. Beard's request, Mr. Curran and Mr. McDermott explained the sequence of events that transpired towards meeting staff's requirements, differences with staff's positions over several matters, forthcoming negotiations with the Department of Public Works and Environmental Services, and their efforts toward processing the contract.

Ms. Stanfield said staff now had a commitment from Mr. McDermott to move forward pending the contract negotiations. Staff was satisfied at that point that a deferral was appropriate.

As there was no one who wished to speak to the issue of deferral, Chairman Ribble called for a motion.

Ms. Gibb commented that she thought for a non-developer, the Cronan family had done a lot, and what they had left to do, she thought was reduced a lot from the original list. She noted that the matter of Thompson Road's dedication remained an issue, and she thought the issues raised by the Cronan family were legitimate. Ms. Gibb said she thought for a family that was trying to run a business and trying to comply with the County, they had done a pretty good job, and spent a lot of money. She was sorry that they would have to sell their property in order to comply with County requirements.

Ms. Gibb then moved to defer A 2008-SU-008, Cronan Family, LLC, and A 2008-SU-037, Danella Construction Co. of Virginia, Inc., to November 17, 2010, at 9:30 a.m., in order to see if Danella was able to negotiate a contract with the Cronan family.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Mr. Byers was not present for the vote.

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~ ~ ~ September 15, 2010, After Agenda Item:

Approval of January 24, 2006; February 14, 2006; March 28, 2006 Minutes

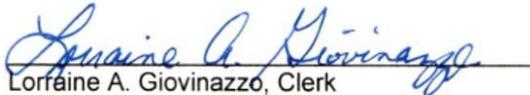
Mr. Hammack moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Paula A. McFarland

Approved on: September 20, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, September 22, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 22, 2010, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-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 storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line. Located at 3915 Glenbrook Rd., on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (*Admin. moved from 3/20/07, 5/1/07, 9/11/07, 4/1/08, 10/7/08, and 4/7/09 at appl. req.*) (*Indefinitely deferred from 5/19/09*) (*Reactivated and scheduled for 9/22/10.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Donald McCarthy, 3915 Glenbrook Road, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. She provided background information on the case, noting that the application had originally been submitted as a result of a Notice of Violation (NOV) issued in February 2004.

In response to a question from Mr. Hammack, Ms. Hedrick said she was unsure why the shed error was not caught sooner. She suspected that the street files had not been reviewed, since the applicant had not applied for any permits.

Mr. Hart and Ms. Hedrick discussed the condition and appearance of the shed, with Mr. Hart stating that it appeared rickety and dilapidated. Ms. Hedrick stated that the applicant wanted to maintain the shed as it was, but noted that the Board could place a condition on the special permit as to its appearance.

Mr. McCarthy presented the special permit request as outlined in the statement of justification submitted with the application. He said the house had been built in 1945, with a barn, shed, and chicken coop built in 1950 on the 2½ acre lot. In 1958, the owner asked to subdivide one acre off and build another house, to which the County agreed. Mr. McCarthy stated it was at this point the shed became noncompliant due to setback requirements. He said the issue of the shed should have been addressed 52 years ago, upon subdivision of the lot. He stated it would be a hardship for him to move the shed or reduce it four feet in height. He noted that the shed was in use, and had a lot of equipment in it. He planned to remove the shed at some point, but had no plans for that now.

Susan Langdon, Chief, Special Permit and Variance Branch, said she had a copy of the 1958 plat, stating that it only showed the corner of the house and the corner of the garage.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-MA-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

DONALD J. MCCARTHY, SP 2007-MA-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 storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (Admin. moved from 3/20/07, 5/1/07, 9/11/07, 4/1/08, 10/7/08, and 4/7/09 at appl. req.) (Indefinitely deferred from 5/19/09) (Reactivated and scheduled for 9/22/10) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2010; and

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

1. The applicant is the owner of the property.
2. The applicant has met the standards set forth in subsections A through F of the Ordinance, in particular that the non-compliance was done through no fault of the property owner.
3. The shed has been there for over fifty years.
4. It has created no impact or use on the adjacent property, which was, in fact, subdivided out of this one.
5. This application is not purely technical, but seems to be a clean-up item out of an earlier application filed by the applicant to gain approval for some other uses on the property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of a detached accessory storage structure (Shed "A"), as shown on the plat prepared by Alexandria Surveys International, LLC, dated November 7, 2006, 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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 22, 2010, Scheduled case of:

9:00 A.M. GREGOR & LAURIE SIEBERT, SP 2010-LE-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 6020 Sumner Rd. on approx. 10,517 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 81-4 ((17)) 11.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Laurie Siebert, 6020 Sumner Road, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-LE-045, subject to the proposed development conditions.

Ms. Siebert presented the special permit request as outlined in the statement of justification submitted with the application. She stated her desire to build an attached one-car garage at the end of the driveway, noting that it would be in harmony with the neighborhood. Ms. Siebert said the past winter and summer had been harsh, and wanted at least one of their cars to be protected from the elements. She stated her agreement with the development conditions, especially regarding tree preservation.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-LE-045 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGOR & LAURIE SIEBERT, SP 2010-LE-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 6020 Sumner Rd. on approx. 10,517 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 81-4 ((17)) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2010; and

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

1. The applicants are the owners of the property.

2. The application meets all the submission requirements set forth in 8-922.
3. The staff recommends approval, and the Board adopts the staff rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story garage addition (375 square feet), as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated May 17, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,340 square feet existing + 2,010 square feet (150%) = 3,350 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the proposed garage location and the limits of clearing and grading at the northern property boundary. Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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.

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~ ~ ~ September 22, 2010, Scheduled case of:

9:00 A.M. THE TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-05
Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously
approved for church and private school of general education and telecommunications facility
to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land

zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A; 6-4 ((14)) A. (Admin. moved from 6/23/10 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Colleen Canovas, agent for the applicant, 201 Royal Street, Leesburg, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permits and Variance Branch, made staff's presentation. She noted that the application was concurrent with a special exception application, both seeking to amend previously approved applications for a 100-foot tall telecom facility, located in the bell tower, a place of worship, a private school, and a columbarium. Ms. Langdon said the Planning Commission recommended approval of SEA 99-D-043 the previous week, and stated that staff recommended approval of SPA 83-D-022-05, subject to the proposed development conditions.

In response to a question from Mr. Beard, Ms. Langdon said a balloon test had been performed which showed no significant impact.

Ms. Canovas presented the special permit request as outlined in the statement of justification submitted with the application. She said she did not have anything to add, but offered photos of the tower as it currently exists and as it would appear with the proposed expansion.

Discussion ensued regarding plantings and the development condition that addressed that.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 83-D-022-05 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 TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for church and private school of general education, columbarium and telecommunications facility to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A; 6-4 ((14)) A. (Admin. moved from 6/23/10 at appl. 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 September 22, 2010; and

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

1. The applicant is the owner of the property.
2. This is a relatively modest modification to an existing facility.
3. There is a favorable staff recommendation, and the Board adopts the rationale in the staff report.
4. The Planning Commission also has recommended approval of the concurrent SEA application.
5. With the imposition of the development conditions as they have been modified, any impact from the additional height to the bell tower would be minimized.
6. A slightly taller bell tower on a church would not bother anyone on a lot this big.

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 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 the Dranesville United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 1089 Liberty Meeting Court (8.11 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Entrex Communication Services, Inc., consisting of seventeen sheets, dated May 19, 2009, as revised through July 1, 2010, and approved with this application, as qualified by these development conditions. Sheets R-1 through R-6, consisting of six sheets, prepared by Dewberry & Davis LLC, and dated June 24, 2009 as revised through November 10, 2009, depict site modifications approved under SEA 83-D-022-04, approved by the Board of Zoning Appeals on January 13, 2010.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum daily enrollment for the private school of general education shall not exceed 99 children.
6. The number of employees associated with the private school of general education shall be limited to a maximum of fifteen (15) at any one time.
7. Seating in the church sanctuary shall be limited to a maximum of 400 seats.
8. All parking shall be on site, as shown on the special permit plat.
9. The hours of operation for the private school of general education shall be limited to Monday – Friday, 8:30 a.m. to 3:30 p.m.
10. Barrier requirements shall be waived along all lot lines. The transitional screening requirement shall be modified along the northern lot line as depicted on the SEA/SPA Plat.

To the extent feasible, given the location of existing graves, Transitional Screening 1 shall be provided along the eastern portion of the cemetery to screen the dwelling on Tax Maps 6-4 ((1)) 69A and 69B from the proposed Phase III addition to the church and from the columbarium prior to approval of final building inspections for the addition or columbarium, whichever occurs first. Supplemental plantings shall be provided as depicted on Sheet Z-7 of the SEA/SPA plat to screen the dwellings on Tax Maps 6-4 ((14)) 2 and 3 from the telecommunications equipment. Screening shall be provided along the southern lot lines of Lots 66B and 70A if determined necessary by the Forest Conservation Branch. The transitional screening plantings for these areas shall be comprised of large evergreen trees with an ultimate height of 40 feet and a minimum height of 10-12 feet tall at the time of planting and medium evergreen trees with an ultimate height of 20-40 feet and a minimum of 6-8 feet tall at the time of planting. The minimum height of the trees at the time of planting shall apply only to the landscaping to be installed. The exact number, size and species of landscaping materials shall be determined by the Forest Conservation Branch, Department of Public

Works and Environmental Services (DPWES). All dead, dying or diseased plantings in the transitional screening yards shall be replaced in consultation with the Forest Conservation Branch.

Existing vegetation shall be preserved and maintained along the lot line and shall satisfy the requirements of transitional screening.

11. A Tree Preservation Plan and Narrative shall be submitted as part of the first and all subsequent plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved located within 25 feet to either side of the limits of disturbance. The tree preservation plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the erosion and sediment control sheets, as may be modified by the "Root Pruning" development condition below. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

Root pruning shall take place as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

12. 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.
13. The existing structure utilized as an equipment building for the telecommunication facility shall be limited to the storage of telecommunication and carillon equipment only.
14. If a speaker system is utilized to broadcast the sound of bells, the system must comply with the noise regulations of Chapter 108 of the Code of Virginia. The playing of music shall be prohibited between the hours of 6:00 p.m. and 7:00 a.m.
15. The existing residential dwelling unit shall be used only for the storage of the telecommunication and carillon equipment, and shall meet all applicable County, State and Federal building, structural and fire codes regulations as determined by DPWES. Access to the building shall be permitted only from within the fenced area located to the east of the building. The interior of the building shall be designed to include a wall that will prohibit access from the doors and windows located on the western façade of the building. The equipment building doors located on the eastern façade, within the fenced area, shall be locked at all times. The gate for the fence shall be locked at all times. The telecommunication equipment shall be located within secured metal cabinets or enclosures inside the equipment building and shall be locked at all times.

The equipment cabinets may be unlocked only to perform maintenance and only in the presence of a maintenance worker. Signs shall be posted on the individual equipment cabinets, the doors to the equipment building and the fence that clearly states that they shall be locked at all times.

These development conditions incorporate and supersede all previous development conditions.

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

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

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

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~ ~ ~ September 22, 2010, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 (change in development conditions) (*Admin. moved from 8/11/10 at appl. req.*)

Chairman Ribble noted that SPA 95-V-031-04 had been administratively moved to November 17, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 22, 2010, Scheduled case of:

9:00 A.M. MAHEDERE-SEBEHAT LEDETA LEMARIAM ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ARLINGTON, VIRGINIA, SP 2010-MA-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4214 Pine La. on approx. 4.54 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 64. (*Admin. moved from 8/11/10 at appl. req.*)

Chairman Ribble noted that SP 2010-MA-041 had been administratively moved to October 27, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 22, 2010, Scheduled case of:

9:30 A.M. T-MOBILE NORTHEAST LLC AND MS. MARYAN SMITH, A 2010-HM-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed telecommunications facility (monopole and unmanned equipment cabinet) is considered a principal use and, therefore, cannot be located on a lot in the R-E District where a single family dwelling already exists. Located at 11501 Stuart Mill Rd. on approx. 6.49 ac. of land zoned R-E. Hunter Mill District. Tax Map 36-2 ((7)) 3A.

Chairman Ribble called the appellants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Tracy Anderson, the appellants' agent, 801 North Fairfax Street, Alexandria, Virginia, came forward and identified herself.

Brian Parsons, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. He said the appeal involved whether a telecommunications facility is considered a principal use and can be located on a lot in the R-E district where a single family dwelling already exists. Mr. Parsons gave a brief history of the requests made by T-Mobile regarding use of this site.

Mr. Parsons said it was the position of the Zoning Administrator that the dwelling was a principal structure/use on the property and the monopole was a second principal structure/use. He noted that "principal building" and "principal structure" were interchangeable terms in the Ordinance. Mr. Parsons stated that although the appellants' justification statement said that no principal building was proposed to be added to the lot, the Zoning Ordinance treats the monopole as a principal structure.

Mr. Parsons discussed the definition of an accessory use, noting that monopole was clearly not subordinate to the dwelling, nor was it customarily found in association with the dwelling. Further, he said the monopole and dwelling have no relationship other than rent payments from the telecommunications company to the owner. For those reasons, he asked that the Zoning Administrator determination be upheld.

Mr. Hart, Mr. Parsons, and Lorrie Kirst, Zoning Administration Division, discussed the requirements for monopoles in the county, with Ms. Kirst explaining that a monopole had to be located in a major utility easement or on government property, otherwise, it required a special exception.

In response to a question from Mr. Byers, Ms. Kirst said this application differed from a swim club in that swim clubs could have multiple uses on site, however, Section 2-501 stated that you could not have a secondary use on residential property.

Mr. Hammack and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the definition of an accessory use, with Ms. Stanfield noting that even if this were considered an accessory use, it would only be permissible with a special exception.

Ms. Anderson presented the arguments forming the basis for the appeal. She discussed the definition of a principal building, stating that any reasonable interpretation would not include an unmanned telecommunications facility. She felt the residence on the property was the principal use, and pointed out that a monopole is only referred to as a structure, not a principal structure. Ms. Anderson went through the four elements that an accessory use must have, showing how a monopole qualified. In summary, she stated there was no prohibition for multiple buildings on a lot, just principal buildings, and that a monopole was not one of them.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that Lorrie Kirst, Assistant Director, Zoning Administration Division, would address the intent of the Board of Supervisors when they amended the Zoning Ordinance.

Ms. Kirst said that a monopole had always required a special exception application. She stated that the Board changed the language in the Ordinance to make it easier to add antennas to utility poles. Ms. Kirst said the current application was to install a new monopole on residential property.

Ms. Gibb, Ms. Anderson, and Chairman Ribble discussed whether any cases since an aforementioned 1996 litigation. Ms. Anderson said there had not been any, but felt staff's position was clearly out of sync with the corrected language in the Ordinance.

Discussion ensued regarding a monopole as a possible accessory use, with Ms. Kirst pointing out that it had always been a principal structure. The definition of an accessory use was debated. Mr. Hart questioned whether the appellant had really satisfied all four requirements, noting that a monopole was not customarily associated with a residence. Ms. Anderson pointed out that a monopole was not normally correlated with a hospital, but that Inova had one on their roof.

The proposed height of the monopole was discussed, and whether the appellant's use of the carrier was contingent upon the monopole being an accessory use. Ms. Anderson said it was not the use of the carrier, but the rent the appellant would be receiving.

Chairman Ribble called for speakers.

Barbara Walsh, 2713 Colvin Run Road, Oakton, Virginia, appeared before the Board in opposition to the monopole.

Mr. Beard disclosed that he knew Ms. Walsh's brother, but did not think that would affect his ability to vote on this appeal.

Ms. Janice McSween, 2557 Bridge Hill Lane, Oakton, Virginia and Mr. Jim Fitzwilliam, president of the Bridges of Oakton Homeowners Association both spoke in opposition to the monopole.

Jim Michael, an attorney with Jackson, Campbell, said he was involved in the previously mentioned similar 1996 circuit court case, and noted that lifestyles had changed dramatically since then. He stated that people were abandoning their land lines in favor of cell phones. He urged the Board to interpret the Zoning Ordinance based on 2010 lifestyles.

Ms. Gibb and Mr. Michael discussed monopole uses in commercial and industrial districts or in any zoning district controlled by public use. Ms. Gibb felt the Board could have amended Section 2-514 at any point, but chose not to. Mr. Michael said the dynamic of society in 2010 favored in-house accessibility to telecommunications.

John Boland and Al Zane, both from Oakton, Virginia, spoke in support of the appeal. Each felt the services that would be provided by the monopole far outweighed any negative aesthetic impact.

Keith Lindall, 5675 Stone Road, Centreville, Virginia, said he was a CPA, and spoke in favor of the monopole. He had met with the Smiths' at their residence numerous times, and never could get a cell signal there.

Maryan Smith, owner of the subject property, stated that she had lived at the residence for over fifty years. She felt that being unable to obtain a cell signal on her property was a safety issue, and asked that a monopole be allowed on her property.

Philip Rappoport, 2559 Yonder Hills Way, Oakton, Virginia, spoke in opposition. He felt approving this monopole would set a precedent for other poles at other neighborhood homes. Mr. Rappoport said monopoles did not belong in residential zones.

In rebuttal, Ms. Anderson said the Board should look to the intent of the Code. She did not feel that approval of this monopole would necessarily set a precedent.

In summary, Mr. Parsons said the Zoning Ordinance was clear, noting that the Board of Supervisors passed this section of the Ordinance to protect homes. He stated that Ms. Smith had numerous other vacant properties where a pole could be located.

Ms. Kirst asked the Board to look at the provisions today as written, not as we would like them to be.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she was not persuaded by the look of the tower, the fact that it was 100 feet tall, and that there was a narrow road going up to it. She was also not persuaded by the fact that people could not use their cell phones. Ms. Gibb noted that she lived in McLean in a valley with many houses in it, and that no one can use their cell phones, stating that they drove out of the subdivision, and sat in the car if they needed to use their cell phone. She would like for everyone to be able to use their cell phones, including herself, but she thought that you have to look at what the Ordinance said, she did not think it was allowed in this residential area.

Ms. Gibb did not believe that it was an accessory use. Under the definition of accessory use, it must meet all four of the standards which were set out, and she did not believe a monopole was something that would customarily be found in association with a dwelling unit today. Therefore, Ms. Gibb said the use did not meet that standard.

Ms. Gibb said she looked at the intent of the Code as the appellant had asked. The Ordinance went on in a great deal of detail, and the Board of Supervisors had amended it several times since 1996, saying where telecommunication facilities could be located, specifically monopoles. She said that particular section of the Ordinance specifically described the situation before the BZA, a monopole with related unmanned equipment cabinets and/or structures. There were three places where these could be located, and the subject case was not one of them, that is, an R-E district with a house on it. Where telecommunication facilities could be located were: 1) in all C districts, I districts, and so on; 2) a zoning district in a utility transmission easement which was 90 feet in width, which she felt made imminent sense because the space was set aside for a utility; and, 3) any zoning district or property owned or controlled by public use in Fairfax County. She said maybe Fairfax County was behind the times and needed to get this amended, and if so, it is a legislative function, but she did not see how, under this Ordinance, that the Board could allow this monopole.

Mr. Beard seconded the motion. He commented that there was a line between interpretation and determination, and that changing the Ordinance was something that the BZA did not have the authority to do. He agreed with Ms. Gibb that the Board was bound by the specifics of the Ordinance.

Mr. Hart said he would support the motion, stating his agreement with Ms. Gibbs' comments. He stated that the Board did not have a policy-making function, but had to abide by the rules the Board of Supervisors made. He could not conclude that staff was plainly wrong on this. He had no doubt that the Ordinance provisions regarding telecommunications would be the subject of further review and amendment as inventions became more widely available, and that the Board had to go by what the Ordinance said that morning.

Mr. Smith stated his support for the motion, and agreed with the previous comments made by the BZA members.

The motion carried by a vote of 6-0. Mr. Byers was not present for the vote, although upon his return to the Board Room, he stated his support for the motion.

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~ ~ ~ September 22, 2010, Scheduled case of:

9:30 A.M. ROBERT L. WISEMAN, A 2010-SP-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and a storage yard, is allowing excessive outdoor storage, has exceeded the 30% minimum rear yard coverage, and has erected an accessory fence in the side and rear yards that exceeds the 7 foot height restriction, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 5959 Colchester Rd. on approx. 1.5 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 1. (*Admin. moved from 8/11/10 for ads.*)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jerry Phillips, came forward, and said he represented the appellant.

Jill Cooper from the Ordinance Administration Branch presented staff's position as set forth in the staff report. She made the argument that a junkyard and storage yard could be considered a legal conforming use, only if it existed prior to the enactment of the Zoning Ordinance in 1941. She said from historical aerial photographs, these only started to appear sometime between 1980 and 1982.

Vice Chairman Hammack had assumed the chair, and asked if there were any questions of staff.

Mr. Hart said some of the photographs were difficult to read, and asked Ms. Cooper questions with regard to them.

With questions from Mr. Smith, Ms. Cooper explained what was allowed in relation to the storage of junk vehicles.

The appellant's agent, Mr. Phillips, presented the arguments forming the basis for the appeal. He spoke about the current Ordinance and the 1978 Ordinance, and which one was relevant to the appellant. He also spoke about the fence height, and what was allowable. He showed some photographs that were taken the previous day. He submitted photographs for the Board to review.

Robert Wiseman, 5959 Colchester Road, Fairfax, Virginia, came forward, and pointed out his property and other things on the photographs at Mr. Beard's request.

Mr. Phillips continued his presentation, indicating they believed cars were screened from view, and that it was clear that this was a valid nonconforming use.

Discussion ensued with Board members and staff as to whether enclosed structures had to be completely enclosed. Staff said they did have to be, similar to what a garage was.

Chairman Ribble had resumed the chair, and called for speakers.

Mr. Wiseman came forward again, stating this was a hobby, it was his understanding that he was in conformance with the Ordinance, and he did not understand why they would want the fence lowered to make things more visible on the property.

A lengthy discussion ensued regarding photographs; what was kept on the property; what the degree of use was prior to the 1984 Ordinance; whether this was, in fact, a hobby or a junk yard; forklifts; what was accessory to the principal structure; height limitations for outdoor storage; and solid wood or masonry fences versus other fences.

Sylvia Taylor (phonetic) came forward to speak. She said Mr. Wiseman attended their church, and was a very honest, upstanding person. She alluded to the fact that Mr. Wiseman could take his cars, sell them where they crush cars, and use the money to help the Five Orphans Project.

Chairman Ribble closed the public hearing.

Mr. Smith moved to uphold the determination of the Zoning Administrator. Although he had sympathy for the appellant, as this was his hobby, and he was doing it for many years, he adopted the arguments advanced by the County staff in the staff report, and the information provided for and discussed during this hearing. He believed the nonconforming use argument would need to predate the 1941 Ordinance. The property was purchased in 1977, and it appeared from the aerial photographs that something additional started happening in the mid-1980s.

Ms. Gibb seconded the motion, which carried by a vote of 7-0

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~ ~ ~ September 22, 2010, After Agenda Item:

Approval of January 31, 2006, February 28, 2006, and March 14, 2006 Minutes.

Ms. Gibb moved to approve the minutes. Mr. Byers seconded the motion which carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

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~ ~ ~ September 22, 2010, After Agenda Item:

Approval of BZA Meeting Dates for 2011

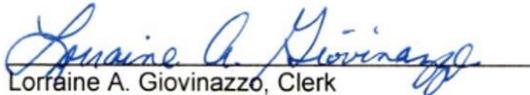
Mr. Hammack moved to adopt the proposed meeting dates. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:34 p.m.

Minutes by: Suzanne Frazier and Lorraine A. Giovinazzo

Approved on: October 5, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, October 6, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ October 6, 2010, Scheduled case of:

9:00 A.M. SCOTT AND PATRICIA BIRKHEAD, TRUSTEES, SP 2010-PR-043 (50% reduction)
(Admin. moved from 9/15/10 at appl. req.)

Chairman Ribble noted that SP 2010-PR-043 had been administratively moved to November 3, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 6, 2010, Scheduled case of:

9:00 A.M. CHANIDA V. PRASITBOON, SP 2010-DR-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit additions to remain 6.3 ft. from one side lot line and 2.1 ft. from other side lot line and roofed deck to remain 6.1 ft. from side lot line. Located at 7438 Patterson Rd. on approx. 10,220 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5)) (H) 4.

Chairman Ribble called the applicant to the podium.

Chanida V. Prasitboon, 7438 Patterson Road, 7430 Patterson Road, Falls Church, Virginia, reaffirmed the affidavit.

Jared Russell, Staff Coordinator, made staff's presentation. The applicant requested to permit a reduction to the minimum yard requirements based on errors in building locations. The minimum side yard requirement in the Ordinance is 10 feet; therefore, a reduction of 3.7 feet, 7.9 feet, and 3.9 feet, were requested.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to a question from Mr. Hart concerning measurements depicted on the plat. She said the house was a little over 55 or 57 feet long. Mr. Hart clarified that the intrusion was over 60 feet long and approximately a 6- and 8-foot intrusion into the minimum side yards.

In response to a question from Mr. Hart concerning Fire Code issues, Mr. Russell said the carport would have to be enclosed on three sides to meet Code requirements.

In response to a question from Mr. Hart, Frank Miller, County Building Inspector, said it was a complaint that there was an unpermitted addition that brought the matter to staff's attention.

Discussion ensued regarding what must be done to bring the property into compliance, and how County Tax Assessments collected taxes on properties that had improvements but with no building permits.

Joseph J. Carmichael, the applicant's agent, 7000 Coventry Road, Alexandria, Virginia, presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was unaware that the additions her ex-husband did were illegal. She had no input on the construction, and purchased the home after her divorce as her ex-husband did not want it. Mr. Carmichael said Ms. Prasitboon paid taxes on the square footage of what now existed ever since she purchased the home. She felt she did nothing wrong, and only wanted assistance to make it affordable to keep her house. In response to a question from Mr. Hart, Ms. Prasitboon said she had no part or knowledge of her ex-husband's renovation project.

Mr. Carmichael explained the unusual floor plan. He noted there was an exterior wall. The kitchen was completely separated from the house with its own ingress, and there was no entrance to it from the inside of the house.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack said the case was a difficult one. He noted the plat's unusual layout in that the kitchen was completely separated from the main house. He said he wanted the applicant to consult with staff on viable options, and wanted to continue the public hearing.

Mr. Carmichael explained the applicant's difficult situation in that permits were required, as was the Board's approval to move forward with the renovations.

Discussion ensued regarding the carport and submitting a revised plat indicating the proposals.

Mr. Hammack moved to continue the public hearing on SP 2010-DR-046 to October 27, 2010, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ October 6, 2010, Scheduled case of:

9:00 A.M. DANIEL E. LOPEZ, BERTA LOPEZ & PATRICIA MORALES, SP 2010-MA-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 5616 Seminary Rd. on approx. 12,587 sq. ft. of land zoned R-3. Mason District. Tax Map 62-3 ((3)) 80.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sara Silverman, the applicants' agent, 3905 Railroad Avenue, Suite 202 South, Fairfax, Virginia, reaffirmed the affidavit. The applicants, Patricia Morales, Daniel E. Lopez, and Berta Lopez also reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SP 2010-MA-047, for the reasons as outlined in the staff report and with adoption of the Proposed Development Conditions dated September 29, 2010.

Ms. Hedrick responded to questions from Mr. Hart concerning the carport, the driveway's size, the number of vehicles owned by the applicants, the ingress and egress, and whether the driveway accommodated the parking of the household's four vehicles. Ms. Hedrick said staff recommended Development Condition 3 to ensure the approval was based on just the household members as they existed today. It was only the household's four vehicles which were parked in the driveway.

Ms. Silverman presented the special permit request as outlined in the statement of justification submitted with the application. She said the Lopezes and Ms. Morales have owned the home since 1981, and the Lopez's children, Orlando and Celina Cabrera resided with them. Celina Cabrera had three children, one with autism. Ms. Silverman explained the living arrangements. She said the senior Lopezes were in their 70s, and their children living with them were provided an affordable dwelling, along with being present to tend to their elderly parents. When the house was purchased, there was an existing kitchen in the basement. Different family members had lived there over the years. She said the Lopezes were unaware of the violation of having a second dwelling unit. Ms. Silverman said the Lopezes had sought to correct the violation, and she listed the changes and improvements that were undertaken. Ms. Silverman said the proposed accessory dwelling now met Ordinance standards, and she was in agreement with the development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-MA-047 for the reasons stated in the Resolution. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL E. LOPEZ, BERTA LOPEZ & PATRICIA MORALES, SP 2010-MA-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 5616 Seminary Rd. on approx. 12,587 sq. ft. of land zoned R-3. Mason District. Tax Map 62-3 ((3)) 80. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 2010; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,587 square feet.
4. The Lopezes have owned the property since 1981.
5. The applicants have been very cooperative from the standpoint of coming up with workable solutions with regard to the front yard percentage coverage.
6. The applicants are trying very hard to bring the property into compliance, which is the Board's aim.
7. Staff has recommended approval.
8. The rationale of staff is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Daniel E. Lopez, Berta Lopez, Patricia N. Morales, and is not transferable without further action of this Board, and is for the location indicated on the application, 5616 Seminary Road, (12,587 square feet), and is not transferable to other land.
3. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
4. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC, dated June 28, 2010, as revised through September 8, 2010, and approved with this application, as qualified by these development conditions.

5. A copy of this special 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.
6. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
7. The accessory dwelling unit shall contain a maximum of 761.88 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
8. All applicable building permits and final inspections shall be obtained for kitchen in the accessory dwelling unit.
9. 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.
10. 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.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. Parking shall be provided on site as shown on the special permit plat. The applicant shall install a physical barrier alongside the 5.5 foot walkway to ensure parking is contained within the asphalt 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.

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

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~ ~ ~ October 6, 2010, Scheduled case of:

9:00 A.M. SANDRA R. RILEY, SP 2010-LE-048 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 2.9 ft. from side lot line and 2.7 ft. from rear lot line and open deck to remain 0.3 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 9.7 ft. from side lot line. Located at 6705 South Kings Hwy. on approx. 20,514 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((11)) 1.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sandra R. Riley, 6705 South Kings Highway, Alexandria, Virginia, and Robert Peterson, the applicant's builder, 3309 Prosperity Avenue, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. For the reasons outlined in the staff report, staff recommended approval of SP 2010-LE-048 for the screened porch addition, subject to the Proposed Development Conditions, dated September 29, 2010.

Ms. Riley presented the special permit request as outlined in the statement of justification submitted with the application. She said she and her husband had lived in the house since 1973, and numerous projects were done over the years with her husband, a cabinet maker, doing the construction. She wanted the enclosed porch to provide a safe and cool place for her grandchildren to play, be protected from insects, and be watched over.

Mr. Peterson said he was a licensed Class A builder. He said he cooperated with the County providing all requested information and documents to have the project approved.

In response to a question from Mr. Hart, Ms. Riley said the shed had no electricity or plumbing and was there since the late 1980s. She said the shed was on a wooden foundation and could not be shifted.

In response to a question from Mr. Hart, Ms. Hedrick said the matter came to staff's attention at the submission of the permit, and not from a complaint.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-LE-048 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

SANDRA R. RILEY, SP 2010-LE-048 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 2.9 ft. from side lot line and 2.7 ft. from rear lot line and open deck to remain 0.3 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 9.7 ft. from side lot line. Located at 6705 South Kings Hwy. on approx. 20,514 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((11)) 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 October 6, 2010; and

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

1. The applicant is the owner of the land.
2. With respect to the screened porch, the Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. The proposed porch would be consistent with the rest of the house.
5. It is really only one corner of the addition that is the problem.
6. The addition is fairly far away from the street.
7. The Board does not believe that in its location, it is going to have any significant negative impact on anybody based on the photographs that the Board has.
8. With respect to the other items, the shed and the deck, although the Board does not have a staff

recommendation, the requests meet the applicable standards.

9. The deck is very close to the lot line on that side, but also it is almost at the ground level.
10. It backs up to a fence which conceals it.
11. The neighbor's shed, which may be another issue, is very close to the deck on that side.
12. In its current location, the deck cannot be seen well and is close to ground level, so it is not going to be bothering anyone to leave it there.
13. The shed is tucked in the back corner.
14. The shed is not particularly large compared to the garage.
15. If you are looking in that direction, you will notice the garage before the shed.
16. It is concealed pretty well by the fence on two sides of it.
17. It seems to have been there a very long time without causing any problems.
18. There is not going to be any significant negative impact by leaving the shed where it is.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the locations and sizes of a one-story screened porch addition (403 square feet), open deck (at-grade wood deck), and an accessory storage structure, as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated May 21, 2010, as revised through July 6, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,957 square feet existing + 4,435.5 square

feet (150%) = 7,392.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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~ ~ ~ October 6, 2010, After Agenda Item:

Approval of April 18, 2006, May 2, 2006, and July 18, 2006 Minutes

Mr. Beard moved to approve the Minutes for April 18, 2006. Mr. Hart seconded the motion, which carried by a vote of 4-0-2. Mr. Smith and Mr. Byers abstained from the vote. Ms. Gibb was absent from the meeting.

Mr. Beard moved to approve the Minutes for May 2, 2006. Mr. Hart seconded the motion, which carried by a vote of 5-0-1. Mr. Smith abstained from the vote. Ms. Gibb was absent from the meeting.

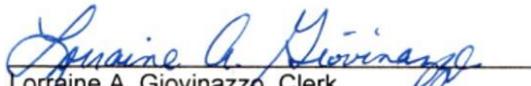
Mr. Beard moved to approve the Minutes for July 18, 2006. Mr. Hart seconded the motion, which carried by a vote of 4-0-2. Mr. Smith and Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:03 a.m.

Minutes by: Paula A. McFarland

Approved on: September 20, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, October 27, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 27, 2010, Scheduled case of:

9:00 A.M. CHANIDA V. PRASITBOON, SP 2010-DR-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit additions to remain 6.3 ft. from one side lot line and 2.1 ft. from other side lot line and roofed deck to remain 6.1 ft. from side lot line. Located at 7438 Patterson Rd. on approx. 10,220 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5)) (H) 4. (Continued from 10/6/10.)

Chairman Ribble noted that SP 2010-DR-046 had been continued from October 6, 2010, to allow the applicant time to submit a revised plat, and he called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Chanida Prasitboon, 7438 Patterson Road, Falls Church, Virginia, came forward.

Joseph O. Carmichael, 7000 Coventry Road, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Jared Russell, Staff Coordinator, said the revised plat depicted the removal of the rear 2.3 feet from the addition and the removal of the front 21.9 feet of the carport. He noted that the addition was now located 3.1 feet from the side lot line.

In response to a question from Mr. Hammack, Mr. Carmichael said the applicant proposed to remove the entire enclosed structure at the rear northeast corner of the building, including the existing slab. He said the front section of the carport would be removed, with retention of a 24-by-14-foot carport open on three sides.

Mr. Hammack asked if the applicant agreed to the revised proposed development conditions. Mr. Carmichael replied affirmatively.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-DR-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

CHANIDA V. PRASITBOON, SP 2010-DR-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit additions to remain 6.3 ft. from one side lot line and 2.1 ft. from other side lot line (**BZA APPROVED CARPORT ADDITION 3.1 FEET FROM SIDE LOT LINE**) and roofed deck to remain 6.1 ft. from side lot line. Located at 7438 Patterson Rd. on approx. 10,220 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5)) (H) 4. (Continued from 10/6/10) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2010; and

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

1. The applicant is the owner of the property.
2. The case was before the Board two weeks ago and carried over to give the applicant an opportunity to make revisions to the original application and reduce the encroachment on the side lot line.
3. The testimony was interesting in that a former spouse constructed the 12.3 x 14.4 foot addition to the rear of the carport and put the kitchen in it.
4. There was not a lot of information about the quality of that construction.
5. The Board thought it was better to allow the applicant to return with a proposal that would indicate what she felt was an appropriate reduction.
6. Given the testimony at the last hearing and the facts involved, the request is reasonable.
7. The original encroachments were constructed by a former spouse. The applicant was not directly involved in that construction and not knowledgeable about the permits and zoning requirements that were involved.
8. The applicant has met the specific requirements set forth in Subsections A through G, in particular, under B, that the non-compliance was done through no fault of the property owner.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 additions as shown on the plat prepared by R.C. Fields, Jr., dated July 19, 2010, revised through October 12, 2010, submitted with this application, and is not transferable to other land.

2. Within six months of approval of this application, all applicable permits and final inspections shall be obtained for the additions as outlined in the staff report or they shall be removed or brought into compliance with Zoning Ordinance requirements.

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 27, 2010, Scheduled case of:

9:00 A.M. DAWN ROWLAND, SP 2010-SU-050 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from side lot line and 2.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of an accessory structure 5.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 14702 Crenshaw Dr. on approx. 8,740 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 44-3 ((2)) (27) 8.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Dawn Rowland, 14702 Crenshaw Drive, Centreville, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-SU-050 for the detached garage, subject to the proposed development conditions.

Mr. Hart and Ms. Hedrick discussed the lattice below the deck floor and whether the garage was attached to the deck, with Ms. Hedrick stating that the garage would not be attached because a portion of the deck would be removed. Ms. Hedrick noted that if the deck touched the garage, it would be considered an addition and would need to meet 50 percent of the required rear and side yard setbacks.

Ms. Rowland presented the special permit request as outlined in the statement of justification submitted with the application. She delineated the five-foot portion of the deck to be removed, noting that there would be approximately eight feet between the deck and the proposed garage. Ms. Rowland referenced the letters of support she had received from her neighbors, and stated that this was the only place the garage could be located.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-SU-050 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAWN ROWLAND, SP 2010-SU-050 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from side lot line and 2.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of an accessory structure 5.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 14702 Crenshaw Dr. on approx. 8,740 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 44-3 ((2)) (27) 8. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2010; and

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

1. The applicant is the owner of the property.
2. Subsections A through F have been complied with.
3. The Board received six (6) letters in support of the application.
4. Staff recommends approval of the accessory structure, specifically the garage, and the Board adopts its rationale.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 locations and sizes of an accessory storage structure (wooden shed) and an accessory structure (detached garage) as shown on the plat prepared by B.W. Smith and Associates, Inc., dated June 3, 2010, as revised through July 26, 2010 submitted with this application and is not transferable to other land.
2. The accessory structure shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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.

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~ ~ ~ October 27, 2010, Scheduled case of:

9:00 A.M. CAROL J. BAILEY, SP 2010-MV-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from side lot line. Located at 7614 Holiday Dr. on approx. 21,813 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((7)) (7) 13.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Christine A. Leonard, 2109 Popkins Lane, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-MV-049, subject to the proposed development conditions.

Ms. Leonard presented the special permit request as outlined in the statement of justification submitted with the application. She said the design of the addition was well integrated with the existing house and other houses in the neighborhood, was in the best possible location, would not adversely impact the use or enjoyment of any adjacent property, and all of the existing vegetation would be preserved.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-MV-049 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROL J. BAILEY, SP 2010-MV-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from side lot line. Located at 7614 Holiday Dr. on approx. 21,813 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((7)) (7) 13. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2010; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. The parcel is a strangely shaped trapezoid kind of lot with the house turned at an angle to all the lot lines.
4. The location of the existing carport is close to what appears to be the side line, although it is a confusing lot to figure out which is the side and which is the rear.
5. The corner of the carport is actually further away from that same line as the existing patio.
6. From the photographs, it appears that there is extensive mature vegetation on the lot and nearby.
7. The impact of the structure would be minimal.
8. The carport is already there and already has a substantial roof.
9. The impact of enclosing the carport would not be noticeable.
10. It will probably look better than the way it is now with half of it enclosed and half of it a carport.
11. The proposed location is the logical placement for the garage because the driveway is already there.
12. It would not make sense to pave over more of the yard to put the garage somewhere else.
13. Development Condition 5 will protect the existing mature trees so no one will be able to see it.
14. The Board has determined that all the criteria in the Sect. 8-922 motion have been satisfied.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 591.0 square feet) of the addition (garage), as shown on the plat prepared by Alfred Copeland, Certified Land Surveyor dated May 16, 1972, revised by Christine A. Leonard, Architect, through August 3, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,892 square feet existing + 2838 square feet (150%) = 4,730 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the proposed garage location and the limits of clearing and grading at the southern and eastern property boundary. Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~October 27, 2010, Scheduled case of:

9:00 A.M. MAHEDERE-SEBEHAT LEDETA LEMARIAM ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ARLINGTON, VIRGINIA, SP 2010-MA-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4214 Pine La. on approx. 4.54 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 64. (Admin. moved from 8/11/10 and 9/22/10 at appl. req.)

Chairman Ribble noted that SP 2010-MA-041 had been administratively moved to December 15, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 27, 2010, After Agenda Item:

Request for Intent to Defer
Manuel S. Espina, Trustee, A 2009-MV-025

Mr. Beard moved to approve the request for an intent to defer to January 12, 2011, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 27, 2010, After Agenda Item:

Approval of July 11, 2006; October 17, 2006; and November 28, 2006 Minutes

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

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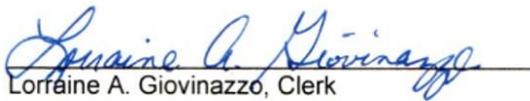
Mr. Beard, Mr. Hart, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed a proposed Zoning Ordinance amendment regarding the lowering of the filing fee for appeals, the upcoming public hearings scheduled before the Planning Commission and the Board of Supervisors, staff's recommendation to reduce the fee, the impact of the current higher fee, the State statute's limit on a locality's fee to the cost of advertising plus reasonable processing costs, and concerns regarding fee reductions.

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

Minutes by: Suzanne Frazier

Approved on: October 22, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, November 3, 2010. All Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ November 3, 2010, Scheduled case of:

9:00 A.M. SCOTT AND PATRICIA BIRKHEAD, TRUSTEES, SP 2010-PR-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 3402 Sherwood Ct. on approx. 10,500 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 0019. (Admin. moved from 9/15/10 and 10/6/10 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Birkhead, 3402 Sherwood Court, Falls Church, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of the addition, subject to the proposed development conditions.

In response to a question from Chairman Ribble concerning the statement of justification, Mr. Birkhead said his statement of justification was correct and well presented in the staff report, and he agreed with the development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-PR-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

SCOTT AND PATRICIA BIRKHEAD, TRUSTEES, SP 2010-PR-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 3402 Sherwood Ct. on approx. 10,500 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 0019. (Admin. moved from 9/15/10 and 10/6/10 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 November 3, 2010; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the general standards for special permit uses as set forth in Sect. 8-006, and the additional standards for provisions for reduction of certain yard requirements contained in Sect. 8-922 of the Ordinance.

3. The applicants have met the six required standards set forth under that Code section, in particular Numbers 4 and 5.
4. The proposed development is harmonious with the surrounding off-site uses and structures in the location.
5. The proposed development does not adversely impact the use or enjoyment of any adjacent property.
6. The Board has a favorable staff recommendation.
7. The Board incorporates, generally, staff's findings in the motion.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by William E. Ramsey, P.C., dated June 22, 2009, and revised to February 1, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,190 square feet existing + 3,285 (150%) = 5,475 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials shown in Attachment 1 of these conditions.
5. Prior to the commencement of construction the applicant shall designate tree save areas along the southern and western sides of the property to protect off-site trees and shrubs on adjacent Lots 18 and 20 from construction activities, and shall install tree protection fencing at the outer limits of the drip lines of said vegetation. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within these tree save areas.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ November 3, 2010, After Agenda Item:

Approval of June 7, 2005, October 31, 2006, and December 12, 2006 Minutes

Mr. Hammack moved to approve the minutes. Mr. Beard seconded the motion, which carried by a vote of 5-0-2. Mr. Byers and Mr. Smith abstained from the vote.

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The meeting recessed at 9:12 a.m. and reconvened at 9:30 a.m.

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~ ~ ~ November 3, 2010, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, 7/14/10, 8/11/10, and 9/15/10 at appl. req.)

Chairman Ribble noted that SP 2009-SU-066 had been administratively moved to January 5, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 3, 2010, Scheduled case of:

9:30 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, and 5/26/10 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to February 2, 2011, at 9:00 a.m., at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the appellant was is in the process of complying with the Notice of Violation, and she expected that the appeal would be withdrawn.

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~ ~ ~ November 3, 2010, Scheduled case of:

9:30 A.M. RP MRP TYSONS, LLC, A 2010-PR-011

Chairman Ribble noted that A 2010-PR-011 had been administratively moved to February 2, 2011, at 9:00 a.m., at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the appeal was an issue of density, there were no actual improvements, and that the land was undeveloped. She was unsure where the appeal would go, and perhaps the Board should schedule it at 9:00 a.m., as it may go forward. She said the appeal would be advertised for 9:00 a.m.

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~ ~ ~ November 3, 2010, Scheduled case of:

9:30 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon Tax Map 113-4 ((1)) 2. (Admin. moved from 9/15/09 and 1/13/10 at appl. req.) (Continued from 3/31/10 and 8/4/10)

Chairman Ribble noted that there had been an intent to continue A 2009-MV-025 to January 12, 2011, due to the appellant having grading problems.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She clarified that it was not she who made the request, but it would be beneficial to the appellant, as they were in the process of removing the violation. She said she expected that it would be withdrawn, and requested that the appeal again be continued.

Chairman Ribble called for a motion.

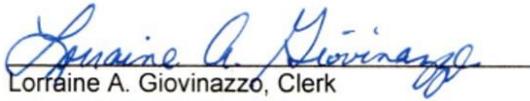
Ms. Gibb moved to continue A 2009-MV-025 to January 12, 2011, at 9:00 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:32 a.m.

Minutes by: Paula A. McFarland

Approved on: October 4, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, November 17, 2010. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ November 17, 2010, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 (*Admin. moved from 8/11/10 and 9/22/10 at appl. req.*)

Chairman Ribble noted that SPA 95-V-031-04 had been administratively moved to December 15, 2010, at 9:00 a.m., at the applicant's request.

Susan Langdon, Chief, Special Permit and Variance Branch, said the hearing had been subsequently moved to January 26, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 17, 2010, Scheduled case of:

9:00 A.M. PATRICIA P. LAWLESS, TRUSTEE, SP 2010-SU-055 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit an open deck to remain 6.2 ft. from one side lot line and another open deck to remain 0.0 ft. from other side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 34.1 ft. from front lot line and addition 10.2 ft. from side lot line. Located at 15328 Blueridge View Dr. on approx. 10,766 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 21.

Chairman Ribble called the applicant to the podium.

Mr. Hart and Ms. Gibb made disclosures and indicated that they would recuse themselves from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Patricia P. Lawless, 15328 Blueridge View Drive, Centreville, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-SU-055 for the roofed deck and garage addition, subject to the proposed development conditions.

Ms. Lawless presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she wished to enclose the carport to protect the area from harsh weather, noting that she had hip problems and feared falling on ice, and she would like to put a rocking chair on her front deck.

Mr. Hammack asked if the concrete patio on the left side of the property had been constructed by a prior homeowner. Ms. Lawless responded that it had.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-SU-055 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICIA P. LAWLESS, TRUSTEE, SP 2010-SU-055 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit an open deck to remain 6.2 ft. from one side lot line and another open deck to remain 0.0 ft. from other side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 34.1 ft. from front lot line and addition 10.2 ft. from side lot line. Located at 15328 Blueridge View Dr. on approx. 10,766 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 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 November 17, 2010; and

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

1. The applicant is the owner of the property.
2. The Board determined that the applicant has presented testimony to satisfy the specific required subsections set forth in Sect. 8-914.
3. The noncompliance was done in good faith or through no fault of the property owner.
4. The applicant has satisfied the six required standards set forth in Sect. 8-922.
5. There is a favorable staff recommendation under the Sect. 8-922 application.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the locations and sizes of a one-story, one-car garage addition (259 square feet), roofed deck (front porch), open deck (concrete stoop), and open deck (concrete patio), as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated July 20, 2010, as revised through October 19, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,760 square feet existing + 2,640 square feet (150%) = 4,400 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Building permits for the additions shall be obtained prior to construction and approval of final inspections shall be obtained.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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. Byers seconded the motion, which carried by a vote of 4-0. Mr. Hart and Ms. Gibb recused themselves from the hearing. Mr. Beard was absent from the meeting.

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~ ~ ~ November 17, 2010, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 (in association with SE 2009-MV-006) (*Indefinitely deferred from 10/6/09 at appl. req.*) (*Reactivated and scheduled for 11/17/10.*)

Chairman Ribble noted that SPA 86-V-052-03 had been administratively moved to January 26, 2011, at 9:00 a.m.

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~ ~ ~ November 17, 2010, Scheduled case of:

9:00 A.M. BOARD OF TRUSTEE OF SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SPA 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-S-063 previously approved for a church to permit the addition of a child care center. Located at

10501 New Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Reverend Bochang Seo, 10501 New Road, Fairfax Station, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 00-S-063, subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Johnson confirmed that there no transportation issues.

Reverend Seo presented the special permit request as outlined in the statement of justification submitted with the application. He said the church wished to expand its educational ministry to include a child care facility having no more than 49 children. Reverend Seo stated that the church also planned to provide rides or carpool arrangements once it reached 30 children in enrollment to help alleviate traffic concerns. He acknowledged the traffic concerns of Eugene Landis, a neighboring property owner, but said he felt the church and its activities had not created an onerous burden on the traffic pattern on New Road.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition to the application: Ross Snare, 6165 Pohick Road, Fairfax Station, Virginia, representing the Pohick Station Homeowners Association; Joseph Gallagher, 6324 Wendy Ann Court, Fairfax Station, Virginia; Loretta Fox, 6163 Pohick Station Drive, Fairfax Station, Virginia; and Betsey Goldberg, 10512 Pohick Court, Fairfax Station, Virginia. Their opposing comments included transportation issues, development conditions from the previous approval having not been complied with, and the impact from additional traffic on an adjacent bicycle path. Ms. Fox presented a petition to the Board, signed by more than 75 area residents, requesting that the application be denied.

In response to a question from Chairman Ribble, Ms. Johnson stated that most of the prior development conditions had been carried forward; however, the ones regarding construction that had already taken place had been deleted.

Discussions ensued regarding ingress and egress for the church, traffic issues, parking lot lighting, and a previous development condition which was to provide right-turn channelization out of the parking lot and its enforceability.

In his rebuttal, Reverend Seo said the church was proposing two different programs to reduce the traffic impact on New Road, specifically offering a vanpool service to attendees of the day care center, and having a staggered beginning and end time for students.

Mr. Smith commented on the traffic abatement proposals by the church, but noted that there were no proposed development conditions to that effect. Ms. Johnson responded that although the church had offered to provide traffic abatement solutions, the Department of Transportation had felt the proposed number of students was not significant enough to require development conditions.

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SPA 00-S-063 to January 5, 2011, at 9:00 a.m. He requested the Department of Transportation review the New Road/Fairfax County Parkway intersection and the current trip generations on Fairfax County Parkway; an answer from the Fairfax County Police Department regarding whether the "No Left Turn" sign on church property was enforceable; information from the Department of Transportation regarding yielding to U-turns when making a right turn; and confirmation that the lighting issues had been resolved. Mr. Byers said he wanted to visit the church property and see the channelization of traffic in place.

Mr. Hammack seconded the motion and asked staff to ascertain whether there had been any accidents or collisions at the intersection within the past two to five years.

Mr. Hart stated his agreement with Mr. Byers' rationale, noting that he would also like to visit the site.

The motion carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ November 17, 2010, Scheduled case of:

9:30 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) *(Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, and 9/15/10.)*

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) *(Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, and 9/15/10.)*

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

Doug Hansen, Senior Staff Coordinator, Zoning Administration Division, provided a history of the two appeals. He stated that the appeals had been heard and deferred seven times over almost two and a half years, noting that the last time it was heard, the BZA took action to allow time for one appellant, Danella Construction Company, to pursue purchase of the property from the property owner, Cronan Family, LLC. If successful, Danella would have been responsible for clearing the zoning violations on the property, including submission of an acceptable site plan and subsequent building permits; however, the appellants had been unable to come to terms for purchase of the property. Mr. Hansen asked the Board to uphold the determination of the Zoning Administrator so legal action could be initiated to bring the property into full compliance with the Zoning Ordinance.

J. Charles Curran, Kidwell, Kent & Curran, PC, Woodson Square, 9695 C Main Street, Fairfax, Virginia, counsel for Cronan Family, LLC, stated that Mary Cronan, the managing member of Cronan Family, LLC, had been diagnosed with cancer and started chemotherapy subsequent to the appellants meeting on September 22, 2010. He said it had limited his ability to meet with her to consider Danella's offer, and he asked the Board for another deferral to afford Mrs. Cronan the ability to attend settlement meetings. In response to a question from Ms. Gibb, Mr. Curran said that besides Mrs. Cronan, six or seven children made up Cronan Family, LLC.

Ms. Gibb and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the procedures should the Board uphold the Zoning Administrator, with Ms. Stanfield noting that the file would be turned over to the County Attorney's office for prosecution.

Chairman Ribble asked Frank McDermott, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, counsel for Danella, to comment on the negotiations and Mr. Curran's request for another deferral.

Mr. McDermott told the Board that his client was still prepared to buy the property, noting that Danella wanted to remain on the site, but would relocate if the parties could not come to a mutual agreement. He discussed the possible outcomes if the Board upheld the Zoning Administrator. Mr. McDermott said there was willingness on both parts to reach an agreement, and he asked for another 30-day deferral to see a

contract could be executed. If no contract was signed, he said Danella would move off the property by March.

Cynthia Wood, the daughter of Mary Cronan, said that when the appeal began, her family had underestimated what was entailed in obtaining a site plan on the property. She said they were happy with the price offered by Danella, but were unhappy with the terms. In response to a question from Chairman Ribble regarding the negotiations, Ms. Wood said the terms dictated that a third of the purchase price would go back to Danella to complete the site plan, a condition that she felt was too costly, and she disagreed with options for Danella to be able to cancel or assign the contract.

Ms. Stanfield stated that she had spoken with a representative from the County Attorney's office regarding the process which would be taken should the Board uphold the Zoning Administrator. She said once it went to the Circuit Court, if the directives of the Court could not be fulfilled, it would come back to the Court and be up to the judge as to how it would proceed.

Ms. Gibb moved that the Board defer decision on A 2008-SU-008 and A 2008-SU-037 to December 15, 2010, at 9:00 a.m. She said the Cronan Family, LLC, needed to make a decision, and someone in the family may have to take over control of the decision-making process for Mrs. Cronan due to her ill health. Mr. Smith seconded the motion.

Mr. Byers said the County had been extraordinarily patient in affording the appellants 29 months to reach a resolution, and he would not support the motion, stating that he had no confidence that anything would be accomplished by waiting another month.

Mr. Smith remarked that there had been a recent similar appeal where the Board had bent over backwards to try to do the right thing and had given the appellant one last deferral. He said it would not harm the County to wait one more month on the appeals.

Ms. Gibb stated that this would be the last deferral and commented that had she not seen the type of irrevocable contract sought by Mrs. Cronan for years due to the economy.

The motion carried by a vote of 4-1. Mr. Byers voted against the motion. Mr. Hart recused himself from the hearing. Mr. Beard was absent from the meeting.

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~ ~ ~ November 17, 2010, After Agenda Item:

Approval of January 9, 2007 and February 27, 2007 Minutes

Mr. Hammack moved to approve the minutes. Mr. Byers seconded the motion, which carried by a vote of 5-0-1. Mr. Smith abstained from the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ November 17, 2010, After Agenda Item:

Proposed Revisions to Board of Zoning Appeals By-laws

Mr. Hammack moved to approve the proposed revisions to the Board of Zoning Appeals by-laws. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

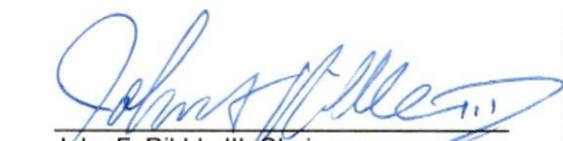
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As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Suzanne Frazier

Approved on: October 22, 2104


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, December 1, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Absent from the meeting was Thomas W. Smith III.

Chairman Ribble was not present, so Vice Chairman Hammack called the meeting to order at 9:15 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were few people present, the Vice Chairman directed the clerk to administer the oath to participants in all hearings, who swore or affirmed that their testimony would be the truth. There were no Board Matters to bring before the Board, so the first case was called.

~ ~ ~ December 1, 2010, Scheduled case of:

9:00 A.M. JOHN J. LORIA AND PATRICIA R. LORIA, SP 2010-DR-052 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1025 Delf Dr. on approx. 20,576 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((15)) 11.

Vice Chairman Hammack called the applicants to the podium.

Thomas J. Striegel, 1612 K Street, NW, #900, Washington, DC, architect and agent for the applicants, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-DR-052, subject to the proposed development.

Mr. Striegel presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed addition was requested, because the applicants wanted to have Ms. Loria's mother move in with them to reside in the accessory dwelling. The arrangement would allow her mother to continue to be independent. Mr. Striegel explained the floor plan, stating the accessory dwelling would be in harmony and compatible with the existing dwelling. He said the Lorias had informed their neighbors of the proposal, and the neighbors all supported it.

In response to a question from Vice Chairman Hammack, Mr. Striegel said the applicants had reviewed and agreed with staff's development conditions.

Ms. Hedrick responded to a question from Mr. Hart regarding the proposed and existing stoops, stairs, and eaves, confirming that they were each by-right constructions.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve SP 2010-DR-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

JOHN J. LORIA AND PATRICIA R. LORIA, SP 2010-DR-052 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1025 Delf Dr. on approx. 20,576 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((15)) 11.

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2010; and

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

1. The applicants are the owners of the land.
2. The staff recommends approval.
3. The rationale of staff is adopted.
4. There are letters of support.
5. There is no opposition to the accessory dwelling unit.
6. There are many of us that are facing the same issue and this seems to be a very reasonable way to resolve the issue of independence for those that are aging, and yet provide the kind of support and comfort that they need.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, John J. and Patricia R. Loria, and is not transferable without further action of this Board, and is for the location indicated on the application, 1025 Delf Drive (20,576 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Davis Buckley, A Professional Corporation, Architects and Planners, dated May 20, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special 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.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,350 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

11. Parking shall be provided on site as shown on the special permit plat.

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.

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 5-0. Chairman Ribble was not present for the vote. Mr. Smith was absent from the meeting.

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~ ~ ~ December 1, 2010, Scheduled case of:

9:00 A.M. THOMAS S. CHERRY, SP 2010-PR-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 3115 Northwood Rd. on approx. 11,770 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((26)) 1.

Vice Chairman Hammack called the applicant to the podium.

Thomas Cherry, 3115 Northwood Road, Fairfax, Virginia, reaffirmed the affidavit.

Chairman Ribble assumed the chair.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-PR-054, subject to the proposed development conditions.

Mr. Cherry presented the special permit request as outlined in the statement of justification submitted with the application. He explained the previously approved and subsequently overturned variance. Mr. Cherry explained the safety concerns which led to the special permit request, the topography of the property, the design of the proposed garage, and the impact on the neighborhood.

Discussion ensued regarding the differences between the previous variance application and the present special permit application, the character of the subject neighborhood compared to other surrounding neighborhoods, the purpose and dimensions of the proposed workshop area, and the narrow width of the proposed garage.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition: Stephen Weidman, neighbor to the applicant, and George Trowbridge, no addresses given. Their main points were the intention to preserve the integrity of the neighborhood, the safety of the neighborhood, other by-right sheds in the neighborhood, the character of the neighborhood being more inclusive of carports and driveways than garages, the concern with setting a precedent where surrounding neighbors would also apply for a garage addition, and the structure being a violation of the subdivision covenant.

Mr. Cherry came forward in rebuttal. He explained that the size of the garage was not excessive, that there was a positive property value impact, and that the covenants and restrictions prevented the installation of a detached shed. A neighboring home had an approved variance, and there was by-right conversions of several carports into garages by neighbors.

In response to Board questions, staff explained their analysis was unchanged, whether the applicant designated a portion of the structure as workshop space, or requested the whole structure as solely a garage use.

As there were no additional speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-PR-054 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS S. CHERRY, SP 2010-PR-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 3115 Northwood Rd. on approx. 11,770 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((26)) 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 December 1, 2010; and

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

1. The applicant is the owner of the land.
2. In general the application meets the required standards for a special permit.
3. The rationale in the staff report is adopted.
4. The Board has staff's recommendation of approval.
5. The lot is very narrow.
6. The other lots in the area are all kind of narrow, but this lot and a couple around it have very steep backyards sloping up.
7. Even if they wanted to put a driveway around the house and have a detached garage in the rear, it is unsure how they could do that. They would have to do a lot of grading, and there would be slope issues and things. As a functional idea, it is not going to work.
8. If a house like this wants to have some place to park the cars under a roof, it is going to be in approximately the same configuration that it is in.
9. There is a mix of carports and garages in the neighborhood.
10. The carports and garages in the neighborhood are about the same impact as each of them has a pretty substantial roof on it.
11. Whether the side walls at one end were enclosed or not, or whether there were doors on both of the bays in front, it really did not change the bulk or the massing of it. It was more the placement of the structure and roof.
12. Many of the homes have either a two-car carport or two-car garage, and whether those structures were carports or garages did not make a whole lot of difference in terms of impact on the neighbors. Whether it was closed in or not, the ones that looked better were probably the ones that were closed in, and some of that shows in the photos, that the ones with carports sometimes have a lot of trash cans and things piled up that would otherwise be stored inside, but are on display because the carport cannot be enclosed.
13. There is not a significant negative impact from having an enclosed structure of that size compared to an open carport or something else.
14. There are different standards now for looking at this application then there were for the variance ten years ago. Under Sect. 8-922, it is somewhat easier for an applicant to satisfy the legal requirements.
15. It was thought that there was a hardship because of the topography and the narrowness of the lot. The topography was the driving circumstance at that time. The vote was four to three; however, the judge disagreed with that.
16. The statute is clearer now that the Circuit Court can do a de novo review.

17. As far as the current application and the applicable standards for a reduction in minimum yard, all of them are satisfied.
18. In regard to Subsection 9 of 8-922, that the BZA determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot, a garage that is 18 feet wide certainly is the minimum.
19. They asked for two more feet ten years ago that would not be allowed as a special permit, but at 18 feet, it is a permissible application.
20. There may end up being functional problems with an 18-foot wide garage but that does not necessarily prevent the Board from approving it.
21. It may not be ideal for a two-car family, but on a lot like this, it is certainly a more reasonable request than if they were going any closer to the line.
22. The workshop in the back was a little more troublesome because of the configuration of the existing structure with the roofline coming down almost to the ground, but that is being changed. It is understandable there would be problems storing anything in a garage that is 18 feet wide and some storage space would be needed at the rear.
23. The roofline and the impact of the wall were looked at, and there is not going to be a significant negative impact, particularly on the next-door neighbor to the left, whether the garage extends back the full 32 feet or it is notched in for the last ten feet.
24. The Board does not always approve extensions that are 30-some feet long into a minimum side yard, but in this case, there is not going to be a significant impact.
25. The house next door is about the same distance from this house as all the other houses in the neighborhood, and they are all similarly situated on the lots.
26. On that side there are windows on the upstairs but the downstairs is just a solid wall and there is a big bush there. It seems that there would not be a significant negative impact on the upstairs windows of the house next door whether the workshop notched over a few more feet or not.
27. Based on the facts before the Board, it is concluded that there would not be a significant negative impact for allowing the further extension of the workshop in the back over and above the extension of the garage.
28. Looking at the legal issue about the Bell case, there is no recollection of anyone making that argument before. Fairfax County's ability to enact an ordinance that allows certain modifications to location of structures by special permit is consistent with what the Court allowed in Bell.
29. The issue of invalidation of a local ordinance as being arguably inconsistent with what the General Assembly has authorized is a matter for the Circuit Court to decide and not the Board of Zoning Appeals.
30. It is not the Board's function to invalidate the local ordinance and determine that the Board of Supervisors has gone beyond what the General Assembly allowed.
31. People argue covenants to the BZA, but the BZA is not allowed to reach those issues. A covenant is a private matter between private parties. There may be questions about whether the covenants are valid or enforceable or which lots can enforce the covenants against which other lots, but these two lots seem to be in different sections of the same subdivision.
32. The Board does not reach those covenant issues. That is for a court to decide, and if the neighborhood association or neighbors take it to court, and a judge gets into that, those issues would not be affected by a zoning approval. If the covenants preclude this for some reason, the Board is not changing that, and a judge can sort that out.
33. With the imposition of the development conditions recommended by staff, the potential impacts of the structure have been satisfactorily mitigated.
34. A specific reference is made to the drawings, that they are consistent with the other structures. Most of the houses on the street seem to be one of two. There was sort of a two-story house and a split-level house, and they all sort of had the carport or the garage to the side.
35. What is proposed in terms of the architecture and the materials is very much consistent with what is already there, whether it is a carport with a roof on it, or some people have enclosed them.
36. The Board has done a case-by-case review.
37. The Board has listened to the professional staff's recommendation and their conclusions about whether the application satisfies the Ordinance.
38. The Board agrees with those conclusions, and with those additional findings of fact, the applicant has cleared all the hurdles.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story garage and workshop addition (approximately 590 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC, dated January 12, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,500 square feet existing + 3,750 square feet (150%) = 6,250 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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~ ~ ~ December 1, 2010, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 20.0 ft. from front lot line, accessory structure to remain 9.8 ft. from rear lot line and accessory storage structure to remain 0.0 ft. from rear lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006).

Chairman Ribble noted that SP 2010-LE-052 had been administratively moved to January 26, 2011 at 9:00 a.m. for ads.

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~ ~ ~ December 1, 2010, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage. Located at 8116 Martha St.

on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10
(Concurrent with SP 2010 LE-053).

Chairman Ribble noted that VC 2010-LE-006 had been administratively moved to January 26, 2011 at
9:00 a.m.

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~ ~ ~ December 1, 2010, After Agenda Item:

Approval of March 27, 2007, April 10, 2007, and May 1, 2007 Minutes

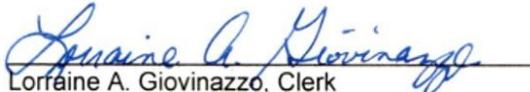
Ms. Gibb moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 6-0.
Mr. Smith was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, December 8, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 8, 2010, Scheduled case of:

9:00 A.M. HIGHLANDS SWIM AND TENNIS CLUB, INC., SPA 76-S-214 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend S 214-76 previously approved for a swim and tennis club to permit site modifications. Located at 1515 Bryan Branch Rd. on approx. 9.42 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 4A and 31-3 ((1)) 185A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Sara V. Mariska, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, requested a one-week deferral. She explained that due to a last minute issue regarding a trail easement, the applicant would like another week to allow further conversation with the Park Authority and staff to work out an agreement.

Mr. Hammack moved to continue the public hearing to December 15, 2010, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ December 8, 2010, Scheduled case of:

9:00 A.M. PETER & MICHELE BROWN, SP 2010-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.6 ft. from rear lot line. Located at 9510 Blythe Dale Ct. on approx. 15,589 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-3 ((16)) 39.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Smith made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Michele Brown, 9510 Blyth Dale Court, Vienna, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-HM-057, subject to the proposed development conditions.

Ms. Brown presented the special permit request as outlined in the statement of justification submitted with the application. She said the deck met all the required standards set forth in the Zoning Ordinance.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-HM-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER & MICHELE BROWN, SP 2010-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.6 ft. from rear lot line. Located at 9510 Blythe Dale Ct. on approx. 15,589 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-3 ((16)) 39. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants have satisfied the six specific requirements set forth under Sect. 8-922 of the Zoning Ordinance.
3. The proposed reduction does not adversely impact the use or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
4. The Board 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 256.0 square feet) of the addition (screened porch), as shown on the plat prepared by Patrick A. Eckert, Land Surveyor, Alexandria Surveys International, LLC, dated August 4, 2010 and signed August 9, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,850 square feet existing + 7,275 square feet (150%) = 12,125 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ December 8, 2010, Scheduled case of:

9:00 A.M. JONG YEOL NA & KYUNG H. NA, SP 2010-SP-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 13.8 ft. with eave 12.7 ft. from side lot line. Located at 9723 Thorn Bush Dr. on approx. 5.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 97-3 ((15)) 51A.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Stephen K. Fox, 10511 Judicial Drive, Fairfax, Virginia, the applicants' agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart and Ms. Hedrick discussed the house location survey contained in the appendices in the staff report. In response to a question from Mr. Hart, Ms. Hedrick said that the applicants were issued a Notice of Violation for land disturbing activity exceeding 2500 square feet in a Resource Protection Area (RPA). She also noted that the garage was larger than the survey indicated, and the applicants were required to obtain another building permit showing the location of the structure.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the applicants were pursuing legal recourse against the contractor that built the garage contrary to the building permit, and his clients had not asked for a larger garage nor were they aware that it had been built larger than requested on the permit application. Mr. Fox said the applicants were under a deadline with the General District Court to remedy the grading violations and were in the process of taking corrective action.

Mr. Hart and Mr. Fox discussed the 2008 building permit application and the engineering firm that certified to the validity of the dimensions contained thereon.

Chuck Dunlap, representing Walter L. Phillips Corporation, the engineering firm who was preparing the revised building permit application, confirmed for Mr. Hart that no RPA exception was needed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SP-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JONG YEOL NA & KYUNG H. NA, SP 2010-SP-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 13.8 ft. with eave 12.7 ft. from side lot line. Located at 9723 Thorn Bush Dr. on approx. 5.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 97-3 ((15)) 51A. 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 8, 2010; and

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

1. The applicants are the owners of the property.
2. The applicants have shown compliance with the required standards.
3. The error was done in good faith.
4. Unlike some of these cases, it appears something was engineered beforehand.
5. A building permit application and plat were submitted and approved, and then somehow, on this very large lot, the garage still was placed too close to the side line.
6. It is hard to tell from the drawing exactly how that happened, whether the garage was further forward than they thought it was going to be, or it was more than 30 feet away from the house, or maybe the house was not quite in the same place to begin with.
7. However that came about, it appears that it is either a mathematical error on the drawing or some kind of stakeout error in the field.
8. The size of the structure is a little different from what is on the approved building permit, i.e., about a foot more or less one way or another in each direction.
9. It is a very large garage; it is as big as some houses in terms of the footprint.
10. On a lot of this size, the impact of the larger footprint is meaningless.
11. There is very large vegetation all around. It would be very difficult to see the garage unless you were up close to it.
12. Looking at the contour lines, the garage is sort of at the top of a very steep slope.
13. Looking at the plat in detail, it looks like there is a drop-off of in excess of twenty (20) feet.
14. It is hard to see how they even got it as close to the line as they did.
15. With the topography there and the mature vegetation, the structure would not have a significant impact on anyone, even as close as 13.8 feet.
16. There is a letter in the staff report from the property owner on that side confirming that they do not have an issue with the location of the garage, as long as it does not affect their ability to transfer the property, and the Board could not see how it would.
17. Given that the error was done in good faith and the applicants are trying to resolve it, and given that the structure is not going to have a significant impact on anyone, the Board has determined that the criteria have been met.
18. The applicants will have to go through a further layer of review with DPWES, at least as to the grading plan.
19. It is not clear how the applicants ended up disturbing more than 2500 square feet, but the Board will leave that to be resolved by DPWES.
20. The Board has determined that the criteria in the Sect. 8-922 motion have been satisfied.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 accessory structure (detached garage) as shown on the plat prepared by Walter L. Phillips Incorporated, dated May 30, 2010 as revised through October 25, 2010, as submitted with this application and is not transferable to other land.
- 2. A building permit and final inspections for the accessory structure shall be diligently pursued and obtained within six (6) months of final approval of this application or this special permit shall be null & void.

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

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

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~ ~ ~ December 8, 2010, Scheduled case of:

9:00 A.M. MICHAEL S. AND SHARON K. DEFFERDING, SP 2010-MA-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.6 ft. from rear lot line. Located at 6818 Alpine Dr. on approx. 42,596 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 74.

Chairman Ribble noted that SP 2010-MA-056 had been administratively moved to January 12, 2011, at 9:00 a.m., at the applicants' request.

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As there was no other business to come before the Board, the meeting was adjourned at 9:50 a.m.

Minutes by: Suzanne Frazier

Approved on: October 29, 2014


 Lorraine A. Giovinazzo, Clerk
 for Kathleen A. Knoth, previous Clerk
 Board of Zoning Appeals


 John F. Ribble III, 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 Wednesday, December 15, 2010. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. As a matter to be presented before the Board, Chairman Ribble took the opportunity to introduce and welcome Ms. Barbara Berlin, the new Director of Zoning Evaluation Division, Department of Planning and Zoning. He then reviewed the policies and procedures of the Board of Zoning Appeals, and called for the first scheduled case.

~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 (change in development conditions) (*Admin. moved from 8/11/10, 9/22/10, and 11/17/10 at appl. req.*)

Chairman Ribble noted that SPA 95-V-031-04 had been administratively moved to January 26, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. PETER W. AND RITA M. LEACH-LEWIS, SP 2010-SU-058 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 32.0 ft. from front lot line and 12.0 feet from a side lot line. Located at 6209 Knoll View Pl. on approx. 10,690 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 91.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Heltzel, the applicants' architect and agent, 9389 Forest Wood Lane, Manassas, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-SU-058 for the front porch, subject to the proposed development conditions.

In response to a question from Mr. Hammack, Ms. Hedrick concurred that it was the HVAC mechanical electrical unit that was too close to the side lot line. She said a building permit was obtained in 1982 to allow construction of an addition 12.1 feet from the northern side lot line. However, the enclosure of the HVAC mechanical unit was not shown on the building permit, and because the mechanical structure was enclosed and attached to the house, it was determined to be an addition. Therefore, it was located too close to the side lot line.

In response to questions from Mr. Hart, Ms. Hedrick said staff would add a development condition stating that, if required, the applicants should obtain the necessary permits, specifically electrical permits, to ensure that the structure was legal and safe.

Mr. Heltzel said he did not have much to add to the justification as stated in the staff report. He said he was retained by the applicants, because they were concerned that their project be designed to assure it was harmonious with and had no adverse impacts on the neighbors and neighborhood. He gave the history of the HVAC unit up to its subsequent enclosure.

In response to a question from Mr. Beard, Mr. Heltzel explained the components of the unit. He said it was basically an air handler unit for the mechanical system, and it was power served. It was not a condenser.

Chairman Ribble called for speakers.

Rita M. Leach-Lewis, 6209 Knoll View Place, Centreville, was administered the oath. She explained the 1982 addition, and that the structure in question was an air conditioner for the addition. She stated there was absolutely no room in the structure for any type of storage.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-SU-058 for the reasons stated in the resolution.

Discussion ensued regarding permits that may be necessary concerning the HVAC unit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER W. AND RITA M. LEACH-LEWIS, SP 2010-SU-058 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 32.0 ft. from front lot line and 12.0 feet from a side lot line. Located at 6209 Knoll View Pl. on approx. 10,690 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 91. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 2010; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval for Reduction in Minimum Yard Requirements Based on Error in Building Location.
3. The applicants have satisfied the specific subsection set forth under that section of the Ordinance, in particular that the non-compliance was done in good faith at the time the air handler was constructed in 1982.
4. The applicants have satisfied the six required subsections set forth under that Section. of the Ordinance, in particular. 4, that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, and scale of the surrounding structures, and 5, that the proposed development does not adversely impact the use and enjoyment of any adjacent property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

- 1. This special permit is approved for the location and size of a one-story, roofed deck (front porch) and dwelling, as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated March 7, 2005, as revised and signed by John F. Heltzel, AIA, PC, dated October 8, 2010, as submitted with this application and is not transferable to other land.
- 2. The roofed deck (front porch) shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
- 3. The applicants shall obtain any permits and inspections applicable to the construction of the HVAC mechanical unit enclosure within 180 days.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. HIGHLANDS SWIM AND TENNIS CLUB, INC., SPA 76-S-214 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend S 214-76 previously approved for a swim and tennis club to permit site modifications. Located at 1515 Bryan Branch Rd. on approx. 9.42 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 4A and 31-3 ((1)) 185A. *(Continued from 12/8/10.)*

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sara Mariska, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, reaffirmed the affidavit.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Debra Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 76-S-214 for the reasons outlined in the staff report with adoption of the revised proposed development conditions.

Ms. Hedrick noted that although no additional impervious surfaces were proposed with the application, since the gross floor area would increase more than 2,000 square feet, the applicant would be required to go through a site plan process, or may request a minor site plan with approval of the County Executive.

Kirk Holley, Fairfax County Park Authority, was administered the oath. Responding to a question from Mr. Hammack concerning how the County was bound by a trail easement, he explained that the Park Authority had the independent right of and process for land acquisition matters and, therefore, the Park Authority could take care of the nature of the easements and the vacation processes. He briefly explained how staff arrived at the unique development conditions. He said over the past 20 years, with encouragement from user groups, staff sought, without success, to obtain an easement from the Highlands Swim Club to be able to form a developed trail. Mr. Holley said when this application came to the Park Authority's attention, staff asked Zoning Evaluation if it could find a nexus of a relationship between the trail as a County Plan issue with the other recreational amenity uses requested by the swim club. Issues raised by the applicant such as screening and the trail's location to minimize its use from the club's activities were negotiated by the Park Authority. Some conditions were written that were thought to be responsive to the club's issues, but would not deter the ultimate ability to construct the trail.

Mr. Hammack expressed his concern over the Board's ability for enforcement if this were to come back before it. He said he had some reservations concerning the development conditions.

Discussion ensued regarding wording of development conditions, a Hold Harmless Agreement, striking certain language, rephrasing specific language regarding granting an easement for the snack bar, a sewer easement matter, the BZA's responsibility for mitigating and having no control of what the Park Authority wanted, and the nexus between the Park Authority's request for an easement and the applicant's requested special permit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Ms. Gibb's questions. With regard to the nexus, she explained that the connection was due to the applicant increasing the site's square footage and floor area ratio by over 50 percent, which increased the use of the site. She noted specifics about the existing silo, expansion of several existing amenities, and the overall increase of the site's use. Ms. Langdon addressed the Comprehensive Plan language regarding trails.

Discussion ensued regarding a Hold Harmless Agreement.

Ms. Mariska presented the special permit request as outlined in the statement of justification submitted with the application. She said the swim club existed in the County since 1965, and the silos were there when the club acquired the property. She noted the club's amenities were located on two levels, and explained the change requested to each. The applicant was not asking for an increase in membership or use of the property nor to add a new use; but rather proposed a relocation to make the facility more logically constructed and accessible. She said technically they would add 2,206 square feet of gross floor area, but there would be no new structures or new impervious surfaces. Ms. Mariska said the trail easement requested by the County was a major concern, and was opposed by the club, because of the proposed location on the property. She noted that the close proximity of the trail to the tennis courts was of significant concern, and the applicant proposed that the Park Authority construct an exterior fence about three feet outside of the courts to prevent interference or distraction for those using the courts. Unfortunately, she said, they had not yet been able to come to an agreement. The club would continue to seek a resolution with the Park Authority, but respectfully request that Condition 14 be removed.

Discussion ensued regarding Lot 26B, a privately owned adjacent property, which was approached by the Park Authority several times, but continued to decline granting the County an easement over that property.

Chairman Ribble called for speakers.

Steve Pelak, 6326 Kellogg Drive, said he served as a volunteer president on the Board of Directors for the Club. The idea was to make the club more accessible, that it was not fenced, and they sought to serve a good community purpose. The club was willing to bear added costs, such as increased vehicle parking for trail users.

William E. Pickens III, was administered the oath. He lived at 7009 Gerard Street, McLean, Virginia, and said he was with the Fairfax Trails and Stream volunteer group, which had about 350 members. It was a citizen volunteer organization dedicated to the stream preservation and trail development in stream valleys. He indicated the areas where Pimmit Run Trail was developed, proposed development, and locations where the easement did not exist. He said the Pimmit Run Trail was basically a local community trail used predominately by local residents. It was continually used, and it meant a lot to the local community. Mr. Pickens asked the Board to support the easement, whether it was a part of the submitted language or what may be negotiated. In response to a question from Ms. Gibb, Mr. Pickens clarified locations of existing easements and those areas where they connected or were expected to be placed. He said he would correct one matter, that there was no access to Bryan Branch Road during the winter because of a locked gate.

In response to Mr. Byers' question of staff that at what point in the application's process did the issue of the easement come up, Ms. Hedrick said that, because of an internal issue regarding distribution, the easement matter came up rather late. She said the Park Authority was notified by certified mail, but its planning staff was not notified until very late in the application process, within a few days before staff's report publication.

Mr. Byers commented that, in his six years on the Board, he did not remember a time when the Board had put these kinds of conditions with regard to an easement into a special permit application. He asked if the Board did them in the past.

Ms. Langdon said originally an easement issue was far less complicated and was very similar to what staff normally did as a suggested development condition. She acknowledged that this application was different, because the applicant wanted to keep their scheduled hearing date while continuing to work with Park Authority staff to come to a resolution acceptable to both parties. Ms. Langdon added that most of the language was suggested by the applicant and had been accepted by the Park Authority. She agreed that the condition was complicated.

Ms. Hedrick noted that the original Development Condition 14, published in the staff report, was taken from the Potomac School's special exception application's development conditions, in which the school dedicated its easement for the Pimmit Run Stream Valley Trail. She said staff was satisfied with them. It was the applicant who made the current changes, and the Park Authority was amenable. Ms. Hedrick said she and Park Authority staff had met three times over the past week, and were trying to make the condition work for everybody.

Mr. Beard clarified that the Potomac School's land use special exception application required the trail easement. It was not volunteered by the school, but was a part of the application as per the Comprehensive Plan.

Ms. Hedrick pointed out that Appendix 5 of the original staff report was the Park Authority's November 29, 2010, memorandum which specifically referred to the Comprehensive Plan's language and the directive of the Board of Supervisors' December 11, 2000 resolution for parks and recreational open space to be deeded to the Fairfax County Park Authority. She noted that the Park Authority had included the specific language from the Comprehensive Plan.

Donald Borcharding, 1548 Forest Villa Lane, McLean, Virginia, was administered the oath. He wanted to make it known that there was an alternate route for the Pimmit Run Trail, rather than its current direction that ran through the Potomac School grounds and several roadways. He indicated those areas where the trail could be rerouted and still be effective. He noted that the original plan was the trail would run along the stream valley, but now it was proposed to run through several developments. He said it was not totally a stream valley trail anymore. Mr. Borcharding said he spoke with the pastor of a church whose parking lot was crossed over to meet up with the other side of the trail. The pastor said he had no problem at that time, as long as the crossover remained informal, but if it were to become part of a published trail, he would expect indemnification against liability from those using the trail. Mr. Borcharding said twice he spoke with three property owners whose land the trail ran across, and each owner said he had not given the Park Authority an easement nor planned to give an easement for the trail to cross their properties.

Candace Sherber, 1341 Potomac School Road, McLean, Virginia, came forward to speak. She said thirty years ago she and her husband purchased several acres where they built their home. They were always aware that their property abutted County park land. She noted that a portion of their property they owned on both sides of Pimmit Run's stream valley. Ms. Sherber said they loved and appreciated nature, and had no problem with the trail's use. She said over the last five years the trail's use had dramatically changed. She noted there was a huge increase in the number of walkers, trash, noise, there were many dogs left off leash and running at large, and a running group who ran at night that wore minors' hats, carried pie pans, and banged and marked trees with flour to indicate their way for the following night's run. Ms. Sherber said she always spoke to trespassers in a courteous and respectful way, but a number of times she was treated to bullying, profanity, and some running their dirt bikes up through the back of her yard and using her driveway to get onto another private road. It was terribly interruptive and distressing. Ms. Sherber asked the Board to consider the alternate route suggested by Mr. Borcharding. In response to a question from Mr. Beard, she said they had not granted an easement, nor to date been approached about one.

Ms. Mariska said the issue was very complicated. There were a lot of things regarding the trail that needed to be worked out. She said the club had worked for three years to move forward with the snack bar's relocation. Ms. Mariska thought the most important thing was to allow discussion to continue without hampering the club's ability to use its property in a more logical fashion.

Chairman Ribble noted that there were several issues, some to be presented to the County Attorney, and the Board's sense was to continue the hearing to another date rather than close the public hearing.

Mr. Byers said he thought it a more prudent course of action to have the County Attorney involved and take a look at the application. He said he took Ms. Mariska's point that perhaps there could be a separate agreement that was exclusive to this special permit application. He said he would like to know whether there were any discussions under the standpoint of the feasibility or desirability of purchasing as opposed to simply granting an easement. Mr. Byers said he believed both the rights of private property owners and the County needed to be protected.

Mr. Byers moved to continue SPA 76-S-214 to January 26, 2011, at 9:00 a.m. Mr. Hammack seconded the motion.

Discussion ensued among the Board members regarding concerns and understandings of the application, requests for information for the January 26th hearing, the nexus matter, and reasons for supporting the continuation of the hearing.

Chairman Ribble called for a vote, and the motion carried by a vote of 7-0.

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The meeting recessed at 11:00 a.m. and reconvened at 11:12 a.m.

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~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. MAHEDERE-SEBEHAT LEDETA LEMARIAM ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ARLINGTON, VIRGINIA, SP 2010-MA-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4214 Pine La. on approx. 4.54 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 64. (*Admin. moved from 8/11/10, 9/22/10, and 10/27/10 at appl. req.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sara Mariska, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, reaffirmed the affidavit.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Shelby Johnson, Staff Coordinator, made staff's presentation. There were two phases of development. The first phase of development, Phase 1, proposed renovations to an existing one-story with basement residential dwelling and the addition of four modular trailer buildings. The second phase of development, Phase 2, would consist of the demolition of the existing residential structure, where an additional 67 parking spaces would be constructed, and the construction of a 27,565 square-foot, 45 foot-high, multipurpose building, which would seat up to 300 worshippers. Phase 2 would also include 11,400 square feet of cellar space, which would include a fellowship hall, church office, and a rectory/minister's residence. Phase 2 would also provide for a private school of general education with a total maximum enrollment of 90 students daily.

Under the current application, SPA 82-D-047-02, the applicant sought special permit approval to permit site modifications to occur over two phases. In Phase I, the applicant proposed a school of general education with a maximum daily enrollment of 100 students for grades K-8, a child care center, also with a maximum daily enrollment of 100, and expanding the maximum allowable employees on site from 5 to 12 employees.

In Phase II, the applicant proposed to increase the maximum daily enrollment to 175 students for both the child care center and the private school of general education, when grades 9-12 would be added. The maximum number of employees proposed would increase to 20.

Staff concluded that, with the adoption of the proposed development conditions, the proposal was in harmony with the Comprehensive Plan, and in conformance with the applicable Zoning Ordinance standards. Staff recommended approval of SPA 82-D-047-02, subject to approval of the revised development conditions.

Ms. Johnson responded to Mr. Hart's questions regarding the conservation easement, and the RPA's location. Ms. Johnson gave a brief history of the application's processing. She clarified that the applicant had an underground detention storm water management facility under its parking lot.

Ms. Mariska presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant recently acquired the subject property and was excited about establishing their church and becoming integrated into the community. She said the church worked very hard with staff and was happy to now have staff's recommendation of approval. Ms. Mariska noted that the church agreed to a number of development conditions that addressed staff's concerns.

Discussion ensued regarding the hours of operation and the development condition that pertained to the lighting, specifying the hours of illumination and cut-off times.

Ms. Johnson said staff would propose a development condition that addressed the use of lights for the church's special events, the occasions, and the holidays that occur throughout the year.

In response to Mr. Hart's comment about future expansion of the church, Ms. Mariska said the applicant understood and concurred with its growth limitations.

Chairman Ribble called for speakers.

Me Tin Cheung, 6437 Lincolnia Road, Alexandria, Virginia, came forward to speak. Ms. Cheung said her concern was a non-residential use in a residential area, and how the church's use, the traffic, and parking would impact the neighborhood.

Addressing Ms. Cheung's concern, Mr. Hart said there were several uses allowed in non-residential areas, and each must meet special permit standards with any imposed development conditions so as to mitigate adverse impact on the residential surroundings. He briefly explained the special permit process and the church's proposed traffic flow.

In rebuttal, Ms. Mariska spoke about the church's special events held yearly and expected activity. She noted that the applicant had worked with another church in the vicinity to schedule and coordinate their

services and events to assure there would not be a significant burden on each other and the community at the same time.

In response to Mr. Beard's question of what was the number of actual church members, Ms. Mariska said there were 250, and that the church was in existence for six years.

Ms. Mariska addressed Mr. Smith's questions concerning another church in the area where a number of complaints were filed about drainage issues and water run-off that ran across Braddock Road. She said they would be happy to coordinate service schedules with that church too, and noted that the intent at site plan was to monitor the amount of drained off water.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-MA-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

MAHEDERE-SEBEHAT LEDETA LEMARIAM ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ARLINGTON, VIRGINIA, SP 2010-MA-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4214 Pine La. on approx. 4.54 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 64. (Admin. moved from 8/11/10, 9/22/10, and 10/27/10 at appl. 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 December 15, 2010; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This started out as a very difficult application, but as it has come through the process, it has cleared the necessary hurdles.
5. Stormwater was going to be a very difficult issue, but with the development conditions, if it turns out that they can't quite do what has been proposed, they are going to have to come back for an SPA.
6. The Department of Public Works and Environmental Service will be evaluating this, but as the development conditions are drafted, it's sufficient.
7. The facility itself, the building, parking, the underground stormwater, and the street improvements take up the lion's share of what is left on the site outside of the Resource Protection Area.
8. The applicant has represented that this is sufficient for their needs.
9. Staff has indicated that it meets the criteria in the Ordinance.
10. It is in compliance with the Comprehensive Plan.
11. While this is not the first church in the neighborhood, we have other churches throughout the County that are certainly compatible with a predominately residential neighborhood, and we have neighborhoods with multiple churches.
12. It does behoove the applicant to try and coordinate the comings and goings with both the adjacent church and the church on the corner, maybe even staggering services 15 or 30 minutes, which the Board is not going to tell you to do that exactly in the development conditions, but if you stagger the services a few minutes, that may spread out the comings and goings enough that it is better for everybody.
13. The Board does not think anybody in any of these churches is going to want all the traffic dumping out at the same moment onto Lincolnia Road.
14. With the imposition of the development conditions, the impacts are sufficiently mitigated.

15. The structure shown in the drawings is attractive, and at this height it is not necessarily going to be out-of-scale with the surrounding neighborhood, or really inconsistent with many other churches that have been approved in residential areas.

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 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, Mahedere-Sebehat Ledeta LeMariam Ethiopian Orthodox Tewahedo Church of Arlington, Virginia and is not transferable without further action of this Board, and is for the location indicated on the application, 4214 Pine Lane, and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by William D. Hume, P.E., Bury + Partners Engineering Solutions, dated March 1, 2010, as revised through December 2, 2010.
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 uses.
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 amendment, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main area of worship shall be a maximum of 337 seats.
6. The design of the buildings shall be in substantial conformance with the architectural renderings included as Sheet A2-01, Church Building Elevations of the Special Permit Plat.
7. The building heights shall not exceed 60 feet for any the proposed structures shown on the SP Plat per the height definition in the Zoning Ordinance, except that domes and towers shall not exceed 62 feet in absolute height.
8. A minimum of 51% of the clear height of the lower level cellar/basement space shall be underground in order to be considered as cellar space in accordance to Sheet A4 of the SP Plat.
9. The Applicant shall comply with DPWES should it determine that a potential health risk exists due to the presence of asbestos containing rock on the application property. The Applicant shall:
 - a) Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risks, and
 - b) Commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department to minimize this risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities and covered transportation of removed materials presenting this risk, and appropriate disposal
10. Environmentally sustainable elements shall be incorporated into the proposed structures. These elements may include, but are not necessarily limited to, high-efficiency mechanical systems, use of materials with recycled content, a high performance and insulated building envelope, water efficient fixtures, low volatile organic compounds in paints, sealants and finish materials, construction waste management and storage and collection and recyclables.

11. The Resource Protection Area (RPA) shall be preserved as undisturbed open space. There shall be no clearing or grading of any vegetation within the RPA except for dead or dying trees and shrubs. Play equipment, fencing and a patio and/or deck may be provided at the rear of the rectory, however there shall be no structures or fences located at a distance further than 25 feet from the rear (south) of the proposed rectory or within the RPA.
12. 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 the Resource Protection Area (RPA), clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. The limits of the RPA and the limits of clearing shall be clearly marked for this meeting and during all phases of construction.
13. The applicant shall conform strictly to the limits of clearing and grading subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forest Management Division (UFMD), for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible as determined by DPWES. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SP Plat, they shall be located in the least disruptive manner necessary as determined by UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
14. The applicant shall submit a Tree Preservation Plan as part of the first and all subsequent site plan submissions or grading plan submissions, whichever occurs first. This plan shall designate the limits of clearing as determined in the previous development condition and require that the Resource Protection Area (RPA) and areas outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." There shall be no mowing of grass or structures in the perpetually undisturbed open space. This plan shall be prepared by a professional with experience in the preparation of tree preservation, such as a certified arborist or landscape architect, and shall be subject to the review and approval of the UFMD, DPWES. The tree preservation plan shall be prepared in conformance with the requirements of the Public Facilities Manual (PFM) and shall be submitted for review by UFMD. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.
15. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four- (4) foot high, fourteen (14) gauge welded wire attached to six -(6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Tree protection fencing shall be erected along the limits of clearing and grading wherever construction activities are proposed adjacent to areas to remain undisturbed. Super silt fence may be approved by UFMD to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

16. The applicant shall root prune and mulch, as needed to comply with the tree preservation requirements of these conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - Immediately after the Phase II erosion and settlement (E&S) control activities are complete, mulch shall be applied at a depth of three (3) inches within designated areas without the use of motorized equipment.
 - Mulch shall consist of wood chips, shredded hardwood and/or pine bark mulch. Hay or straw mulch shall not be used within tree preservation areas.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
17. The applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation conditions, and UFMD, DPWES approvals. The applicant shall actively monitor the site to ensure that inappropriate activities such as the storage of construction materials, dumping of construction debris and traffic by construction equipment and personnel do not occur within the designated tree save areas. During any clearing of tree/vegetation/structure removal on the applicant property, a representative of the applicant shall be present to monitor the process and ensure that the activities are conducted in conformance with these conditions and as approved by UFMD, DPWES. The applicant shall restore understory plant materials, leaf litter and soil conditions to the satisfaction of UFMD, DPWES if these are found to be damaged, removed or altered in any manner not allowed in writing by UFMD, DPWES. The monitoring schedule shall include weekly inspections during demolition activities and once monthly inspections during construction activities. This schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFMD, DPWES.
18. The applicant shall meet the requirements of the Tree Conservation Ordinance pursuant to County Code, Chapter 122.
19. Existing vegetation along the southern, southeastern, and southwestern lot lines shall be preserved and maintained and shall satisfy Transitional Screening 1 (TS1). TS1 shall be provided along the northeastern and northwestern lot line, except it may be modified along the western lot line adjacent to the turn around with additional plantings to meet the intent of Transitional Screening 1 as determined by UFMD;
 - Landscaping shall include substantial ornamental and shade trees, shrubs, foundation and understory plantings in order to soften the impact of the proposed use and screen the dwelling and proposed church structure.
 - The number, size, species and location of plantings shall be provided in consultation with UFMD and DPWES. All vegetation shall be maintained in good condition and any dead or dying vegetation shall be replaced with like kind as determined by the Urban Forester.
20. The barrier requirement shall be waived along the southern, southeast and southwest lot lines (south of the RPA). The existing vegetation shall be used to satisfy the barrier requirement along these lot lines. Barrier F (a 6-foot high board-on-board fence), subject to sight distance, shall be provided along the eastern and western lot lines north of the RPA, in a location as determined in consultation with UFMD.
21. Parking shall be provided as depicted on the special permit plat, and shall consist of a minimum of 132 parking spaces. All parking shall be on site.

22. Peripheral parking lot landscaping shall be waived along the south side of the parking lot in favor of existing vegetation. All other parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
23. Prior to issuance of a Non-RUP, the applicant shall construct all road improvements to include a proposed stub out along the western end of Pine Lane and a tie-in to the right-of-way onto Outlet Road in consultation with the Fairfax County Department of Transportation (FCDOT), and as approved by the Virginia Department of Transportation (VDOT). The applicant shall provide all ancillary easements, including emergency vehicle and sidewalk easements.
24. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
25. Stormwater Management (SWM) measures may be provided via an underground detention facility as shown on the SP Plat as determined by DPWES. The majority of Best Management Practices (BMPs) shall be met through a conservation easement placed over the RPA. The remainder of required BMP will be met through natural or structural systems. If a modification of the PFM to permit the proposed stormwater management/best management practices as shown on the SP Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SP Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
26. All 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. All lighting shall be full cut-off luminaries, shall be controlled by timers and shall be turned off when the site is not in use, except for security lighting, and in no event later than 11:00 p.m., except for up to 10 special occasions per year. Lighting shall not be installed in landscape islands. No uplighting of landscaping, signage or architecture shall be provided.
27. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
28. The use of loudspeakers shall not be permitted outside the building.
29. The residential structure on site shall only be occupied as a rectory for the place of worship use.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to this special permit amendment. The Board of Zoning Appeals may grant additional time 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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

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~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use

Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, and 7/28/10 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to February 16, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 15, 2010, Scheduled case of:

9:00 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, and 11/17/10)

9:00 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, and 11/17/10)

Chairman Ribble called the two appeals, stating that they were being heard for decision.

Mr. Hart said he had previously recused himself on both the cases, and he would again recuse himself.

Douglas W. Hansen, Staff Coordinator, Zoning Administration Division, said since the June 17, 2008, public hearing, the two appeals were heard and deferred by the Board of Zoning Appeals eight times. At the latest meeting on November 17, 2010, the BZA further deferred decision until December 15, 2010, to allow Danella Construction Company of Virginia, Inc., an appellant and one of the tenants, one final opportunity to complete negotiations for purchasing the property from Cronan Family, LLC, the owner and other appellant. If the purchase of the property was successful, Danella Construction would take the responsibility for clearing the zoning violations, including submission of an acceptable site plan and then, subsequently obtaining the required building permits and Non-Residential Use Permits. Mr. Hansen said Danella was unable to come to an agreement with Cronan Family, LLC, for an acceptable purchase price. He requested the Board to uphold the determination of the Zoning Administrator so that legal action may be initiated to bring the property into full compliance with the Zoning Ordinance.

At the request of Chairman Ribble for a status, J. Charles Curran, Kidwell, Kent & Curran, Counsel for Cronan Family, confirmed that the two parties were unable to come to an agreement on a contract for the sale.

Francis A. McDermott, Hunton & Williams, attorney for Danella Construction Company of Virginia, Inc., said he agreed with Mr. Curran's statement. The two parties had tried very hard, but were not there, and Danella would vacate the property. He requested the Board allow them to March 30th to vacate, without the necessity to engage in a law suit or other costly complications. He said they engaged a realtor to relocate their business.

Mr. Curran requested the Board allow the same time consideration to their other tenant, Fairfax Hydrocrane, to find another property.

At the request of Ms. Gibb that staff inform the Board of its position regarding a date for the decision's deferral, Joe Bakos, Assistant Branch Chief, Zoning Enforcement/Property Maintenance, said when considering the equipment, personnel, and other things to be removed, 90 days was acceptable. He added that if the appellants were to relocate within Fairfax County, that they assured their property would be lawfully zoned for the use, so that this exercise in compliance measures need not be repeated. Mr. Bakos explained the enforcement process throughout the various stages of an appeal.

At the request of Mr. Hammack for clarification, Mr. Hansen said the Notice of Violation concerned Fairfax Hydrocrane, but was mailed to Cronan Family, LLC.

Referring to Mr. Bakos's previous comment that Danella be sure its relocation property was zoned correctly, Mr. McDermott said he wanted to make clear for the record that his client had been assured in good faith that the use was allowed on the Cronan property, and they had not known they would be in violation. He said his client tried repeatedly to get the property into compliance; that the company had 26 to 29 sites up and down the east coast, and none were ever cited for a zoning violation, as that was not the way they did business. He said Danella was seeking a relocation property, and he requested that Danella Construction not be cited for any violations, because throughout the process they tried to be of help.

Discussion ensued regarding the March 30th deferral, what companies were involved, and staff and the County Attorney's anticipated follow-up action.

Chairman Ribble called for a motion.

Ms. Gibb moved to defer decision on Cronan Family, LLC, A 2008-SU-008, and Danella Construction Company of Virginia, Inc., A 2008-SU-037, to April 6, 2011, to assure violations and relocations were completed.

Mr. Beard seconded the motion.

Discussion ensued regarding clarification of the motion to defer, the issues currently before the BZA concerning probable legal actions imposed on the appellants, future actions of Hydrocrane, the site plan matter, the usual time-frame taken by the County Attorney for its actions, and facts regarding further action if and when the determination of the Zoning Administrator were upheld.

Chairman Ribble called for a vote on Ms. Gibb's motion to defer decision on both appeals to April 6, 2011, at 9:00 a.m.

The motion carried by a vote of 5-0. Mr. Byers was not present for the vote. Mr. Hart recused himself.

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There were no Action Items on the After Agenda, but Mr. Hart referenced the forthcoming December 15, 2010 memorandum from David B. Marshall regarding a Federal Communications Commission Publication on Radiofrequency Safety, noting the importance to the County of such information concerning cellular communication towers.

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As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017



Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals