

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 24, 1989. The following Board Members were present: Chairman Daniel Smith, Ann Day, Paul Hammack, Robert Kelley, Mary Thonen, and John Ribble. Vice-Chairman John DiGiulian was absent from the meeting

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Chairman Smith called the meeting to order at 9:15 a.m., with Ann Day leading the prayer.

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Page 1, January 24, 1989, (Tape 1), Scheduled case of:

9:00 A.M. CAPTAIN AND MRS. JACK A. ENDACOTT, VC 88-M-075, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10 feet from side lot line (15 ft. min. side yard required by Sect. 3-207) located at 6362 Lakeview Drive, on approximately 10,540 square feet of land, zoned R-2, Mason District, Tax Map 61-3((14))124. (DEF. FROM 11/10/88 AT APPLICANT'S REQUEST)

Chairman Smith advised that the applicant had requested a withdrawal of VC 88-M-075 and inquired if anyone in the room had an interest in this application. No interest was voiced.

Mrs. Thonen moved to allow withdrawal of VC 88-M-075. Mrs. Day seconded the motion, which carried unanimously. Mr. DiGiulian was absent from the meeting.

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Page 1, January 24, 1989, (Tape 1), Scheduled case of:

9:00 A.M. SALCO MECHANICAL CONTRACTORS APPEAL, A 88-A-002, application under Sect. 18-103 of the Zoning Ordinance to appeal Zoning Administrator's decision to decline a request to interpret Article 13 of the Zoning Ordinance and refer such request to the Director, Department of Environmental Management, on property located at 8000 Forbes Place, on approximately 107,245 square feet of land, zoned I-5, Annandale District, Tax Map 79-2((4))703. (DEF. FROM 10/4/88 AT APPLICANT'S REQUEST)

Chairman Smith advised of a written request to withdraw A 88-A-002, and inquired if anyone in the room had an interest in this application. No interest was voiced.

Mr. Hammack moved to allow withdrawal of A 88-A-002. Mr. Ribble seconded the motion which carried unanimously. Mr. DiGiulian was absent from the meeting.

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Page 1, January 24, 1989, (Tape 1), Scheduled case of:

9:15 A.M. HAPPY FACES CHILD DEVELOPMENT CENTER, SP 88-V-035, application under Sect. 3-403 of the Zoning Ordinance to allow nursery school and child care center, located at 6215 Richmond Highway, on approximately 36,768 square feet of land, zoned R-4, C-8, and HC, Mount Vernon District, Tax Map 83-3((1))38 and Outlot A. (DEF. FROM 6/28/88 AND 8/2/88 - NOTICES NOT IN ORDER. DEF. FROM 10/4/88 AND 11/16/88 TO ALLOW APPLICANT TIME TO RESOLVE ISSUES. DEF. FROM 12/13/88 AT APPLICANT'S REQUEST)

Chairman Smith inquired if the applicant was ready to be heard. After receiving no response, he asked if anyone was present to represent the applicant.

Lori Greenlief, Staff Coordinator, advised the Board that applicant's representative had been expected to appear.

To allow the staff time to call the applicant to find out if anyone would appear, Mr. Hammack moved to defer this application until the end of the meeting. Mrs. Thonen seconded the motion which carried unanimously. Mr. DiGiulian was absent from the meeting.

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Page 1, January 24, 1989, (Tape 1), Scheduled case of:

9:15 A.M. JOHN H. BORDERS, VC 88-V-168, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 3.2 feet from side lot line (10 ft. min. side yard required by Sects. 3-207 and 2-412), located at 1604 Hollindale Drive on 24,710 square feet of land, zoned R-2, Mount Vernon District, Tax Map 93-4((6))501.

Kathy Neilly, Staff Coordinator, presented the staff report and noted a correction of the variance to 6.8 feet and not 11.8 feet as incorrectly stated in the January 17, 1989 staff report.

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The applicant, John H. Borders, 1604 Hollindale Drive, Alexandria, Virginia, spoke in support of his application as outlined in the statement of justification.

During the ensuing discussion between Mr. Borders, Chairman Smith, and Mr. Hammack, the applicant stated he would be satisfied with reducing the width of the carport from 22 feet to 20 feet, allowing the carport addition to 5.2 feet from side lot line.

Margaret Burris, 1608 Hollindale Drive, Alexandria, Virginia, spoke in opposition to the application, referring to letters she had written to the Board. She stated she felt the carport would be too close to her property and expressed concern about a possible adverse effect upon the existing drainage problem because of the lay of the land.

Mr. Ribble said he would support the application only if a condition were added to address the drainage problem.

Because the topography of the lot precludes locating the carport in the rear of the property, Mr. Hammack moved to grant-in-part VC 88-V-168, allowing construction of the carport to 5.2 feet from the side lot line, with amended development conditions as reflected in the resolution.

Chairman Smith said he could not support the application because he did not believe it was a minimum variance application; he believed the structure could have been moved forward; he did not believe the question of reasonable use had been addressed; he believed a one-car carport could suffice and could be built by right.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-168 by JOHN H. BORDERS, under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 3.2 feet (THE BOARD GRANTED 5.2 FEET) from side lot line, on property located at 1604 Hollindale Drive, Tax Map Reference 93-4((6))501, 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 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 24,710 square feet of land.
4. The topography of the lot precludes locating the carport in the rear of the property.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the revised plat is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The applicant is required to provide adequate tile drain around the new construction and along the newly-constructed driveway in order to keep water runoff off of Lot 500.
5. New plats shall be provided to reflect the variance granted.
6. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit.

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-1, Chairman Smith voted nay. Mr. DiGullian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 3, January 24, 1989, (Tape 1), Scheduled case of:

9:30 A.M. FRANCIS A. FORGIONE, VC 88-C-169, application under Sect. 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to a rear lot line to 0.0 feet from rear lot line (5 ft. min. rear yard required by Sects. 6-106, 3-307, and 2-412), located at 13100 Willoughby Point Drive, on 7,811 square feet of land, zoned PDH-3 and WS, Centreville District, Tax Map 35-3((23))(4)19.

Kathy Reilly, Staff Coordinator, presented the staff report.

The applicant, Francis A. Forgione, 13100 Willoughby Drive, Fairfax, Virginia, spoke in support of his application as outlined in the statement of justification.

Because the proposed deck might interfere with the maintenance of the AT&T easement to the rear of the property, Mrs. Thonen moved to deny VC 88-C-169.

Mrs. Day advised the applicant of his right to request a waiver of the twelve-month-wait limitation in order to redesign the proposed deck, but he expressed no interest.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-C-169 by FRANCIS A. FORGIONE, under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to a rear lot line to 0.0 feet from rear lot line, on property located at 13100 Willoughby Point Drive, Tax Map Reference 35-3((23))(4)19, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1989; and

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

1. That the applicant is the owner.
2. The present zoning is PDH-3 and MS.
3. The area of the lot is 7,811 square feet of land.
4. The proposed deck may interfere with the maintenance of the AT&T easement to the rear.

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

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

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

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

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

Mrs. Day seconded the motion. The motion carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1989.

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9:45 A.M. JAMES E. AND BETTY G. BEACH, VC 88-M-166, under Sect. 18-401 of the Zoning Ordinance to allow construction of family room addition to dwelling to 15.4 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-407) located at 3118 Westley Road on approximately 8,528 square feet of land, zoned R-4, Mason District, Tax Map 50-4((17))357.

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Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Betty G. Beach, 3118 Westley Road, Falls Church, Virginia, spoke in support of her application, as outlined in the statement of justification. She stated that her neighbors have no objections to the construction of a family room addition on her property.

There were no speakers, so Chairman Smith closed the public hearing.

Since the addition would be separated from the adjacent houses by a street, Mrs. Day moved to grant VC 88-V-166, stating that the construction and materials used for the addition must be compatible with the existing structure.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-166 by JAMES E. AND BETTY G. BEACH, under Section 18-401 of the Zoning Ordinance to allow construction of family room addition to dwelling to 15.4 feet from a street line of a corner lot, on property located at 3118 Westley Road, Tax Map Reference 50-4((17))357, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,528 square feet of land.
4. The addition would be separated from the adjacent houses by a street.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The construction and materials used must be compatible with the existing structure.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 5-1; Chairman Smith voted nay. Mr. DiGuilian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 6, January 24, 1989, (Tape 1), Scheduled Case of:

10:00 A.M. JOHN C. CAMERON, VC 88-V-171, under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.5 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), located at 7700 Robin Hood Court on 20,087 square feet of land, zoned R-2, Mount Vernon District, Tax Map 102-2((5))(5)37.

Lori Greenleaf, Staff Coordinator, presented the staff report. She called the Board's attention to a letter received on behalf of an adjacent property owner, Mrs. Nichols. Ms. Greenleaf stated that Mrs. Nichols is planning to sell her home and her son-in-law, Chris Mitchell, wrote a letter requesting a deferral to enable the future property owner to comment on the variance.

Mr. Winston Leh and Mr. Bill Quinn, both of the Longwood House Office Building in Washington, D.C., spoke on behalf of Mrs. Nichols and said they were there as friends of the family and colleagues of the late Congressman Bill Nichols. They spoke in opposition to construction of the addition to the dwelling at 7700 Robin Hood Court, until some future time when Mrs. Nichols may sell her home. They did not know when that might occur.

Inge Cameron, 7700 Robin Hood Court, Alexandria, Virginia, spoke in support of the application as outlined in the statement of justification. Mrs. Cameron stated that Mrs. Nichols formerly had been in favor of the planned enclosure. Mrs. Cameron further stated there are trees screening the proposed enclosure from the Nichols property.

Mrs. Cameron informed the Board that Mrs. Nichols had not yet put her house up for sale. The Board did not believe Mrs. Nichols' plans were predictable enough to have any effect on this application.

Mr. Leh and Mr. Quinn again came forward to request a deferral of consideration of this application until Mrs. Nichols' property could be sold. Chairman Smith asked whether Mrs. Nichols had any objection to the variance, other than having it deferred until after she sold her house. Mr. Leh and Mr. Quinn did not state that she did.

Mr. Hammack stated that, if this application was approved by the Board, the construction might well be completed before Mrs. Nichols put her house up for sale. Mr. Hammack

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asked the applicant when construction might begin if this application were approved. The applicant stated that she planned to begin construction as soon as the request was granted and that construction would, hopefully, be completed by the end of March.

It was the consensus of the Board that it would be in the best interest of both Mrs. Cameron and Mrs. Nichols for the Board to consider the application at this time.

There were no other speakers so Chairman Smith closed the public hearing.

Because the lot is exceptionally shallow, and the house is situated on the lot in an unusual way, Mr. Ribble moved to grant VC 88-V-171.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-171 by JOHN C. CAMERON, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.5 feet from side lot line, on property located at 7700 Robin Hood Court, Tax Map Reference 102-2((5))(5)37, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,087 square feet of land.
4. The lot is exceptionally shallow.
5. The house is situated on the lot in an unusual way.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Day seconded the motion.

The motion carried by a vote of 5-1; Chairman Smith voted nay. Mr. DiGuilian was absent from the meeting..

Mr. Kelley moved to waive the eight-day time limitation. Mrs. Thonen seconded the motion, which carried unanimously. Mr. DiGuilian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 8, January 24, 1989, (Tape 1), Scheduled case of:

10:15 A.M. INTERNATIONAL TOWN AND COUNTRY CLUB, INC., SPA 82-C-037-3, application under Sect. 3-103 of the Zoning Ordinance to amend SP 82-C-037 for a country club to permit addition of seasonal structure over existing tennis courts, additional parking spaces, and extension of hours of operation, located at 13200 Lee Jackson Highway on 240.87 acres of land, zoned R-1, Centreville District, Tax Map 45-1((1))11.

Chairman Smith stated that the notices were not in order, so SPA 82-C-037-3 would be deferred until the notices were put in order.

Anthony Pease, on the Board of Directors of International Town and Country Club, said he was responsible for filing the application. He questioned the need to notify all contiguous property owners because of their distance from the location of the proposed addition.

Chairman Smith asked Lori Greenlief, Staff Coordinator, to read the requirements for notification as set forth in the Zoning Ordinance, for Mr. Pease' edification. Ms. Greenlief did so.

Further questions by Mr. Pease regarding notification requirements were answered by Chairman Smith.

Mrs. Thonen moved to defer SPA 82-C-037-3 to February 28, 1989 at 10:30 a.m. Mr. Kelley seconded the motion which passed unanimously. Mr. DiGuilian was absent from the meeting.

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Page 8, January 24, 1989, (Tape 1), Scheduled case of:

10:30 A.M. DANIELLE V. BERNSTEIN, VC 88-P-170, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 24 feet from front lot line (30 ft. min. front yard required by Sect. 3-407), located at 2609 Jeanne Street on 10,057 square feet of land, zoned R-4, Providence District, Tax Map 50-1((2))111.

Chairman Smith acknowledged receipt of a written request from the applicant for a deferral of this application because the applicant could not be present at this time.

Mrs. Thonen moved to defer VC 88-P-170 until February 14, 1989 at 10:30 a.m. Mr. Kelley seconded the motion which carried unanimously. Mr. DiGuilian was absent from the meeting.

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Page 9, January 24, 1989, (Tape 1), Scheduled case of:

10:45 A.M. H.P. AND ELOISE S. SEAMON, VC 88-V-167, application under Sect. 18-401 of the Zoning Ordinance to allow creation of a single buildable through lot from combination of two (2) outlots, one having width of 10.52 feet and the other 22.79 feet (80 ft. min. lot width required by Sect. 3-306) located on Popkins Lane on approximately 19,399 square feet of land, zoned R-3, Mount Vernon District, Tax Map 93-1((1))11A and 12B.

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Chairman Smith acknowledged a written request from the applicant to defer this application in order for the applicant to meet with and address the objections of the neighboring land owners.

Denise James, Staff Coordinator, advised the Board that the applicant requested deferral until March 14 or March 21, 1989.

Mrs. Thonen moved to defer VC 88-V-167 to March 21, 1989 at 9:15 a.m. Mr. Hammack seconded the motion which carried unanimously. Mr. DiGuilian was absent from the meeting.

Richard Botterff, 7012 Davis Street, Alexandria, Virginia, a contiguous property owner, advised Chairman Smith that, if the deferral takes place, the opposition would only be stronger because the majority of the neighbors were strongly opposed to this application.

Joanne McBride of 7004 Davis Street, Alexandria, Virginia, requested that the time of the hearing on March 21, 1989 be changed to 10:15 a.m. so that she could attend.

The Board unanimously agreed to accommodate her and moved the hearing to 10:15 a.m..

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Page 9, January 24, 1989, (Tape 1&2), After Agenda Item:

Messiah Lutheran Church and United Community Ministries, Inc.  
Special Permit Amendment Application SPA 81-V-028-1

Lori Greenlief, Staff Coordinator, participated in a discussion with Board Members on a motion to defer this application, clarification of reasons for the deferral, and what additional information the Board needed to make a decision on this application.

The Board members discussed at length the additional information that might be needed to evaluate this application.

Mr. Hammack requested the staff to provide a history of the church property.

Mrs. Thonen inquired if the Board had ever allowed people, who were not directly working for the church, to live on church property. She recalled the Groveton Baptist Church, where the Board conditioned that the tenants move out since they were not considered in the category of church related.

Mr. Hammack stated that the reason the application was accepted was that Ms. Gwinn made a determination that allowing people to live in a house rented by a non-profit organization was church related. He stated it was his understanding that Ms. Gwinn made a ruling that United Ministries was church related, but that she may have done it in a hurry. He expressed concern that, if the Board denies the application for the women to live in the house, they would be overruling Ms. Gwinn's determination that this is a church related use.

Chairman Smith agreed and stated that, from all indications, it is a church related use.

Mrs. Thonen stated that, as much as she liked United Community Ministries, it is not church related.

Chairman Smith stated that United Ministries' function is that of a charitable service to the Community.

Mrs. Thonen stated that she would like it explained to her by Ms. Gwinn and the County Attorney how this organization is church related.

Mr. Hammack stated that Ms. Gwinn evaluated the acceptability of this application for purposes of being heard. She did not evaluate its merits for granting or denying. It is now up to the Board to evaluate the application and either grant or deny the request.

Mr. Hammack moved that the Board ask Ms. Gwinn and the County Attorney to come to the next meeting and explain the position of the Zoning Administrator concerning the structure on the church property being used for a church related purpose, specifically to allow three women to reside there.

010

Mrs. Thonen seconded the motion.

As a point of clarification, Ms. Greenlief stated this this house and the land it sits on was shown on the special permit plat which was approved for church and related uses in 1981. The Zoning Administrator has determined that allowing the three women to live in this house is a church related use and it is allowed under the special permit. If the BZA chooses to deny this application based on its merits and on the standards for special permit uses, it doesn't necessarily mean that the BZA is reversing the Zoning Administrator's decision. According to the Zoning Administrator, use of the property is governed by the 1981 approval of that dwelling for church related use.

Mr. Ribble stated that he would like to see the history of the church.

Mrs. Thonen stated that the people who live in the house at Groveton Baptist Church were ruled not to be in the church related category. She stated that she could not understand now how this can be different.

Ms. Greenlief stated that in the case of Groveton, the church allowed individuals who had no connection with their ministry to live in the house. But they collected rent from those individuals so the Zoning Administrator saw that differently.

Mr. Hammack stated that he did not want to talk with the County Attorney.

Ms. Greenlief stated that she had Ms. Gwinn on the phone and asked the Board what they would like to request of Ms. Gwinn.

Mrs. Thonen said she would like to go on record as saying she is very interested in how Ms. Gwinn got to the point where she thought United Ministries was church related and she would like to act on that.

The Board requested Ms. Greenlief to ask Ms. Gwinn if she would be available on February 14, 1989. Ms. Gwinn said that she could be available.

Ms. Greenlief asked Mr. Hammack if he would like to change the letter to Messiah Lutheran Church and United Community Ministries, Inc. to reflect the decision of the Board and he said that he did.

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Page 10, January 24, 1989, (Tape 2), After Agenda Item:

Approval of Virginia Electric Power Company, SP 88-L-094, Resolution

Lori Greenlief, Staff Coordinator, brought this Resolution to the attention to the Board. She pointed out that development condition number 5 stated that the waiver of the dustless surface shall expire on January 24, 1990. Since the Board usually grants this waiver for five (5) years, staff changed that to read 1994.

Chairman Smith assured Ms. Greenlief that was the Board's intention.

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Page 10, January 24, 1989, (Tape 2), After Agenda Item:

Approval of Resolutions 1/17/89

Other than the changes to Resolutions for Messiah Lutheran Church and United Community Ministries, Inc. and Virginia Electric Power Company, the Board approved the Resolutions as presented.

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Page 10, January 24, 1989, (Tape 2), Information Item:

Memo to Audrey Moore from Daniel Smith concerning Home Professional Offices

Mr. Hammack asked if staff was ready to deliver this memo once it was approved. Geri Bepko, Deputy Clerk, said that staff was ready to deliver it after Chairman Smith signed it.

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Page 11, January 24, 1989, (Tape 2), Information Item:

Interpretation from the Zoning Administrator Concerning  
Parking for Accessory Dwelling Units

Ms. Thonen referred to a memo from Ms. Gwinn stating that the Board of Zoning Appeals could not waive the number of parking spaces for the primary dwelling in which the accessory dwelling unit was located. She wanted to know if the SZA could waive the number of spaces for the accessory dwelling unit. She recalled that the Board of Zoning Appeals had an application where the person who would live in the accessory dwelling unit did not have a car and would not need a parking space.

Lori Greenlief, Staff Coordinator, stated that she would get a clarification and respond to the Board on February 7, 1989.

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Page 11, January 24, 1989, (Tape 2), Board Matter:

Reappointment of Mrs. Ann Day to the  
Board of Zoning Appeals

Mr. Ribble acknowledged that Mrs. Day was up for reappointment before the Circuit Court and moved to recommend her reappointment.

Mrs. Thonen seconded the motion which carried unanimously. Mr. Kelley was not present for the vote and Mr. DiGuilian was absent from the meeting.

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Page 11, January 24, 1989, (Tape 2), Information Item:

Memo from Clerk on Change in Board of Zoning Appeals Meeting Dates

The Clerk, Betsy Hurr, recommended that, since the Board usually discusses Board Matters prior to public hearing, the first Agenda Item might be advertised to begin at 9:10 a.m.

Chairman Smith stated that, since most of the time there were no Board Matters preceding the first Agenda Item, he recommended leaving the time at 9:00 a.m. The Board agreed to leave the time at 9:00 a.m.

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Page 11, January 24, 1989, (Tape 2), After Agenda Item:

11:00 A.M. NELSON JAMES BUILDERS, INC./BATAL-DOLAN PROPERTIES, A VIRGINIA GENERAL PARTNERSHIP APPEAL, A 88-S-010, to appeal Zoning Administrator's determination that creation of an outlet on appellants' property requires approval under the Subdivision Ordinance and approval of an amendment to SE 86-S-082 by the Board of Supervisors, on property located at 4827 and 4831 Piney Branch Road, on approximately 10.1773 acres of land, zoned R-1(C), Springfield District, Tax Map 56-3((5))3 and 4.

Chairman Smith inquired if anyone in the room was interested in this appeal, as the applicant had requested withdrawal. No interest was voiced.

Mrs. Thonen moved to allow A 88-S-010 to be withdrawn.

Mr. Hammack seconded the motion which carried unanimously. Mr. Kelley was not present for the vote. Mr. DiGuilian was absent from the meeting.

Robert W. Parks, 4821 Piney Branch Road, Fairfax, Virginia, appeared before the Board to inquire why the appeal application was being withdrawn. Chairman Smith stated that it appears the appellant is not pursuing the appeal. Instead, the appellant will follow the determination of the Zoning Administrator and go before the Board of Supervisors.

Mr. Parks complained that he was unnecessarily inconvenienced because the sign was still up, indicating that the hearing would go forward.

Mr. Hammack explained that proper procedure dictates that the appeal must remain on the formal Agenda until the Board considers the request for withdrawal and officially allows withdrawal.

Chairman Smith explained that the sign could not have been taken down until the Board took official action to allow the withdrawal of the appeal.

The Board members apologized for any inconvenience this procedure may have caused Mr. Parks.

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011

11:30 A.M. FISCHER MACLEOD ASSOCIATES AND MONTGOMERY WARD, SP 88-L-096, application under Sect. 12-304 of the Zoning Ordinance to allow redistribution of sign area and additional sign area for a regional shopping center, located at 6691 Springfield Mall on 79.24 acres of land, zoned C-7, Lee District, Tax Map 90-2((3)) 1, 2, 3, 4, 4A, 5, 5A, 5B, 6, 9, 10.

012

Denise James, Staff Coordinator, presented the staff report. Ms. James stated that two items were inadvertently left out of the staff report: (1) the first page of the applicant's affidavit; and (2) the applicant's statement of justification referred to in the staff report. She stated that both items had been distributed to the Board that morning.

Tony Calabrese, with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, represented co-applicants Fischer MacLeod Associates, Managers of Springfield Mall, and Montgomery Ward. He stated that staff had quickly and succinctly described the application.

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

Mr. Hammack moved to grant SP 88-L-096 because the applicant had presented testimony indicating compliance with appropriate sections of the Zoning Ordinance, and subject to the development conditions set forth in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-L-096 by FISCHER MACLEOD ASSOCIATES AND MONTGOMERY WARD, under section 12-304 of the Zoning Ordinance to allow redistribution of sign area and additional sign area for a regional shopping center, on property located at 6691 Springfield Mall, Tax Map Reference 90-2((3))1, 2, 3, 4, 4A, 5, 5A, 5B, 6, 9, 10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1989; and

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

- 1. That the applicant is the owner of the land.
2. The present zoning is C-7, SC and HC.
3. The area of the lot is 79.24 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-912 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the following signage:

- Montgomery Ward 206.00 sq. ft.
Montgomery Ward 141.00 sq. ft.
Montgomery Ward 141.00 sq. ft.
Home Ideas 18.00 sq. ft.
Merchandise Pick-up 18.00 sq. ft.
Staples 130.00 sq. ft.

This approval is granted for the removal and redistribution of signage and new signage indicated by location and size on the plat submitted with this application.

013

Any additional signs of any kind other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. This condition shall not preclude directional signs and refacing and maintenance of existing signs. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

3. Sign permits, as regulated by Article 12 of the Zoning Ordinance, shall be obtained for all signs.
4. Illumination of the signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance.
5. In accordance with the approved application, the total sign area for the Springfield Mall shall not exceed 5,089 square feet. The mounting of the approved signs shall be coordinated with and approved by Fairfax County in order to assure that the total square footage of the approved allowable signage area will not be exceeded at any one point in time.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless additional time is approved by the Board of Zoning Appeals because of the occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. DiGuillan was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 13, January 24, 1989, (Tape 2), Scheduled case of:

Happy Faces Child Care Center, SP 88-V-035

SP 88-V-035 was deferred from 9:15 a.m. to give applicant's representative an opportunity to be present.

Chairman Smith inquired if there was anyone now present to represent Happy Faces Child Care Center.

Lori Greenlief, Staff Coordinator, stated she had tried but could not reach applicant's representative.

The Board reviewed the scheduling chronology of this application and instructed staff to summon the applicant by Certified Mail to appear at 10:45 a.m. on February 14, 1989, to offer support of the application. The Board further requested staff to notify the applicant that failure to appear would result in having SP 88-V-035 summarily denied.

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Page 14, January 24, 1988, (Tape 2), Adjournment:

Since there was no other business to come before the Board, Mr. Ribble moved to adjourn. Mr. Hammack seconded the motion which carried unanimously. Mr. DiGuillan was absent from the meeting.

Chairman Smith adjourned the meeting at 11:40 a.m.

*Gerl B. Bepko*  
Gerl B. Bepko, Deputy Clerk to the  
Board of Zoning Appeals

*Daniel Smith*  
Daniel Smith, Chairman  
Board of Zoning Appeal

SUBMITTED: 4/25/89

APPROVED: 5/2/89

D14



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015

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 7, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Ann Day; Paul Hammack; Robert Kelley; John Ribble and Mary Thonen.

Chairman Smith called the meeting to order at 8:05 P.M. with Mrs. Day leading the prayer.

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Page 15, February 7, 1989, (Tape 1), Scheduled case of:

8:00 P.M. JAMES GEISLER, TRUSTEE, AND ADELE GEISLER, SP 88-A-086, application under Sect. 3-103 of the Zoning Ordinance to allow child care center, located at 4522 Burke Station Road, on approximately 67,232 square feet of land, zoned R-1, Annandale District, Tax Map 69-1((1))11. (DEF. FROM 11/29/88 AT APPLICANT'S REQUEST AND IN ORDER FOR THE PLANNING COMMISSION TO REVIEW APPLICATION)

Kathy Reilly, Staff Coordinator, presented the staff report and informed the Board that there were many unresolved land use and transportation issues associated with the application. She stated that the intensity, access and appearance of this use is not compatible with the surrounding community and could destabilize the neighborhood. With respect to transportation, Ms. Reilly stated that issues involving construction of frontage improvements along Burke Station Road, dedication of adequate right-of-way for Burke Station Road, provision of a median break along Burke Station Road, construction of left and right turn deceleration lanes to Virginia Department of Highway (VDOT) standards for the site entrance, provision of interparcel access to properties to the north and west of the subject site, and demonstration of the right to construct the parking lot in the permanent VDOT easement had not yet been resolved.

Ms. Reilly stated that on January 26, 1989, the Planning Commission held a hearing on this application and had recommended denial.

James Geisler, 8719 Evangel Drive, Springfield, the applicant, appeared before the Board. He stated that the initial site plan that he had submitted to the County for review indicated an entrance on Burke Station Road about 100 feet from the proposed intersection of Braddock Road; therefore, the potential for a deceleration lane and median breaks was impossible. Mr. Geisler stated that he had an alternate development plan with an entrance on Braddock Road but that he had not presented it prior to the hearing.

Chairman Smith informed Mr. Geisler that he should have submitted the alternate plan to staff prior to the hearing for their review and evaluation.

Mr. Geisler stated that the proposed child care center was bounded on two sides by institutional uses, therefore would not change the character of the neighborhood.

In response to a question from Chairman Smith, Ms. Reilly stated that Braddock Road was planned for a four-lane divided highway from Guinea Road to Sideburn Road.

Chairman Smith called for speakers in support or opposition to the request.

Cary Adams, 4625 Tapestry Drive, Fairfax, representing the George Mason Forest Homeowners Association, appeared before the Board to speak in opposition. He stated that he was representing 176 lot owners and that his subdivision was located about 500 yards west of the site. Mr. Adams stated that extensive review of this area during the rezoning of the Yeonas project developed a consensus in the community that this area remain single family. He indicated that there were no commercial properties located on the north side of Braddock from the Beltway to Route 29 and that 495 additional car trips coming in and out of this site would cause a significant backup on Burke Station Road and Braddock Road. Mr. Adams stated that the proposal failed to meet five of the six locational guidelines established by Fairfax County for child care facilities which included the provision of a safe, noise-free location.

The next speaker in opposition was Ronald J. Cruz, 4381 Harvester Farm Lane, Fairfax, representing the Hickory Farms Community Association. He stated that he was representing 198 lot owners and that he concurred with the previous speakers' comments.

During rebuttal, Mr. Geisler stated that he understood the concerns of the citizens and that he hoped to address these in the second rendition of the site plan.

There being no further speakers, Chairman Smith closed the public hearing.

Mr. Hammack moved to deny SP 88-A-086 for the reasons cited in the staff report and because he believed that the application did not meet all the required standards and due to the concern with the traffic problems associated with the site.

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016

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-A-086 by JAMES GEISLER, TRUSTEE, AND ADELE GEISLER, under Section 3-103 of the Zoning Ordinance to allow child care center, on property located at 4522 Burke Station Road, Tax Map Reference 69-1(1)11, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 67,232 square feet of land.
4. That for reasons cited in the staff report, the application does not meet all of the standards, particularly with regard to traffic.

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 and the additional standards for this use as contained in Section 3-103 of the Zoning Ordinance.

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

Mrs. Thonen seconded the motion.

The motion carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1989.

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Page 16, February 7, 1989, (Tape 1), Scheduled case of:

8:20 P.M. BUFFA'S DANCE STUDIO, LTD, SP 88-S-089, application under Sect. 3-103 and 8-901 of the zoning Ordinance to allow private school of special education and waiver of dustless surface, located at 8101 Ox Road, on approximately 5 acres of land, zoned R-1, Springfield District, Tax Map 97-1(1)19. (DEF. FROM 11/29/88 AT APPLICANT'S REQUEST)

Chairman Smith informed the Board that he was in receipt of a letter from the applicant requesting a withdrawal based upon the objections from neighbors living in the South Run Oaks Community.

Mrs. Thonen moved to allow the withdrawal of SP 88-S-089 at the applicant's request.

Mr. DiGiulian seconded the motion which passed by a unanimous vote of 7-0.

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Page 16, February 7, 1989, (Tape 1), After Agenda Item #1:

Request for Additional Time  
John B. Gardiner, VC 87-P-047

Mrs. Day moved to grant the request for additional time for VC 87-P-047. The new expiration date is July 15, 1990.

Mr. Hammack seconded the motion which passed by a vote of 5-2, Mr. Ribble and Mr. Kalley not present for the vote.

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Page 16, February 7, 1989, (Tape 1), After Agenda Item #2:

Approval of December 13, 1988 Minutes

Mrs. Thonen moved approval of the BZA Minutes for December 13, 1988.



Page 17, February 7, 1989, (Tape 1), (After Agenda Item #2, continued from Page 16)

Mrs. Day seconded the motion which passed by a vote of 5-2, Mr. Ribble and Mr. Kelley not present for the vote.

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Page 17, February 7, 1989, (Tape 1), After Agenda Item #3:

Application for U.S. Home Corporation Appeal

Mrs. Thonen moved that the appeal for U.S. Home Corporation be deemed complete and timely filed, and that a public hearing be scheduled for April 20, 1989 at 11:00 a.m.

Mrs. Day seconded the motion which passed by a vote of 5-2, Mr. Ribble and Mr. Kelley not present for the vote.

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Page 17, February 7, 1989, (Tape 1), Scheduled case of:

8:40 P.M. RAJDHANI MANDIR BY PURAN C. MITTAL, SP 88-S-081, application under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities, located at 11425 Popes Head Road, on approximately 6.6681 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-4(1)7. (DEF. FROM 11/29/88 AT APPLICANT'S REQUEST)

Chairman Smith informed the Board that he was in receipt of a letter from the applicant requesting a deferral of SP 88-S-081.

Jane Kelsey, Chief, Special Permit and Variance Branch, recommended that the application be deferred to May 2, 1989, in order to give staff time to reevaluate any special permit plat revisions and prepare an addendum to the staff report.

Mr. Picigulian moved to defer SP 88-S-081 to May 2, 1989 at 8:00 P.M. as suggested by staff. Mr. Hammack seconded the motion.

Peter A. Wathen, President of the Glendilough Citizens Association, 11415 Meath Drive, Fairfax, appeared before the Board. He stated that he was representing 130 homes directly across Popes Head Road from the proposed place of worship. Mr. Wathen stated that he was concerned that the applicant had not yet reduced or eliminated staff's negative comments to the proposal, and that they could have easily accomplished that by now. Mr. Wathen stated that he was opposed to the deferral of the application.

The question was called on the motion to defer which passed by a vote of 7-0.

Mrs. Thonen instructed the applicant to come prepared to go forth with the application on May 2nd because she did not want any further deferrals.

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The Board recessed at 8:50 p.m. and reconvened at 9:05 p.m.

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Page 17, February 7, 1989, (Tape 1), Scheduled case of:

9:00 P.M. METROPOLITAN CONSTRUCTION CO., VC 88-V-172, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling in a floodplain to 12 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), located at 6400 Potomac Avenue, on approximately 7,000 square feet of land, zoned R-3, Mount Vernon District, Tax Map 83-4(2)(28)17 and 18.

Kathy Reilly, Staff Coordinator, presented the staff report. She informed the Board that the applicant had submitted an application for a Special Exception to allow the proposed dwelling to be located in a floodplain which had subsequently been approved by the Board of Supervisors on January 23, 1989.

Masoud Kavianpour, President of Metropolitan Construction Company, appeared before the Board and referred to the statement of justification submitted with the application in lieu of testimony.

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

Mrs. Thonen moved to grant VC 88-V-172 in accordance with the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-172 by METROPOLITAN CONSTRUCTION CO., under Section 18-401 of the Zoning Ordinance to allow construction of dwelling in a floodplain to 12 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 6400 Potomac Avenue, Tax Map Reference 83-4(2)(28)17 and 18, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 7,000 square feet of land.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

019

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion.

The motion carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1989. This date shall be deemed to be the final approval date of this variance.

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Page A, February 7, 1989, (Tape 1), Scheduled case of:

9:15 P.M. McLEAN TENNYSON LIMITED PARTNERSHIP, VC 88-D-155, application under Sect. 18-401 to allow subdivision into seven (7) lots, proposed lots 2 through 6 each having width of 3.6 feet (70 ft. min. lot width req. by Sect. 4-406), located at the corner of Tennyson Drive and Laughlin Avenue, on approximately 2.1686 acres of land, zoned R-4, Dranesville District, Tax Map 30-4((3))1, 2, 3, 4; 30-4((17))A. (DEF. FROM 12/20/88 AT APPLICANT'S REQUEST)

Chairman Smith stated that the Board was in receipt of a letter requesting an indefinite deferral of VC 88-D-155.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had no objection to an indefinite deferral, but that if it was more than 90 days the application would have to be readvertised and new notification letters mailed to the surrounding property owners.

Gene Durman, President of the McLean Manor Civic Association, 6718 Weaver Avenue, McLean, appeared before the Board to express his disapproval of a further deferral. He stated that each time the citizens showed up to speak at a hearing, the application was deferred. Mr. Durman stated that the fundamental problems of the parcel would not be altered by additional information gathering.

Mrs. Thonen stated that there were six letters in opposition to the request contained in the application file.

Chairman Smith indicated his concern that the applicant was not interested enough to appear at the hearing to discuss his indefinite deferral request. He questioned staff regarding the procedure used when an applicant requested deferral.

Ms. Kelsey explained that the applicant had been sent a letter the first time the application was deferred which indicated the scheduled date and time of the hearing that evening, and that anyone requesting a deferral was informed that they should be present at the hearing to discuss the request. She stated that this was Denise James' case and she could not say what Ms. James may have discussed with the applicant.

Following a discussion, the Board indicated the option of deferring the hearing to another evening meeting in order to accommodate the citizens who were present and asked if anyone wished to speak.

Barbara Dittmar, 6621 Old Chesterbrook Road, McLean, appeared before the Board. She indicated that Comprehensive plan meetings for her area were held on Tuesday evenings which would make it difficult to attend the BZA meeting.

Katy Parisi, 6801 Dillon Avenue, McLean, stated that the citizens had held meetings with the developer and appeared at both scheduled BZA hearings. She stated that the citizens were discouraged with the lack of interest of the developer and wanted the application to be heard.

Mr. DiGiulian moved that the Board continue the hearing on VC 88-D-155 until February 14, 1989 at 11:00 a.m. at which time the BZA would expect the applicant to go forward with his application.

Mr. Hammack seconded the motion which failed by a vote of 3-4 with Mrs. Day, Mrs. Thonen, Mr. Ribble and Mr. Kelley voting nay.

Mrs. Thonen moved that the Board go forward with the case and hold the hearing that evening without the representation of the applicant.

Mr. Ribble seconded the motion. The motion passed by a unanimous vote of 7-0.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report and informed the Board that there were several outstanding issues regarding drainage, transportation and environmental concerns. She stated that the application did not meet the nine standards required for a variance.

Chairman Smith stated that although the applicant was not present, his statement, contained in the staff report, would be made a part of the record and would be taken into consideration at the time a decision was made in this matter.

Chairman Smith called for speakers.

Gene Durman, President of the McLean Manor Civic Association, 6718 Weaver Avenue, McLean, appeared before the Board and stated that the applicant had an ability to develop the land and would not be unduly deprived of his right to use the land. He pointed out that the site was an extremely sensitive piece of land which backed up to a tributary of Summit Run. He further added that the site was located in the 100 year floodplain and was subject to flooding problems.

Other speakers in opposition included Katy Parisi, 6801 Dillon Avenue, McLean; Leonard Parkinson, 6724 Weaver Avenue, McLean; Gordon Facer, 6661 Tennyson Drive, McLean; and John Lamend, 6722 Weaver Avenue, McLean, who discussed the drainage and flooding problems regarding the site.

There being no further speakers, Chairman Smith closed the public hearing.

Mrs. Day moved to deny VC 88-D-155 because the property has a history of floodplain problems, it has a storm sewer drainage ditch which can adversely affect Lots 6, 7, 8 and 9, it does not meet the standards for a variance, seven lots in this subdivision would increase the traffic on Tennyson Drive which is already saturated at this point, and there was no hardship involved in this application since the applicant had four buildable lots.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-D-155 by MCLEAN TENNYSON LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to allow subdivision into seven (7) lots, proposed lots 2 through 6 each having width of 3.6 feet (70 ft. min. lot width req. by Sect. 4-406), on property located at the corner of Tennyson Drive and Laughlin Avenue, Tax Map Reference 30-4(3)1, 2, 3, 4 and 30-4(17)A, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 2.1686 acres of land.
4. The property has a history of floodplain problems. It has a storm sewer drainage ditch which can adversely affect on its neighbors. Lots 1 and 7 do meet the lot width required on Tennyson, however, there are five lots on a pipestem lot, and Lots 2, 3, 4, 5 and 6 are actually on the pipestem. On page four of the staff report, it states that Lots 6, 7, 8 and 9 do not meet the standards for a variance. Seven lots in this subdivision would really increase the traffic on Tennyson Drive which already is saturated at this point. There is no hardship involved in this application since the applicant has four lots now. The pipestem is not in conformance with the Comprehensive Plan in this area. The requested lots are excessive for this parcel in comparison with neighboring lots. The incorporation of the outlot to make larger lots could be utilized in this development.

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

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

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021

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

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

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

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

Mr. Ribble seconded the motion.

The motion carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1989.

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As there was no other business to come before the Board, the meeting was adjourned at 9:50 P.M.

  
 Judy L. Moss, Acting Associate Clerk  
 Board of Zoning Appeals

  
 Daniel Smith, Chairman  
 Board of Zoning Appeals

SUBMITTED 4/4/89

APPROVED 4/11/89

B/ank

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 14, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Ann Day; Paul Hammack; Robert Kelley; John Ribble and Mary Thonen.

023

Chairman Smith called the meeting to order at 9:58 A.M. with Mrs. Day leading the prayer.

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Page 23, February 14, 1989, (Tape 1), Scheduled case of:

9:45 A.M. MESSIAH LUTHERAN CHURCH AND UNITED COMMUNITY MINISTRIES, INC., SPA 81-V-028-1, application under Sect. 3-403 to amend SP 81-V-028 for a church and related facilities to permit addition of a public benefit association use, located at 1906 Belle View Boulevard, Mount Vernon District, Tax Map 93-1((23))(1)1, 2, 3, 4, 10 and 11. (CONCURRENT WITH SE 88-V-069. DEF. FROM 12/20/88 IN ORDER FOR THE BOARD OF SUPERVISORS TO HEAR SE 88-V-069.)

Lori Greenlief, Staff Coordinator, stated that this case had been deferred from January 17, 1989 to allow the Board to further research the application and to allow the Zoning Administrator to be present. She stated that she would be happy to go through the staff report if the Board wished and that the zoning Administrator was present.

In response to questions from Mr. Hammack regarding the Floor Area Ratio (FAR) and the off-site parking, Ms. Greenlief explained that the previous application did not include FAR calculations but approximate calculations indicate that Lot 10 would probably not be needed to meet the FAR. She stated that perhaps there could be a "swap" in terms of special permit area since the pastor lives on the adjacent lot. With regard to the off-site parking, she stated that the church was proposing to utilize the Mount Vernon Park Sport Complex. She added that the applicant was present and perhaps could elaborate.

Chairman Smith called the applicant forward.

Sharon Kelso, Executive Director of United Community Ministries, came forward. She stated that Supervisor Hyland was handling the off-site parking as a Board Item before the Board of Supervisors.

Mr. Hammack asked if anyone was present from the church who could respond to the parking situation. Ms. Kelso stated that the answer would be the same because Supervisor Hyland was not going to proceed until a decision had been made.

Mr. Hammack explained to the applicant that the church was still required to provide a certain number of parking spaces and according to the plat this had not been done.

Ms. Kelso stated that it was her understanding, as well as the church, that parking did not become an issue unless this use was approved for the site.

Mrs. Thonen asked if there was an over abundance of parking at the Sport Complex. Ms. Kelso replied that the Park Authority had an open policy and does not restrict parking on their facilities and this facility apparently has sufficient parking which is under utilized at this time.

Mr. Hammack added that he believed strongly that all church parking should be on site because of the impact on the surrounding neighborhoods and the safety factor with people crossing busy streets to get to the church site.

Mrs. Thonen pointed out that if there is a County policy that the Board of Supervisors can reduce the required number of parking spaces, the Board of Zoning Appeals should follow the policy.

Mr. Hammack stated that there is enough parking on site and 15 of those spaces are being assigned to the proposed use.

Ms. Kelso pointed out that the center would be operating during the times when the church is not holding services and no more than 5 parking spaces would be used by the health screening facility because the other cars would be coming and going in short periods of time. She commented that the Office of Transportation had indicated that the existing driveway is too narrow to accommodate two way traffic, and therefore will be made a one way entrance with one-way signs erected. Ms. Kelso noted that a representative from the church was present and could better respond as to where the parishioners parked their cars.

Mr. Kelley commented that he lived close to the church and the parishioners parked anywhere they wanted.

Chairman Smith stated that this use could not be implemented, if granted, until such time as the parking was provided. He suggested that the Board should make a determination on the use itself and require new plats at the time the parking agreement had been finalized.

In response to a question from Mrs. Thonen, Ms. Gwinn, Zoning Administrator, stated that the number of required parking spaces may be reduced by no more than 50% if the place of worship is located within 500 feet of any public/commercial parking lot. This is contingent upon there being sufficient parking at that location and with the permission of the owner and if there is no charge for the parking. In this instance since County park land is involved, the Board of Supervisors would review the agreement to make certain that everything is in order.

Ms. Gwinn added that she believed that it was appropriate for the applicant to first request approval from the Board of Zoning Appeals of the use before going to the Board of Supervisors to negotiate the parking. She pointed out that staff had adequately addressed the parking in the development conditions.

Mr. Hammack expressed concern that perhaps there would not be room for an additional 75 cars on Sunday morning because most sport complexes were overcrowded on weekends. Ms. Gwinn agreed that this was a valid concern.

Following a discussion among the Board and Ms. Gwinn regarding the parking, Mr. Hammack stated that he would not feel comfortable with granting the use until the parking had been resolved. Several Board members were in agreement.

Ms. Kelso reiterated that this project would not be operating at the same time of the church.

The Board pointed out that the church and the entire site was under Special Permit, therefore the Board must look at the overall picture.

Ms. Gwinn stated that there is a provision in the Ordinance whereby the Board of Supervisors could reduce the number of parking spaces for two different uses by reasons of hours of operation.

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The Board recessed for a fire drill at 10:50 a.m. and reconvened at 11:03 a.m.

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Following further discussion among the Board members regarding the parking and whether or not the proposal was part of the church activities, Mr. Hammack made a motion to defer this application in order for the Board of Supervisors to make a determination regarding the parking. He noted that new plats would need to be submitted showing the parking.

Mrs. Thonen stated that she believed that someone should assist the applicant in laying out the parking spaces.

Because Ms. Kelso indicated that she was confused as to the need for new plats, the Board explained that new plats must be submitted showing exactly where the parking is to be located.

Mr. Hammack asked staff for a date and time for a deferral and Ms. Greenlief suggested March 4, 1989 at 11:30 a.m. Mr. DiGiulian seconded the motion. The motion carried by vote of 7-0.

Ms. Greenlief asked the Board as to exactly what they wanted shown on the plat with regard to the parking. Chairman Smith explained that the plat did not need to be changed if the off-site parking agreement was finalized.

Mr. Hammack stated that he wanted the applicant to submit a plat showing the existing parking.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board to clarify if they were requesting that the church provide additional parking on site.

Mr. Hammack asked that staff tell the Board what streets the parishioners would have to cross to get to the church.

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10:00 A.M. W. C. WILLS, VC 88-M-161, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into three (3) lots, proposed Lot 1 having a lot width of 62.31 feet and proposed Lot 2 having a lot width of 40.45 feet (150 ft. min. lot width required by Sect. 3-106), located at 4917 Brook Hills Drive, on approximately 3.5095 acres of land, zoned R-1, Mason District, Tax Map 71-3((1))3. (DEF. FROM 1/10/89 - NOTICES NOT IN ORDER)

025

Tischa Weichmann, Staff Coordinator, presented the staff report. She stated that staff does not believe that the applicant had met standards 4, 6, 7, 8, and 9, staff therefore cannot support this application.

In response to questions from Mr. Hammack, Ms. Weichmann replied that the existing detention pond will not be on Lots 1 and 3.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P.O. Box 547, Fairfax, Virginia, came forward to represent the applicant. Mr. Via submitted a letter in support from Mr. Hanks, an adjoining property owner, into the record. He stated that this subdivision is made up primarily of one acre single-family dwellings and that other lots in the area have been subdivided.

Mr. DiGiulian asked where the access was to Lot 3B and Mr. Via explained that access would be adjacent to the proposed pipestem for Lot 2.

In response to a question from Chairman Smith, Mr. Via explained that the applicant resides in the existing dwelling and has for many years.

Mr. Via continued by stating that the applicant does not plan to develop the proposed lots at this time but would like to make the lots available for his children. He added that Lots 1 and 2 would have access from Brook Hill Drive and Lot 3 would have access from Bradford Drive. The proposed lots would be larger than the average lot size in an R-1 Zoning District. A professional land appraiser hired by the applicant has indicated that this application would have no adverse impact on the value of the surrounding properties.

Mr. Via disagreed with staff's judgment that the application does not meet the standards for a variance and added that this would not be precedent setting as this is the only lot of this type in the area.

In closing, Mr. Via stated that without the variance the applicant would be prohibited from utilizing his property and asked the Board to grant the request.

Mrs. Day stated that she had studied the staff report and that she would support the applicant's request because she believed that this is an exceptional application.

Mrs. Thonen commented that she would like to see the houses that would be constructed be architecturally compatible with the existing houses. Mr. Via stated that he believed that the applicant would be in agreement but was not sure how it could be done.

Following questions from the Board, Mr. Via explained that the existing sewer easement would have to be relocated if the lots were ever developed.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request and the following came forward: Tony Calabrese, attorney with the law firm of McGuire, Woods, Battle, represented Dick Wright, 4913 Bradford Drive, Annandale, Virginia; Charlie Johns, 4915 Bradford Drive, Annandale Virginia; Mira Barks, 4912 Brooks Hill Drive, Annandale, Virginia; Joanne P. McKenney, 7524 Greenfield Road, Annandale, Virginia; and, Richard Wright, 4913 Brooks Hill Drive, Annandale, Virginia.

The citizens agreed with staff's judgment that the standards had not been met, that the request would change the character of the neighborhood, and that the request would make the existing drainage problems worse than they are presently. They asked the Board to deny the request.

During rebuttal, Mr. Via assured the Board that applicant would comply with all the regulations.

Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant VC 88-M-161 because he believed that the applicant had met the nine standards for a variance, specifically 2(a), (c), and (d). The approval was subject to the development conditions contained in the staff report. He commented that Appendix 4 states that the Office of Transportation does not believe that this request will adversely impact the neighborhood.

Mr. Hammack stated that he could not support the motion because he did not believe that the applicant had shown there was a hardship. He added that he also believed that the applicant could subdivide the property into two lots without a variance. Mr. DiGiulian disagreed.

Ms. Weichmann stated that Mr. DiGiulian was correct that the applicant would need a variance to subdivide into two lots.

Chairman Smith stated that he also would not support the motion.

Mrs. Thonen called for the question.

The motion carried by a vote of 5-2 with Chairman Smith and Mr. Hammack voting nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-M-161 by W. C. WILLS, under Section 18-401 of the Zoning Ordinance to allow subdivision into three (3) lots, proposed Lot 1 having a lot width of 62.31 feet and proposed Lot 2 having a lot width of 40.45 feet, on property located at 4917 Brook Hill Drive, Tax Map Reference 71-3(1)3, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.5095 acres of land.

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

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

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

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

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

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1. This variance is approved for the location and the specific subdivision shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless subdivision has been recorded or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A tree preservation plan shall be submitted and approved by the County Arborist.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-2 with Chairman Smith and Mr. Hammack voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 27, February 14, 1989, (Tape 2), Scheduled case of:

10:15 A.M. FAITH UNITED METHODIST CHURCH, SPA 87-L-081-1, application under Sect. 3-203 of the Zoning Ordinance to amend SP 87-L-081 for child care center by deleting condition requiring construction of a right turn lane, located at 7010 Harrison Lane on approximately 5.33 acres of land, zoned R-2, Lee District, Tax Map 92-2((1))8B. (OUT OF TURN HEARING GRANTED ON 1/10/89)

Denise James, Staff Coordinator, presented the staff report. She stated that the applicant is requesting that the Board amend SP 87-L-081 and delete a portion of development condition number 5 requiring a right turn lane. After visiting the site during peak rush hours, staff still recommends a right turn lane. Staff does not object to a modification of this turn lane to permit a right turn flare or taper, but this should be subject to Virginia Department of Highways and Transportation's approval. In closing, Ms. James stated that staff recommends approval of SPA 87-L-081-1 subject to the development conditions.

Richard Pro, 6608 Dorset Drive, Alexandria, Virginia, a member of the church came forward to represent the church. Mr. Pro stated that the child care center would not impact the traffic flow, that there is adequate sight distance, and that the extension of Lockheed Lane would reduce the flow of traffic on Harrison Lane. He added that Supervisor Alexander had been discussing, with Fort Belvoir, the possibility of constructing a lane from Route 1 to Telegraph Road to help the traffic situation. Mr. Pro stated that the church would dedicate the 30 foot requirement from the centerline of Harrison Lane for future road improvements which would make the right turn obsolete. He noted for the record that there is a subdivision directly across the street and the developer was not required to construct a left turn lane.

There were no speakers in support of the request and Chairman Smith called for speakers in opposition to the request.

James Roger Ellison, Vice President of B. F. Saul Company, came forward to represent residents of a condominium development located to the south of the church on Harrison Lane. He agreed with staff that the right turn lane was needed for safety reasons because the sight distance was inadequate.

In response to questions from the Board, Mr. Ellison stated that there is a right turn lane in front of the condominiums. He agreed that he believed a taper lane would be sufficient.

During rebuttal, Mr. Pro stated that he had never had a problem with entering or exiting the site.

Mrs. Thonen asked Mr. Pro if he would accept constructing a taper lane. Mr. Pro stated that he believed that this might cost as much as a right turn lane.

Mrs. Thonen commented that she had had many calls from the adjacent homeowners regarding the right turn lane.

Mr. Pro argued that he believed that there was adequate sight distance but Mrs. Thonen disagreed.

Chairman Smith closed the public hearing. He then asked staff to address the changes in the development conditions.

Page 28, February 14, 1989, (Tape 2), (Faith United Methodist Church, SPA 87-L-081-1, continued from Page 27)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the condition had been reworded to give the applicant some flexibility.

There was no further discussion and Mrs. Thonen proceeded with her motion. She stated that she would like to see the child care center go forward and made a motion to grant as she believed that the applicant had satisfied the standards. The approval was subject to the development conditions contained in the staff report with the following addition to condition number 5:

- "o A tapered right turn lane into the site from Harrison Lane shall be constructed. The final design and location of the lane shall be subject to final approval by the Virginia Department of Transportation. The County shall work with the applicant to the best of its ability to get this done at the least amount of cost to the church."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-L-081-1 by FAITH UNITED METHODIST CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 87-L-081 for child care center by deleting condition requiring construction of a right turn lane, on property located at 7010 Harrison Lane, Tax Map Reference 92-2((1))8B, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 5.33 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management (DEM) pursuant to this Special Permit shall conform with the approved Special Permit and these conditions.
5. The following transportation improvements shall be implemented:

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- o Right-of-way to thirty (30) feet from centerline of Harrison Lane necessary for road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple upon sixty (60) days notice from the Virginia Department of Transportation (VDOT).
  - o A tapered right turn lane into the site from Harrison Lane shall be constructed. The final design and location of the lane shall be subject to final approval by the Virginia Department of Transportation. The County shall work with the applicant to the best of its ability to get this done at the least amount of cost to the church.
  - o The three delineation posts adjacent to the church driveway shall be relocated, subject to VDOT approval, in order to improve site distance.
  - o Handicap parking shall be provided and identified in accordance with the Code of Virginia.
  - o Temporary ancillary easements shall be provided to facilitate future road improvements on Harrison Lane.
6. The maximum daily enrollment shall be limited to thirty-six children. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m.
  7. There shall be a maximum of six (6) employees on site at any one time.
  8. The existing parking spaces shall be used to satisfy the required seven (7) spaces. All parking shall be on site.
  9. Transitional Screening 1 shall be provided along all lot lines with the following modifications:
    - o The existing vegetation may be used to satisfy the screening requirement along the western lot line and clearing and grading shall be limited to the "existing tree line" shown on the plat.
    - o Between the southern lot line and the parking lot evergreen plantings shall be installed so as to minimize the noise and the dust of the parking area. The specific type, size, and density shall be approved by the County Arborist.
    - o Along the northern and eastern lot lines the existing vegetation, which shall be supplemented as necessary to meet Par. 4 of Sect. 13-104, shall be used to satisfy the screening requirement.
  10. Provided the outdoor recreation area is completely fenced, the barrier requirement shall be waived.
  11. Any sign erected shall conform to Article 12 of the Zoning Ordinance.
  12. Lighting, if used shall be shielded so as to prevent light or glare from projecting onto adjacent properties.
  13. At such time as the parking area is paved, it shall be relocated out of the required screening yards, Transitional Screening 1, and interior parking lot landscaping shall be provided in accordance with the Zoning Ordinance.
  14. The modification of the dustless surface requirement is approved for two (2) years and shall automatically expire, without notice on January 26, 1990.
- This area shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management, which shall include but not be limited to the following:
- A. Travel speeds in the parking areas shall be limited to 10 mph or less.
  - B. During dry periods, application of water or calcium chloride shall be made in order to control dust.
  - C. Routine maintenance shall be performed to prevent surface unevenness, wear-through or subsoil exposure. Resurfacing shall be conducted when stone becomes thin.
  - D. Runoff shall be channeled away from and around the parking areas.
  - E. The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of stone surface.

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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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1988. This date shall be deemed to be the final approval date of this special permit.

Mrs. Day seconded the motion.

The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 30, February 24, 1989, (Tape 2), Scheduled case of:

10:30 A.M. DANIELLE V. BERNSTEIN, VC 88-P-170, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition o dwelling to 24 feet from front lot line (30 ft. min. front yard req. by Sect. 3-407), located at 2609 Jeanne Street on 10,057 square feet of land, zoned R-4, Providence District, Tax Map 50-1(2)111.

Denise James, Staff Coordinator, presented the staff report.

The applicant, Danielle Bernstein, 2609 Jeanne Street, Falls Church, Virginia, came forward. She stated that her situation is unique as she cannot build in the side yard because of a stairwell which extends 5 feet. The character of the neighborhood would not be changed, and the large trees located in the front yard would not be removed.

In response to questions from Mrs. Day, Ms. Bernstein stated that her neighbors had constructed carports in their side yards because they did not have the extending stairwells.

There were no speakers to address this request and Chairman Smith closed the public hearing.

Mrs. Day stated that she could not support a structure being located in the front yard and moved to deny the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-P-170 by DANIELLE V. BERNSTEIN, under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 24 feet from front lot line, on property located at 2609 Jeanne Street, Tax Map Reference 50-1(2)111, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 22, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,057 square feet of land.

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

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

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

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

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

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 5-0 with Messrs. Hammack and Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 22, 1989.

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Page 31, February 14, 1989, (Tape 2), Scheduled case of:

10:45 A.M. HAPPY FACES CHILD DEVELOPMENT CENTER, SP 88-V-035, application under Sect. 3-403 of the Zoning Ordinance to allow nursery school and child care center, located at 6215 Richmond Highway, on approximately 36,768 square feet of land, zoned R-4, C-8, and RC, Mount Vernon District, Tax Map 83-3(1)38 and Outlot A.

Lori Greenlief, Staff Coordinator, informed the Board that she had tried to telephone the applicant and when she could not contact her by phone, a certified letter had been mailed.

Mrs. Thones moved to deny the application for lack of interest and due to the applicant's failure to appear at the public hearing.

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

James R. and Charlotte M. Hall, VC 87-D-044  
Additional Time

Mr. Hammack moved to grant the applicant of VC 87-D-044 an additional twelve months to commence construction. The new expiration date will be January 15, 1990.

Mrs. Day seconded the motion which carried by a vote of 5-0 with Messrs. Digiulian and Ribble not present for the vote.

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

Mobil Service Station, VC 87-M-036  
Additional Time

Mrs. Day moved to grant the applicant of VC 87-M-036 an additional nine months to commence construction. The new expiration date will be September 22, 1989.

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

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

U.S. Home Corporation, SP 87-S-008  
Additional Time

Mrs. Day moved to grant the applicant of SP 87-S-008 an additional twelve months to commence construction. The new expiration date will be November 20, 1989.

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

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

St. Mary of Sorrows Church, SPA 77-A-041-1  
Additional Time

Mr. Hammack moved to grant the applicant of SPA 77-A-041-1 an additional nine months to commence construction. The new expiration date will be October 1, 1989.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

Approval of Minutes for September 20, September 27, October 11,  
November 1, December 6, 1988 and January 10, 1989

Mr. Hammack moved approval of the Minutes as submitted.

Mrs. Day seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 32, February 14, 1989, (Tape 2), After Agenda Item:

McLean Tennyson Limited Partnership, VC 88-D-155, Reconsideration

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that on February 7, 1989 the Board of Zoning Appeals denied VC 88-D-155. The applicant's agent was present should the Board have any questions.

Mr. Hammack asked that the applicant's agent come forward.

Keith Martin, attorney with Walsh, Colucci, Stackhouse, Barich, Lubeley, P.C, 950 North Glebe Road, Arlington, Virginia, represented the applicant and apologized to the Board for not appearing at the February 7th public hearing. He stated that he had believed that submitting a letter requesting a deferral was adequate and asked the Board not to penalize the application for his misunderstanding. Mr. Martin added that he could not have provided any additional information had he been at the public hearing. Studies are still being conducted on the property with regard to the floodplain and the applicant



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has no intention at this time to seek a variance to allow a subdivision into seven lots. Mr. Martin noted that had he been present he would have requested either a deferral, a withdrawal without prejudice, or requested a waiver of the 12-month time limitation for refiling a new application, if the request were denied.

Ms. Kelsey explained that the public hearing had been held and it is the Board's procedure that a request for a waiver of the 12-month time limitation must be done at that time, but the applicant could request a reconsideration of the Board's decision.

Following a discussion among the Board members, Mrs. Thonen moved that the Board reconsider its action of February 7, 1989 to deny VC 88-D-155. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mrs. Thonen called Mr. Martin back to the podium. Mr. Martin explained that he would like to Board to reconsider its action to deny.

Chairman Smith asked the applicant if there was any new information and Mr. Martin replied he had nothing new to add.

Mrs. Thonen moved to deny VC 88-D-155. Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mr. Martin then requested that the Board waive the 12-month time limitation for refiling a new application.

Mrs. Thonen moved to waive the 12-month time limitation. Mrs. Day and Mr. DiGiulian seconded the motion.

Mr. Kelley stated that he would support the motion but he believed that it was a little bit "slight of hand" and getting around the citizens.

Chairman Smith called for the vote and the motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 33, February 14, 1989, (Tape 2), After Agenda Item:

February 7, 1989 Resolutions

Mrs. Day moved approval of the Resolutions as submitted. Hearing no objection, the Chair so ordered with Mrs. Thonen and Mr. Ribble not present for the vote.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that staff would be moving to Centerpointe and that there might possibly be a problem in preparing the Resolutions from this public hearing in order to bring them back to the Board for their review.

It was the consensus of the Board that they would like to review them prior to their approval.

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Page 33, February 14, 1989, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:55 p.m.

  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

  
Daniel Smith, Chairman  
Board of zoning Appeals

SUBMITTED: \_\_\_\_\_

4/25/89

APPROVED: \_\_\_\_\_

5/6/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 21, 1989. The following Board Members were present: Chairman Daniel Smith; Paul Hammack; Robert Kelley; Ann Day; John Ribble and Mary Thonen. Vice-Chairman John DiGiulian was absent from the meeting.

Chairman Smith called the meeting to order at 9:30 a.m. with Mrs. Day leading the prayer.

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Page 35, February 21, 1989, (Tape 1), scheduled case of:

9:00 a.m. KHALIL S. ABDEL-HAY, VC 88-M-173, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport for an attached garage 8.1 feet from a side lot line such that side yards total 16.3 feet (20 ft. total min. side yard required by Sect. 3-307), located at 3482 Pence Court, on approximately 10,788 square feet of land, zoned R-3(C), Mason District, Tax Map 59-4((17))16.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Khalil S. Abdel-Hay, 3482 Pence Court, Annandale, Virginia, presented his statement of justification.

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

Mr. Hammack stated that, since a right-of-way extends for 25 feet across the rear of the property, there is really no other location to construct the garage.

Mr. Hammack moved to grant VC 88-M-173.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-M-173 by KHALIL S. ABDEL-HAY, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport for an attached garage 8.1 feet from a side lot line such that side yards total 16.3 feet, on property located at 3482 Pence Court, Tax Map Reference 59-4((17))16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3(C).
3. The area of the lot is 10,788 square feet of land.
4. A right-of-way exists to the rear of the property.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion.

The motion carried by a vote of 4-1; Chairman Smith voted nay. Mr. Kelley was absent for the vote; Mr. DiGuilian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 36, February 21, 1989, (Tape 1), Scheduled case of:

9:15 a.m. JAMES E. MERCER, GENEVA L. HALL, OSIE M. BROADUS, DIANE THOMAS, DOROTHY MAE AGES, VC 88-D-174, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed lot 50A having a lot width of 10 feet and to allow dwelling to remain 23.5 feet from lot line formed by pipestem (80 ft. min. lot width req. by Sects. 3-306 and 2-416), located at 1339 Balls Hill Road, on approximately 35,276 square feet of land, zoned R-3, Dranesville District, Tax Map 30-1((1))49,50, 30-1((17))A.

Kathy Reilly, Staff Coordinator, presented the staff report.

Mr. Ribble alluded to a similar situation recently presented to the Board, concerning the setback requirement for a proposed pipestem.

Jane Kelsey, Chief, Special Permit and Variance Branch, reviewed the pertinent Zoning Ordinance Section, and cited an interpretation made by a previous Zoning Administrator, for the edification of the Board Members.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Ehrich & Lubeley, 950 North Glebe Road, Suite 300, Arlington, Virginia, represented the applicant and presented the statement of justification.

A discussion ensued concerning ingress and egress to and from the proposed pipestem and the attitude of contiguous property owners toward this application.

In response to a question from Mrs. Thonen, Ms. Kelsey stated that staff had not received any verbal or written communication from Supervisor Richards regarding her position on this application.

Ellen Grayson-Barnes, 1343 Balls Hill Road, McLean, Virginia, identified herself as a

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neighbor on Lot 48. She stated she had no objection to what the applicant did with the property. She expressed concern about any possible effect the applicant's request might have on her property and/or the subsequent paving of Webb Lane.

Mr. Hammack asked Mr. Martin if the Mercer family and their heirs understood that their driveway was to be constructed in accordance with the Public Facilities Manual. Mr. Martin replied that they did.

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

Mrs. Thonen stated that, because the lot has an irregular shape and, without a variance, the applicant would be deprived of reasonable use of the lot, she would move to grant VC 88-D-174.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-D-174 by JAMES E. MERCER, GENEVA L. HALL, OSIE M. BROADUS, DIANE THOMAS, DOROTHY MAE AGES, under Section 18-401 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed lot 50A having a lot width of 10 feet, and to allow dwelling to remain 23.5 feet from lot line formed by pipestem, on property located at 1339 Balls Hill Road, Tax Map Reference 30-1((1))49,50, 30-1((17))A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 35,276 square feet of land.
4. The lot has an irregular shape.
5. Without a variance, the applicant would be deprived of reasonable use of the lot.

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

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

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

Page 38, February 21, 1989, (Tape 1), (James E. Mercer, Geneva L. Hall, Osis M. Broadus, Diane Thomas, Dorothy Mae Ages, VC 88-D-174, continued from Page 37)

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

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

1. This variance is approved for the subdivision of one lot into two lots as shown on the submitted plat with this application.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. Only one (1) entrance to two lots shall be allowed from Balls Hill Road. The driveway easements shall be recorded among the land records of Fairfax County in a form approved by the County Attorney with deeds to the property to ensure future access to these lots via a common driveway.
4. The driveway to the proposed lot shall be constructed in accordance with the Public Facilities Manual.
5. The applicant shall conduct a soils survey for the entire site. The applicant shall provide a geotechnical study at the request of the Director, Department of Environmental Management, at the time of subdivision plan approval for approval by the Department of Environmental Management and shall implement findings as requested by DEM.
6. Prior to subdivision plan approval, the applicant shall implement a tree preservation plan subject to review and approval by the County Arborist with the intent of identifying, locating and preserving individual mature, large and/or specimen trees and entire save areas on the site. Preliminary rough grading shall not be permitted on site prior to County Arborist approval of a tree preservation plan.
7. A trail shall be provided along Balls Hill Road frontage of the property as determined by the Director, Department of Environmental Management (DEM).
8. The applicant shall dedicate right-of-way along the entire frontage of this site adjacent to Balls Hill Road as shown on the plat submitted with this application dated September, 1988.

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-1; Chairman Smith voted nay. Mr. DiGullian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 38, February 21, 1989, (Tape 1), Scheduled case of:

9:30 a.m. GARY L. SAYLOR, SP 88-D-101, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow 13 foot high shed to remain 5.0 feet from side lot line and 4.7 feet from rear lot line (10 ft. min. side yard, 13 ft. min rear yard req. by Sects. 3-407 and 10-104), located at 7412 Howard Court, on approximately 14,450 square feet of land, zoned R-4, Dranesville District, Tax Map 40-1((6))(D)12.

Denise James, Staff Coordinator, presented the staff report. She stated that, in September of 1988, the applicant received a notice of violation from the Zoning Enforcement Branch and noted that the applicant did not obtain a building permit for the structure.

The applicant, Gary L. Saylor, 7412 Howard Court, Falls Church, Virginia, presented his statement of justification.

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Gregory R. Mensinger, 7422 Paxton Road, Falls Church, represented David and Diana Kiel, neighbors of the applicant whose permanent address is 7421 Paxton Road, Falls Church. The Kiels are presently living overseas. Mr. Hammack referenced the Kiels' letter of February 14, 1989, which is a part of the record, and expressed concern about the view from the Kiels' back yard.

A discussion ensued between Mr. Mensinger and Board Members concerning the screening between the Kiels' property and the shed. Mr. Mensinger stated that a fence was preferable to trees. Mr. Hammack stated that he believed a fence would be a more objectionable view than the shed itself.

Mr. Saylor spoke in rebuttal and, during a discussion with the Board Members, the Board discovered that the Kiels have a shed on their property which is very close to the Saylor property and, if not grandfathered, would probably be in violation under the existing Zoning Ordinance.

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

Because moving the shed would cause unreasonable hardship for the applicant, Mrs. Day moved to grant SP 88-D-101, with development condition number 3 to read, in part, "...A total of five (5) evergreen landscape plantings a minimum of five (5) feet in height shall be planted (and maintained) along the southwestern edge..." instead of "A total of five (5) evergreen landscape plantings a minimum of three (3) feet in height shall be planted along the southwestern edge..."

Mr. Hammack stated he would like to see screening on the northwestern side of the Saylor lot to protect the Kiel property and proposed an amendment which would provide for a total of ten (10) trees. Mrs. Thonen seconded the motion which failed by a vote of 2-4; Mr. Ribble, Mr. Kelley, Mrs. Day and Mrs. Thonen voted nay. Mr. DiGuilian was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-D-101 by GARY L. SAYLOR, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow 13 foot high shed to remain 5.0 feet from side lot line and 4.7 feet from rear lot line, on property located at 7412 Howard Court, Tax Map Reference 48-1(6)(D)12, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 14,450 square feet of land.
4. Moving the shed would cause unreasonable hardship to the applicant.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. A Building Permit shall be obtained within forty-five (45) days for the shed.
3. The shed shall be completed in a neutral color or a natural finish in order to be unobtrusive at its present location. A total of five (5) evergreen landscape plantings a minimum of five (5) feet in height shall be planted and maintained along the southwestern edge of the shed in order to soften the visual impact of the structure on adjacent properties. Existing vegetation on the northern and eastern edges of the shed shall be retained to maintain a buffer between the shed and adjacent properties.

4. The old shed shall be removed within thirty days of this approval.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-1; Mr. Hammack voted nay. Mr. DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 40, February 21, 1989, (Tape 1), Scheduled case of:

9:45 a.m. MANUEL S. ESPINA, VC 88-V-175, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 36 feet from front lot line (50 ft. min. front yard req. by Sect. 3-E07), located at 10925 Belmont Boulevard on 25,991 square feet of land, zoned R-E, Mount Vernon District, Tax Map 118-1(2)67.

Bernadette Bettard, Staff Coordinator, presented the staff report and pointed out a mistake in the staff report, stating "...a variance of 36 feet to the minimum side yard..." should state the front yard.

Mr. Ribble requested clarification from Ms. Bettard concerning the nature of this addition, which was alternately defined as a drive-through or an extended roof.

The applicant, Manuel S. Espina, 10925 Belmont Boulevard, Lorton, Virginia, presented his statement of justification. He said that the "canopy" he proposed to construct was part of the design of the original building.

Mr. Smith asked Mr. Espina what his justification was for requesting permission to make this addition. Mr. Espina stated the purpose of the addition was "looks."

Mr. Ribble asked the applicant whether there were any "arcades" in the neighborhood, since the applicant's written statement of justification stated, "...Arcades are a common theme in the neighboring houses...."

Chairman Smith asked if there were any other houses in the neighborhood with this type of an addition. Mr. Espina said he did not know of any.

Chairman Smith asked Mr. Espina if he had any other justification for this request. Mr. Espina stated that the only other justification he could think of was that the design of the house was intended to include this addition.

Francesco Rapuano, 10929 Belmont Boulevard, Lorton, Virginia, stated that his lot is adjacent to Mr. Espina's lot. He spoke in opposition to this request and presented the Board Members with a petition signed by other neighbors of Mr. Espina. Mr. Rapuano stated that the neighbors of Mr. Espina managed to work within the framework of the Zoning Ordinance and believed that he should be able to do the same.

Mr. Ribble stated that, because of the findings of fact that (1) the neighbors of the applicant object to this request for a variance, (2) the request for a variance is solely to enhance the design of the dwelling, and (3) denial of the application will not create a hardship for applicant, he would move to deny VC 88-V-175.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-175 by MANUEL S. ESPINA, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 36 feet from front lot line, on property located at 10925 Belmont Boulevard, Tax Map Reference 118-1((2))67, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 25,991 square feet of land.
4. Neighbors object to request for addition.
5. The sole purpose of proposed addition is to enhance design of dwelling.
6. Denial of the application will not create a hardship for applicant.

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

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

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

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

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

Mrs. Thonen seconded the motion. The motion carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1989.

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Page 42, February 21, 1989, (Tape 1), Board Matter:

Mr. Hammack moved that the Board go into Executive Session to meet with James Zook and Barbara Byron, but withdrew his motion when it was discovered that this meeting was scheduled to take place on February 28, 1989 at 11:00 a.m.

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Page 42, February 21, 1989, (Tape 2), Scheduled case of:

10:00 a.m. HAMEL HEALTH VENTURES, INC., SP 88-S-095, application under Sect. 5-503 of the Zoning Ordinance to allow health club at 4429 Brookfield Corporate Drive, Suite 100, on approximately 5.02 acres of land, zoned I-5, Springfield District, Tax Map 44-1((3))2.

Denise James, Staff Coordinator, presented the staff report.

The applicant, Diana Hamel, 12896C Grays Point Road, Fairfax, Virginia, began by discussing the question of square footage of the planned health club.

Chairman Smith stated it was his understanding that the applicant was required to amend the plat to correct an error in square footage and to have the parking tabulation indicated on the plat.

Ms. Hamel asked Chairman Smith if development condition number 8, limiting the maximum number of patrons on site to 50, could be changed now that the square footage will be increased.

Chairman Smith stated that the request could not be heard until the applicant provided the corrected plat to staff.

Chairman Smith asked if there was anyone in the room to speak for or against the request and no interest was voiced. He asked if staff had any objection to deferring this request until the plats were in order and staff has a chance to reevaluate the additional space. Ms. James said that staff had no objection. She stated that staff's concern was that there might not be adequate parking for the number of patrons on site and, if that figure would change, staff would need to know what the new figure was, and if that would affect parking tabulations.

After a discussion between the Board, staff and the applicant, Mr. Hammack moved to defer SP 88-S-095 until February 28, 1989 at 10:45 a.m.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 42, February 21, 1989, (Tape 2), Scheduled case of:

10:15 a.m. SYDENSTRICKER UNITED METHODIST CHURCH, SPA 78-S-264-4, application under Sect. 3-103 of the Zoning Ordinance to amend S-264-78 for church and related facilities to permit a covered walkway addition, located at 8508 Hoopes Road, on approximately 4.9075 acres of land, zoned R-1, Springfield District, Tax Map 89-3(1)15.

Kathy Reilly, Staff Coordinator, presented the staff report.

Mr. Hammack asked if there would be any change in the seating capacity or parking spaces. Ms. Reilly answered that no changes were anticipated.

Edward Wright, 8521 Hoopes Road, Springfield, Virginia, represented the applicant and presented the statement of justification. He stated that he accepted the staff report and changes as presented.

Mr. Kelley moved to grant SPA 78-S-264-4.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 78-S-264-4 by SYDENSTRICKER UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend S-264-78 for church and related facilities to permit a covered walkway addition, on property located at 8508 Hoopes Road, Tax Map Reference 89-3(1)15, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.9075 acres of 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 Section 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this special permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum seating capacity for the main place of worship shall be limited to a total of 300 seats.\*
6. The number of parking spaces shall be 95. All parking shall be on site.
7. There shall be no church related parking in the driveway adjacent to the structure used for the Sunday school rooms. This driveway shall be for the use of the parsonage only.\*
8. The existing vegetation shall be retained and used to satisfy the Transitional Screening 1 (25') requirement as defined by the County Arborist. Existing vegetation shall remain undisturbed except that removal shall be permitted to accommodate construction of the new addition and any required utility work. The applicant shall submit a landscaping plan to the County Arborist. The landscaping plan shall depict the type, size and amount of vegetation to be planted adjacent to the covered walkway. The landscaping shall be used to soften the visual impact of the proposed walkway.\*
9. The barrier requirement shall be waived.\*
10. All signs on the property shall conform with Article 12 of the Zoning Ordinance.
11. Right-of-way to 30 feet from existing centerline of Hooes Road and to 45 feet from centerline of Sydenstricker Road along the entire property frontage necessary for public street purposes shall be dedicated and shall convey to the Board of Supervisors in fee simple upon thirty (30) days notice from Fairfax County or the Virginia Department of Transportation. Ancillary temporary access easements shall be provided to facilitate these improvements.\*
12. Temporary slope easements shall be provided along Hooes frontage to facilitate road improvements. Temporary slope easements shall be provided along Sydenstricker Road consistent with the VDOT plans for the Springfield Bypass.\*
13. The applicant shall take all necessary actions to correct any drainage deficiencies as determined by the Director, DEM.\*

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14. The applicant shall perform maintenance on the existing drainage and detention facilities as follows: that it shall clean out sediment and debris from the six (6) foot detention to pond and swale behind Lot 122 and that it should cut weeds and remove cuttings from the pond between Lots 123 and 124 and that this maintenance function shall be performed annually or as often as required in order to minimize the off-site drainage impact.\*
15. The maximum daily enrollment of the nursery school and child care program shall be forty-five (45) children.\*
16. The maximum number of staff persons associated with the nursery school/child care program shall be seven (7).\*
17. The hours of operation for the nursery school/Child care program shall be limited to 8:30 a.m. to 12:00 noon, Monday through Friday.\*
18. The existing modular unit shall be removed from the property within sixty (60) days following completion of the addition.\*
19. Variance approval shall be obtained to allow the existing dwelling to remain the minimum required front yard of the dwelling unit be relocated outside the minimum required front yard or shall be removed. The applicant shall select on the of alternatives and within sixty (60) days following the transfer of the property to be dedicated for the public street purposes.\*
20. Non-residential Use Permit for the modular unit shall be obtained within thirty (30) days of the Board of Zoning Appeals approval of SPA 78-S-264-4.\*
21. A six foot wide Type I trail within a 10 foot wide public access easement shall be provided along the southwest side of Sydenstricker Road and along the frontage of Hoopes Road for the entire frontage of the property. Construction may be deferred at the discretion of the Director of the Department of Environmental Management (DEM).\*
22. The applicant shall submit new plats showing the existing and approved on-site trailer and deleting the note for 15 additional parking spaces. These plats shall be submitted to the Chairman, Board of Zoning Appeals prior to the release of the resolution for this application.

(\*The asterisk denotes development conditions of previously approved special permits. These conditions incorporate all conditions of the previously approved special permits.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 44, February 21, 1989, (Tape 2), Scheduled case of:

10:30 a.m. LAWRENCE L. SIEMIANSKI, SPA 80-D-035-2, application under Sect. 3-103 of the Zoning Ordinance to amend SP 80-D-035 for a home professional (dentist) office to permit continuation of the use without term, located at 1300 Baulah Road on 35,247 square feet of land, zoned R-1, Dranesville District, Tax Map 19-3((1))12.

Grayson P. Hanes of the law firm of Hazel, Thomas, Piske, Beckhorn and Hanes, P.C., 3110 Fairview Drive, Fairfax, Virginia, represented the applicant. Mr. Hanes requested a deferral of SPA 80-D-035-2 because a patient of the applicant, who had testified for the

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applicant at the last hearing, had died and the applicant was eulogizing the child at the time of the scheduled hearing. Mr. Hanes stated that another reason for requesting a deferral was that he had a revision of the plat which he wished to present to show the Fairfax County Water Authority easement recently acquired along the front of the property, along Route 7.

Denise James, Staff Coordinator, stated that staff had no objection to deferring this request.

Chairman Smith asked if there was anyone present who had an objection to deferring this request, and no objection was voiced.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if the applicant planned to make any other substantive changes to the plat which might necessitate restaffing and/or a potential change in staff's position.

Mr. Hanes stated there would be no change other than to show the recently acquired easement.

Ms. Kelsey then proposed March 14, 1989 at 11:15 a.m. as a good time for this request to be heard.

Mr. Hammack moved to defer SPA 80-D-035-2 until March 14, 1989 at 11:15 a.m.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Grayson P. Hanes of the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P.C., 3110 Fairview Drive, Fairfax, Virginia, said he had heard that Ann Day would be leaving the Board of Zoning Appeals and stated he would miss working with her and thanked her for her contribution to Fairfax County.

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Addition Time Request  
Mr. & Mrs. William E. Allison, VC 87-M-082

Mrs. Day moved to abide by recommendations of the staff and moved to grant an additional 12 months, to expire March 11, 1990.

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

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Request for Waiver of 12-month Time Limitation  
Ralph R. and Susan B. Galdo, VC 88-D-143

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicants were present and it was her understanding that there was no opposition to this waiver. Ms. Kelsey stated Mr. Peters was there from the Great Falls Civic Association to indicate that they had no objection to this request for a waiver.

After some discussion regarding the procedure for waiving the 12-month limitation, and a review by Ms. Kelsey of the requirements, Mr. Kelley moved to grant a waiver of the 12-month limitation on VC 88-D-143.

The motion was seconded by Mrs. Thonen and carried by a vote of 5-1, Chairman Smith voted nay. Mr. DiGuilian was absent from the meeting.

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Reconsideration of Waiver Only  
Previous Request for Waiver of 12-month Limitation  
McLean Tennyson Limited Partnership, VC 88-D-155

Jane Kelsey, Chief, Special Permit and Variance Branch, reviewed this request for the Board. This request had been denied on February 7, 1989. On February 14, 1989, the applicant requested waiver of the 12-month limitation, which was granted by the Board.

Page 44, February 21, 1989, (Tape 2), (Reconsideration of Waiver Only, Previous Request for Waiver of 12-month Limitation, McLean Tennyson Limited Partnership, VC 88-D-155, continued from Page 45)

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Mr. Kelley said that he wanted to be sure that Mr. Martin, who represented McLean Tennyson Limited Partnership, would send proper notification.

Mrs. Thonen moved to reconsider the request for a waiver of the 12-month limitation on VC 88-D-155. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

Mrs. Thonen stated that the reason for reconsideration was that Mr. Martin should be told to notify the interested persons.

Mr. Hammack reasoned that, if the 12-month limitation was waived, the applicant would still have to notify all interested people at the time he filed a new application.

Ms. Kelsey reviewed the procedure for sending out form letters when 12-month limitations are waived.

Mrs. Thonen withdrew her motion to reconsider and asked that the applicant be requested to sent out notification. Mr. Ribble withdrew his second of the motion. This was not considered by the Board to be the proper procedure to vacate a motion.

In order to vacate the original motion, Mr. Kelley moved to reconsider the vote just taken. Mrs. Thonen seconded the motion which carried by a vote of 4-2; Mr. Ribble and Chairman Smith voted nay.

It was decided that the action taken would put the applicant in the same position as last week.

Ms. Kelsey recommended that staff ask Mr. Martin to notify all those people present last week and advise them that the Board had waived the 12-month limitation and he would be filing a new application with amended plans to reduce the number of lots. Ms. Kelsey stated that Mr. Martin should also make notification that, when he did make new application, they would be notified in accordance with the procedure.

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Page 46, February 21, 1989, (Tape 2), After Agenda Item:

Set Hearing Dates  
Karlold Corporation Appeal  
Hazelton Laboratories America, Inc., Appeal

Mrs. Thonen moved to schedule these appeals to be heard on April 11, 1989. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 46, February 21, 1989, (Tape 2), After Agenda Item:

Approval of Minutes from October 10 and December 20, 1988

Mrs. Thonen moved to approve these minutes as presented. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 46, February 21, 1989, (Tape 2), After Agenda Item:

Request for Out-of-turn Hearing  
Word of Life Assembly of God, SPA 81-A-078-2  
Tentatively Scheduled for May 9, 1989

Jane Kelsey, Chief, Special Permit and Variance Branch, presented this request to the Board. She stated that numerous applications have emanated from that quadrant, along Backlick Road, and that staff needs as much time as possible for staffing. Citizens' meetings also are anticipated. For these reasons, staff could not support the out-of-turn hearing.

Mrs. Thonen moved to deny the out-of-turn hearing requested for SPA 81-A-078-2. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 47, February 21, 1989, (Tape 2), After Agenda Item:

Request for Out-of-turn Hearing  
Thomas and Frances McGeehee, SP 89-P-004  
Tentatively Scheduled for May 9, 1989

Jane Kelsey, Chief, Special Permit and Variance Branch, presented this request to the Board. Convenience was judged to be the reason for this request.

Mr. Ribble moved to deny this request. Mr. Thonen seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 47, February 21, 1989, (Tape 2), Information Item:

System Implemented in Computer for  
Motions by the Board of Zoning Appeals  
Involving Action Items

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board of this system which had been suggested by Mr. Zook and would be discussed next week at the Board's meeting with Mr. Zook.

Mrs. Thonen moved to discuss this item next week. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. DiGuilian was absent from the meeting.

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Page 47, February 21, 1989, (Tape 2), Board Matter:

Expiration of Ann Day's Term

Mr. Ribble reminded the Board that this was Ann Day's last meeting as a Member of the Board. He commented on how helpful Mrs. Day was to him in learning the procedures. He said she was an asset to the Board and that he would miss her. Her wished her good luck in any new venture she may pursue.

Mrs. Thonen said she would like to add her best wishes to Mrs. Day. She said she was surprised and disappointed that Mrs. Day was not reappointed. She stated Mrs. Day was an asset to the Board and the Board would plan some type of party.

Mrs. Day said she had enjoyed being on the Board and had learned a great deal. She said it was a fine Board for which she had the highest respect. While they did not always agree on everything, they worked it out. She said she felt they had been as fair as anyone could possibly be, making very difficult decisions affecting people's livelihood. She said she enjoyed it.

Chairman Smith said he would like to thank Mrs. Day for all the help she had given him since she had been on the Board. He said she had been an asset to the Board and she had an excellent attendance record and an on-time record, which certainly was commendable. He said he hoped this would be recognized by the Board of Supervisors.

Mrs. Day asked that the Clerk prepare a copy of this portion of the meeting for her Memory Book.

Mr. Kelley, as the newest Member of the Board, said he would also like to thank Mrs. Day for the invaluable assistance she gave him in getting acclimated to the procedures.

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Page 47, February 21, 1989, (Tape 2), After Agenda Item:

Revised Plats  
McLean Bible Church, SPA 73-D-151-2

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had reviewed these plats and recommended that the Board accept them.

No objection was expressed by the Board, so Chairman Smith said he would sign off on the plats.

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Page 48, February 21, 1989, (Tape 2), Adjournment:

Since there were no other matters to come before the Board, Mr. Ribble moved to adjourn. Mrs. Day seconded the motion which carried unanimously. Mr. DiGuilian was absent from meeting.

Chairman Smith adjourned the meeting at 12:30 P.M.

Gerl B. Begko  
Gerl B. Begko, Deputy Clerk to the  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/23/89

APPROVED: 6/6/89



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 28, 1989. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Ann Day; Paul Hammack; and Mary Thonen. Robert Kelley and John Ribble was absent from the meeting.

Chairman Smith called the meeting to order 9:22 a.m. and gave the invocation.

He welcomed Martha Harris, the new member of the Board of Zoning Appeals.

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Page 49, February 28, 1989, (Tape 1), Scheduled case of:

9:00 A.M. S. STONE AND BEULAH M. LANDESS, VC 88-M-176, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into four (4) lots, proposed lots 4C and 4D each having a lot width of 9.0 feet (80 ft. min. lot width required by Sect. 3-306) and to allow existing dwelling on proposed Lot 4B to be 14 feet from the lot line formed by the pipestem (25 ft. min. distance required by Sect. 2-416), located at 6377 Landess Street on 1.37716 acres of land, zoned R-3, Mason District, Tax Map 72-1((20))4.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval to subdivide a parcel of land into four lots but the lot could be subdivided into two lots by right. Ms. Greenlief added that in staff's opinion the applicants have reasonable use of the property and a hardship approaching confiscation does not exist and that the approval of this request would result in an isolated subdivision of pipestem lots in an area developed solely in a conventional development pattern of lots which meet the minimum lot width requirement. In closing, Ms. Greenlief stated that in staff's judgment the application does not meet all of the required standards for a variance.

Fred Landess, 806 Gilliam Mountain Road, Charlottesville, Virginia, son of the applicants, appeared before the Board. The applicants purchased the property in 1944 and have resided there since that time and are now at an age where it is difficult for them to maintain the property. The lot is 60,000 square feet making it larger than most of the lots in the neighborhood and has an unusual size, depth and topography because of severe slopes on two sides. He added that there would be one driveway and that the request would bring the subject property more in line with the surrounding properties.

Mrs. Thonen asked if Mr. Landess had read the letters submitted from the neighbors and he replied that he had not.

Chairman Smith explained that Mr. Landess could comment on the letters during his rebuttal time.

At this time, Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Samuel Watson, 6364 Hillcrest Place, Alexandria, Virginia, abutting property owner, came forward and stated that he was not opposed to the request but was concerned that the removal of trees would affect the buffering between his property and the subject property. Mr. Watson also asked that a soil study be conducted to determine if storm drains are needed to prevent runoff on to his property and expressed concern with the hours that construction would be ongoing.

The next speaker was Philip Church, 6333 Oak Ridge Drive, Alexandria, Virginia. He stated that he was not opposed to the applicant subdividing the subject property into two lots by right but did object to subdividing into four lots. Mr. Church stated that he has lived two blocks from the subject property for ten years and has seen the area continually be built up and that he was tired of being "nickled and dimed to death."

During rebuttal, Mr. Landess stated that the trees would remain and that he does not believe there is a ground water problem. He added that the lots would be comparable to the other lots in the neighborhood and that this request would be more in line with the neighborhood than a townhouse development.

Chairman Smith closed the public hearing.

Mr. Hammack stated that this was a close case but that he believed that it would be an undesirable precedent to grant the request, the applicant can divide the property into two lots without a variance, and that the applicant had not satisfied the standards. He then made a motion to deny the request.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-M-176 by S. STONE AND BEULAH M. LANDESS, under Sect. 18-401 of the Zoning Ordinance to allow subdivision into four (4) lots, proposed Lots 4C and 4D each having a lot width of 9.0 feet and to allow existing dwelling on proposed Lot 4B to be 14 feet from the lot line formed by the pipestem, on property located at 6377 Landess Street, Tax Map Reference 72-1((20))4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.37716 acres of land.
4. The granting of this variance would set an undesirable precedent as there are other large lots in the neighborhood.
5. The applicants can subdivide into two lots by right, four lots would be a convenience.

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

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

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

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

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

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 8, 1989.

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9:15 A.M. DR. AND MRS. M. SOBHANY, VC 88-V-179, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling 15 feet from side lot line and 45 feet from the front lot line (20 ft. minimum side and 50 ft. minimum front yards required by Sect. 3-B07), located at 11809 River Drive on approximately 31,665 square feet of land, zoned R-E, Mount Vernon District, Tax Map 122-2((2))10.

Keith Martin, attorney with Walsh, Colucci, Stackhouse, Emrich, Lubeley, P.C, 950 North Glebe Road, Arlington, Virginia, representing the applicant came forward to request a thirty day deferral. He stated that this would allow the applicant an opportunity to submit plans to the neighborhood Architectural Review Board.

Chairman Smith polled the audience to determine if anyone present objected to the deferral. Hearing no reply, Chairman Smith asked staff for a deferral date. Lori Greenleaf, Staff Coordinator, suggested March 21, 1989 at 10:30 a.m. Hearing no objection, the Chair so ordered.

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9:30 A.M. JERRY A. HINN AND GARY D. KNIPLING, T/A MASON NECK HOSPITAL, SP 88-V-103, application under Sect. 4-503 of the Zoning Ordinance to allow a veterinary hospital as approved in SP 86-V-062, expired, located at 7685 Armistead Road on approximately 20,004 square feet of land, zoned C-5 and C-8, Mount Vernon District, Tax Map 107-4((4))32A.

Lori Greenleaf, Staff Coordinator, presented the staff report. On February 24, 1987, the Board of Zoning Appeals approved SP 86-V-062, an identical application, but the Special Permit expired before the site plan had been approved and construction commenced. She stated that since the original application the Ordinance has been revised and the number of parking spaces could be reduced to 16 rather than 23, allowing room to provide additional screening. In closing, Ms. Greenleaf stated that it is staff's judgment that this application does not meet the standards for a Special Permit use for reasons set forth in the staff report. Staff recommended denial of the application.

H. Kendrick Sanders, 3905 Railroad Avenue, #200N, Fairfax, Virginia, attorney for the applicant came forward. Mr. Sanders stated that he considered this application to be merely an extension of time on the original application. This is an identical case which was heard by the Board in February 1987. He explained that the applicant's engineer passed away during the site review process and a new engineer had to be hired. The site plan was approved within the 18-month time period but the building permit was not pulled, construction did not commence, the special permit expired, and the applicant did not request additional time.

Mr. Sanders stated that he believed that the major issue was that the property is zoned C-5 and C-8, which allows part of the property to be used by right for basically anything and this use is more in line with the character of the neighborhood. He asked that development condition 7 in the staff report be revised to delete the word "maximum" and stated that he would like to be certain that there were no other changes because some of the conditions were worded differently then before.

Mr. DiGiulian called Mr. Sanders attention to development conditions 9 through 12 and 18 because he did not believe that complied with the approved site plan. Mr. Sanders asked that the development conditions of the previous staff report be incorporated if the case is approved rather than the ones in the staff report dated February 21, 1989.

Mrs. Harris stated that the applicant had indicated at the last public hearing that if strict implementation of the screening and setback requirements were to be instituted that the property could not be used. Since the parking requirement had been revised, she asked if parking spaces could be removed to allow additional screening. Mr. Sanders replied that he did not believe so because there is an approved site plan and the process had already taken two years. He explained that to change the screening now would require an additional year for the applicant to go through another site plan review.

In response to questions from Mrs. Harris, Mr. Sanders explained that the applicant would have to comply with all Health Department regulations relating to the veterinary hospital.

Mrs. Thones questioned staff if development condition number 16 would address any concerns regarding odor and noise connected with the veterinary hospital and Ms. Greenleaf replied that it should.

Mr. Sanders noted that the permits have been approved but the applicant had not yet picked them up from the Health Department.

Mr. Hammack asked staff to explain the differences in these development conditions and the ones in the previous approval. Ms. Greenleaf replied that she had not compared the

Page 52, February 28, 1989, (Tape 1), (Jerry A. Hinn and Gary D. Knipping, t/a Mason Neck Hospital, SP 88-V-103, continued from Page 51)

two sets of development conditions because staff had analyzed this the same as any new application. She added that if there were any conditions that the applicant disagreed with she would be happy to discuss them.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a different staff coordinator had prepared the staff report on the previous application and that the Board had revised the development conditions at the time of public hearing.

Mr. Sanders asked that the Board use the development conditions stipulated by the Board in the previous approval be adopted for this Special Permit.

There were no speakers to address this request and Chairman Smith asked if staff had any closing comments.

Ms. Greenleaf stated that although it appears that the applicant was diligently pursuing site plan approval the permit did expire and the applicant could have requested additional time. Staff did review this as a new application, therefore did not go through the two sets of development conditions word for word.

Chairman Smith closed the public hearing.

Mr. DiGiulian stated that he believed that the applicant had met the standards for a special permit and moved approval of the request. The approval was subject to the development conditions dated February 24, 1987 being implemented with the following modifications:

Conditions 1 through 7 remain the same.

Condition number 8 revised to read: "Twenty-four (24) parking spaces shall be provided."

Conditions 9, 10, 11, 12, 13, and 14 shall remain the same.

Add condition number 15 which shall read: "The applicant shall comply with the conformance standards specified in Article 12 of the Zoning Ordinance."

Add condition number 16 which shall read: "The building shall be constructed so as to ensure no emission of odor or noise which may be detrimental to adjoining properties."

Mr. DiGiulian stated that he was familiar with the area and was not aware of anything that had changed in the area from the prior approval to prohibit this from being a compatible use.

Mr. Hammack seconded the motion.

Chairman Smith noted that the Parking Ordinance had changed and asked staff if 16 parking spaces was sufficient, Ms. Greenleaf replied that 16 was required.

Mrs. Harris stated that she believed additional screening should be provided.

Mrs. Thonen commented that she did not want to see the applicant have to go back through site plan review. Ms. Greenleaf stated it was staff's understanding that the applicant would have to go back through site plan review because of the change in use since an office building was currently under construction and the applicant wanted to change the use to a veterinary hospital.

Mr. DiGiulian expressed concern that a reduction to the number of parking spaces would cause overflow parking along Armistead Road. He added that the Department of Environmental Management (DEM) apparently believed that the screening was sufficient.

Mrs. Thonen disagreed with staff about reducing the number of parking spaces and stated that she could not in good conscience send the applicant back through site plan.

Chairman Smith called Mr. Sanders back to the podium. In response to an earlier question from Mrs. Harris, Mr. Sanders stated that he had discussed reducing the parking with the applicants but because of the narrowness of the lot, the parking spaces could not be removed in order to provide additional screening.

Ms. Kelsey explained that she had discussed the situation with John Winfield of DEM. He indicated that the same type of revision that the applicant went through to revise the use to a medical office building from a veterinary hospital would have to be done to reverse the type of use. Mr. Winfield further indicated that the process would take approximately one month and a reduction in the number of parking spaces and providing additional screening would not affect the length of the process. Ms. Kelsey stated that the medical office building was approved subject to the submitted plat and DEM

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overlooked the fact that the Board of Zoning Appeals had no jurisdiction to modify the screening for a use by right, therefore the medical office building was approved with inadequate screening.

There was no further discussion and Chairman Smith called for the vote. The motion carried by a vote of 4-1 with Mrs. Harris voting nay; Messrs. Kelley and Ribble absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-V-103 by JERRY A. HINN AND GARY D. KNIPLING, T/A MASON NECK HOSPITAL, under Section 4-503 of the Zoning Ordinance to allow a veterinary hospital as approved in SP 86-V-062, expired, on property located at 7685 Armistead Road, Tax Map Reference 107-4((4))32A, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is C-5 and C-8.
3. The area of the lot is 20,004 square feet of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-911 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum number of employees on the premises at any one time shall be seven (7).
6. The hours of operation shall be limited to 7:30 a.m. to 8:00 p.m. on weekdays, and 7:30 a.m. to 2:00 p.m. on Saturdays. Emergency care will be provided as needed.
7. Dedication for public street purposes shall be from the center line of Armistead Road as well as construction of road improvements consistent with the dedication and construction previously completed by the adjacent City Service Station. Temporary grading and construction easements shall be provided.
8. Twenty-four (24) parking spaces shall be provided.

Page 54, February 28, 1989, (Tape 1), (Jerry A. Binn and Gary D. Knipling, t/a Mason Neck Hospital, SP 88-V-103, continued from Page 53)

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9. Parking lot lighting, if installed, shall be the low intensity type, on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.
10. A seven (7) foot brick wall shall be constructed and plantings shall be provided as shown on the development plan as submitted with this application.
11. Interior parking lot landscaping shall be provided pursuant to Article 13 of the Zoning Ordinance. Such landscaping shall include the provision of substantial planting islands in a manner that will soften the visual impact of the parking areas and building. Landscaping shall be provided in accordance with a landscape plan submitted to staff for review and approved by the BSA and the County Arborist.
12. The open space calculations shall be provided to the Department of Environmental Management for review and approval to ensure that no more than 25 percent of the interior parking lot landscaping is used to satisfy the open space requirement.
13. The maximum height of the building shall not exceed 18 feet. The building shall be one story and be in conformance with the pictures submitted.
14. The applicant shall comply with all Health Department regulations pursuant to Sect. 8-911, additional standards for Veterinary Hospitals.
15. The applicant shall comply with the conformance standards specified in Article 12 of the Zoning Ordinance.
16. The building shall be constructed so as to ensure no emission of odor or noise which may be detrimental to adjoining properties.

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

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion.

The motion carried by a vote of 4-1 with Mrs. Harris voting nay; Messrs. Kelley and Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 8, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 54, February 28, 1989, (Tape 1), Scheduled case of:

9:45 A.M. KENNETH S. AND HELENE BROWER, VC 88-8-177, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 20.6 feet from rear lot line (25 ft. minimum rear yard required by Sect. 3-307), located at 7800 Lowmoor Court on approximately 9,431 square feet of land, zoned R-3, Springfield District, Tax Map 98-2((6)464.

Kathy Reilly, Staff Coordinator, presented the staff.

The applicant, Kenneth Browner, 7800 Lowmoor Court, Springfield, Virginia, came forward. He stated that he was proposing to extend the back wall of the house 12 feet, expand the kitchen, and add a sitting room. He added that the addition will be architecturally compatible with the existing house.

Mrs. Thonen asked the size of the existing kitchen. Helene Brower, wife of the applicant, came forward and stated that the kitchen was approximately 10 x 12 with a L-shaped layout.

Mr. Brower noted that because the lot is pie shaped this is the only place for the addition.

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Mr. Hammack asked how far the house on Lot 478 was from the shared property line and Mr. Brower replied approximately 30 feet. Mr. Brower added that he had discussed the addition with the owners of Lots 478 and 479 and they had voiced no objection.

There were no speakers to address this application and Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant the request because the lot is pie shaped, the house is unusually situated on the lot, and because she believed that the applicant had met the standards. The approval was subject to the development conditions contained in the staff report being implemented.

Mrs. Thonen called the applicant back to the podium to discuss the screening. Mrs. Brower stated that there is a small group of trees but most of the trees are on the neighbor's side of the fence.

Mrs. Thonen added condition number 4 to read: "The materials, construction, and architecture of the addition shall be in keeping with the existing dwelling unit. A row of evergreens, three (3) feet in height at the time of planting, shall be planted five (5) feet apart along the rear lot line behind the addition."

Ms. Reilly asked for a clarification as to exactly where the trees were to be planted.

Mrs. Thonen replied that the trees were to be planted directly behind the addition not along the entire length of the property.

Chairman Smith informed the applicants that new plats showing the plantings would have to be submitted to staff if the request was approved.

A discussion took place among staff and the Board as to whether or not new plats were needed showing the plantings. Mrs. Thonen stated that she would not make it a condition.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-S-177 by KENNETH S. AND HELENE BROWER, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 20.6 feet from rear lot line, on property located at 7800 Lowmoor Court, Tax Map Reference 98-2(6)464, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,451 square feet of land.
4. The lot is pie shaped prohibiting construction elsewhere on the lot.

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

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

Page 56, February 28, 1989, (Tape 1), (Kenneth S. and Helene Brower, VC 88-8-177, continued from Page 55)

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The materials, construction, and architecture of the addition shall be in keeping with the existing dwelling unit. A row of evergreens, three (3) feet in height at the time of planting, shall be planted five (5) feet apart along the rear lot line behind the addition.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 8, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 56, February 28, 1989, (Tape 2), Scheduled case of:

10:00 A.M. DANIEL J. & MARY F. GODAR, VC 88-C-180, application under Sect. 18-401 of the zoning Ordinance to allow construction of a detached garage 10 ft. from a side lot line (15 ft. min. side yard required by Sects. 3-207 and 10-104), located at 9746 Vale Road on approximately 29,945 square feet of land, zoned R-2, Centreville District, Tax Map 38-3((20)33).

Kathy Reilly, Staff Coordinator, presented the staff report.

The applicant, Daniel J. Godar, 9746 Vale Road, Vienna, Virginia, came forward and referenced his statement of justification submitted with the application. He added that there are no objections from the neighbors and this is the only location that the garage can be constructed.

In response to questions from the Board, Mr. Godar replied that the sanitary sewer easement is 10 to 15 feet wide. He added that he has owned the house since September 1975 and presently has no garage.

Mary Godar, the co-applicant, came forward and asked the Board to grant the request.

There were no speakers to address this request and Chairman Smith closed the public hearing.

Mr. Hammack stated that he would like to grant the request but did not believe that the applicants had satisfied the hardship requirement, that the request would be a



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convenience, and that the garage could be constructed elsewhere on the property. He then moved to deny the request.

Chairman Smith seconded the motion for purposes of discussion and agreed with Mr. Hammack's comments.

Mrs. Thonen asked the applicant what was in the area behind the easement.

Mrs. Godar explained that there are large trees, a garden, and a large recreational area. She stated that if the garage was constructed in this area she would have to carry the groceries a long way.

Mr. Hammack stated he understood her viewpoint but that the Ordinance did not care how far she had to carry groceries.

Chairman Smith called for the vote. The vote was 3-2 with Chairman Smith, Mrs. Harris, and Mr. Hammack voting aye. Mrs. Thonen and Mr. DiGiulian voting nay.

Mr. Hammack explained that the applicant could request a waiver of the 12-month time limitation.

The applicants made no request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-C-180 by DANIEL J. AND MARY F. GODAR, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage 10 feet from a side lot line, on property located at 9746 Vale Road, Tax Map Reference 38-3((20))33, 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 28, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 29,945 square feet of land.

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

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

Page 58, February 28, 1989, (Tape 2), (Daniel J. and Mary F. Godar, VC 88-C-180, continued from Page 57)

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

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

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

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

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

Chairman Smith seconded the motion.

The motion carried by a vote of 3-2 with Chairman Smith, Mrs. Harris, and Mr. Hammack voting aye; Mrs. Thonen and Mr. DiGiulian voting nay; Messrs. Kelley and Ribble absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 8, 1989.

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Page 58, February 28, 1989, (Tape 1), Scheduled case of:

10:15 A.M. EILEEN C. MELE, VC 88-P-178, application under Sect. 18-401 of the Zoning Ordinance to allow construction of room addition to dwelling to 14.4 feet from rear lot line (25 ft. minimum rear yard required by Sect. 3-207), located at 8207 Labbe Lane on approximately 11,581 square feet of land, zoned R-2(C), Providence District, Tax Map 39-3((39))16.

Mr. Hammack noted that a letter had been received from the applicant requesting a deferral because of a death in the family. He moved to defer until such time as the applicant could be present.

Chairman Smith polled the audience to determine if there was anyone present interested in the case. Hearing no reply, he asked staff for a date and time for the deferral.

Bernadette Bettard, Staff Coordinator, suggested March 7, 1989 at 8:30 p.m.

Mr. Hammack moved to defer VC 88-P-178 to March 7, 1989 at 8:30 p.m. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

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Chairman Smith noted for the record that the Board had a scheduled meeting at 11:00 a.m. with James Zook, Director, Office of Comprehensive Planning, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning.

Ms. Byron suggested that perhaps the Board could proceed with the last case as Mr. Zook was not present due to an earlier meeting.

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Page 58, February 28, 1989, (Tape 2), Scheduled case of:

10:15 A.M. INTERNATIONAL TOWN AND COUNTRY CLUB, INC., SPA 82-C-037-3, application under Sect. 3-103 of the Zoning Ordinance to amend SP 82-C-037 for a country club to permit addition of seasonal structure over existing tennis courts, additional parking spaces, and extension of hours of operation, located at 13200 Lee Jackson Highway on 240.87 acres of land, zoned R-1, Centreville District, Tax Map 45-1((1))11. (DEF. FROM 1/24/89 - NOTICES NOT IN ORDER)

Lori Greenlief, Staff Coordinator, presented the staff report. She stated there is an extensive history of many amendments on the subject property which are outlined in the staff report. There is thick existing vegetation on the western and southern borders of the tennis courts and the trees are approximately 25 feet in height which will adequately screen the lower portion of the tennis bubble. In staff's opinion since the majority of the structure will be screened, there will be no potential visual impact.

She continued by stating that staff was concerned with the visual impact from the parking lot. Because there is no vegetation between the parking lot and Route 50, staff

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recommended the planting of a evergreen hedge and trees in that area. The parking lot is located near some problem soils on the site and staff further recommended planting on the southern and northern side of the driveway in order to stabilize the soils.

In closing, Ms. Greenleaf stated that staff believed the use would meet the standards and therefore recommended approval subject to the development conditions being implemented.

Anthony L. Pease, a member of the Board of Directors of the country club, 13200 Lee Jackson Highway, Fairfax, Virginia, came forward. Mr. Pease stated that he had read the staff report and the applicant would comply with all development conditions. He stated that the bubble would be used from October 1st until April 31st. This would allow the club to offer an additional service to the families which make up the existing membership.

There were no speakers to address this application and Chairman Smith closed the public hearing.

Mr. DiGiulian moved approval of the request because he believed that the applicant had met the standards. The approval was subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-C-037-3 by INTERNATIONAL TOWN AND COUNTRY CLUB, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-C-037 for a country club to permit addition of seasonal structure over existing tennis courts, addition of parking spaces, and extension of hours of operation, on property located at 13200 Lee Jackson Highway, Tax Map Reference 45-1((1))11, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1989; and

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

- 1. That the applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 240.87 acres of 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 Section 8-403 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- 2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
- 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 use shall be subject to the provisions set forth in Article 17, Site Plans.

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5. The existing chain link fence shall remain as it is currently located as shown on the special permit plat and the remaining barrier requirement along all other lot lines shall be waived.
6. The existing evergreen trees along the western and southern sides of the existing tennis courts shall be deemed to satisfy the Transitional Screening requirement along that portion of the southern and western lot lines and shall be maintained to screen the proposed tennis bubble. Care shall be taken to preserve these trees when the bubble is installed and dismantled. An evergreen hedge, six (6) feet in planted height, shall be installed along the southern edge of the parking lot near the tennis courts. Additional evergreen trees shall also be planted along the southern side of the parking lot, the purpose of which shall be to mitigate the visual impact of the asphalt and the cars. The number, size, and type of these trees shall be determined by the County Arborist. The existing vegetation along the remaining portions of the southern and western lot lines and the entire northern and eastern lot lines shall be deemed to satisfy the Transitional Screening requirement.
7. Native vegetation shall be planted to help reduce the amount of water runoff in the following areas:
  - Along the southern side of the driveway leading up to the proposed parking lot.
  - Along the northern side of the proposed parking lot up to the northwestern corner of the tennis courts
  - In the southwestern corner of the existing main parking lot.

The County Arborist shall review and approve a landscape plan which shows these plantings. The plantings shall be of a variety that will stabilize the soils in these areas.
8. There shall be a minimum of 125 parking spaces and a maximum of 208 parking spaces on site.
9. All lighting for this use shall be directed on-site and shielded, if necessary, to prevent light and glare from projecting off of the application property. Lighting for the tennis courts when the bubble is not erected shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed fifty (50) feet.
  - o The lights shall be a low-intensity design which directs the light directly onto the facility.
  - o Shields shall be installed, if necessary, to prevent the light from projecting beyond the courts and parking lot areas.

The 50 foot high light standards around the tennis courts shall not be lighted during the months when the tennis bubble is erected.
10. All noise shall be in accordance with Chapter 108 of the Fairfax County Code.
11. The hours of operation for the tennis courts and pro shop shall be from 7:00 a.m. to 11:30 p.m., daily.
12. Dedication shall be provided to Fairfax County in fee simple within 90 days of request by Fairfax County for the needed land should a service road be constructed in the future.

The above conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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Mrs. Thonen and Mr. Hammack seconded the motion. The motion carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 8, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 61, February 28, 1989, (Tape 2), After Agenda Item:

Hamel Health Ventures, Inc., SP 88-S-095

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to an item that was deferred from February 21, 1989. She stated that staff was requesting a deferral because the plats are still deficient.

Denise James, Staff Coordinator, explained that this case had been deferred to allow the applicant time to submit revised plats to show the exact square footage of the use, the parking spaces, and to put the parking tabulation on the plat. She stated that the applicant had submitted new plats to staff just prior to this public hearing but the plats need to be redone and certified by the engineer. The applicant had requested a week's deferral.

Chairman Smith asked staff if the Resolution was before the Board today and Ms. Kelsey replied that it was.

Mr. Hammack moved to defer for one week so that the applicant could submit new plats.

Ms. Kelsey stated that the March 7th meeting was a night meeting and suggested a time of 8:40 p.m.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

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Page 61, February 28, 1989, (Tape 2), Scheduled case of:

Snappy Lube, VC 86-P-106, Additional Time

Mrs. Thonen moved to grant the applicant of VC 86-P-106 an additional six (6) months to commence construction. The new expiration date would be September 10, 1989

Messrs. DiGiulian and Hammack seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble not present for the vote.

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Page 61, February 28, 1989, (Tape 2), After Agenda Item:

E. W. Lynch, Jr., Out of Turn Hearing

Mrs. Thonen moved approval of the applicant's request for an out of turn hearing.

Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian abstaining. Messrs. Kelley and Ribble absent from the meeting.

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Page 61, February 28, 1989, (Tape 2), After Agenda Item:

Coscan Washington, Inc., Hampton Forest Swimming Pool, SP 89-S-006

Mrs. Thonen moved approval of the applicant's request for an out of turn hearing because it was for a swimming pool.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested May 9, 1989.

Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

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Page 62, February 28, 1989, (Tape 2), Scheduled case of:

February 21, 1989 Resolutions

Mrs. Thonen moved approval of the Resolutions as submitted with the exception of Hamel Health Ventures, Inc. which the Board discussed earlier in the public hearing.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

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Page 62, February 28, 1989, (Tape 2), Scheduled case of:

Karlold Corp. Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to a memorandum from the Zoning Administrator concerning the Karlold Corp. Appeal.

Mrs. Thonen stated that she had reviewed the memorandum from Ms. Gwinn and could not determine if it was or was not timely filed, therefore she would rely upon the Zoning Administrator's determination.

Chairman Smith suggested that the application be sent back to the Zoning Administrator as not being timely filed.

Mrs. Thonen moved that the Karlold Corp. Appeal was not timely filed and that the application be sent back to the Zoning Administrator.

Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

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Page 62, February 28, 1989, (Tape 2), Information Item:

Mrs. Thonen stated that she believed that the Board should plan a reception and a certification of recognition for Ann Day, a former Board member.

Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

Chairman Smith asked if this included the Board of Supervisors and Mrs. Thonen replied that was her intent.

James Zook, Director, Office of Comprehensive Planning, stated that if it was the Board's intent to request the Board of Supervisors to recognize Ms. Day during one of its sessions a motion to that effect should be made.

Mrs. Thonen then moved to request that the Board of Supervisors recognize the work and dedication of Ann Day.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Messrs. Kelley and Ribble absent from the meeting.

Chairman Smith thanked Mr. Zook for his input and agreed that was the correct procedure.

Mrs. Thonen moved to go into Executive Session to discuss personnel matters.

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Page 62, February 28, 1989, (Tape 2), Adjournment:

Following the Executive Sessions, as there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/2/89

APPROVED: 5/9/89

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 7, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, vice-Chairman; Paul Hammack; Robert Kelley; and Martha Harris. John Ribble and Mary Thonen were absent.

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Chairman Smith called the meeting to order at 8:05 P.M. and led the prayer.

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Page 23 March 7, 1989, (Tape 1), Scheduled case of:

8:00 P.M. JANET A. DAY, VC 88-A-181, application under Sect. 18-401 of the zoning Ordinance to allow enclosure of existing carport 7.3 feet from side lot line such that side yards total 16.0 feet (8 ft. min., 20 ft. total min. side yard required by Sect. 3-307), located at 5406 Francy Adams Court on approximately 18,655 square feet of land, zoned R-3(C), Annandale District, Tax Map 68-3(5)230.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Gary Carter, 7479 Little River Turnpike, Annandale, the contractor, appeared before the Board to explain the request as outlined in the statement of justification contained in the staff report. He stated that the property had an exceptional shape due to the narrowness, and that the placement of the house on the property was unique.

Chairman Smith stated that the file on this case contained a letter of support from the neighbor of the adjoining property.

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

Mr. Hammack moved to grant VC 88-A-181.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-A-181 by JANET A. DAY, under Section 18-401 of the zoning Ordinance to allow enclosure of existing carport 7.3 feet from side lot line such that side yards total 16.0 feet, on property located at 5406 Francy Adams Court, Tax Map Reference 68-3(5)230, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3(C).
3. The area of the lot is 18,655 square feet of land.
4. The plat attached to the application shows that the house is sited very close to the front of the curve on Francy Adams Court. The lot is irregular in shape with sharply converging lot lines. The carport needs a variance of only .7 of a foot. The total side yard requirements can be compromised due to the position of the house on the lot.

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

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

Page 64, March 7, 1989, (Tape 1), (Janet A. Day, VC 88-A-181, continued from Page 63)

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 4-1 with Chairman Smith voting nay, Mr. Ribble and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 64, March 7, 1989, (Tape 1), Scheduled case of:

8:15 P.M. STANLEY MARTIN COMMUNITIES, INC., SP 88-S-106, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 15.7 feet from pipestem lot line (25 ft. min. front yard required by Sect. 2-416), located at 10735 Beechnut Court on approximately 30,498 square feet of land, zoned R-C, Springfield District, Tax Map 87-3(11)28.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that a building permit application was filed for a house and a deck but that the plat did not show a proposed deck in the location that it had been constructed.

In response to questions, Ms. Bettard stated that the plat which had accompanied the building permit application was a grading plan.

Robert Bishop, 8000 Tower Crescent Drive, Vienna, representative of the applicant, appeared before the Board to explain the request as outlined in the statement of justification contained in the staff report. He stated that a building permit had been issued for a deck 660 square feet in size, which comprised the area of both the decks. The error had occurred when the contract on the house was ratified and the deck was enlarged. Mr. Bishop stated that the house could have been resited to meet the required setbacks if the mistake had been realized.

Lori Greenleaf noted that development condition number two should be changed to read:

"A Building Permit for the larger deck shall be obtained within thirty (30) days of this approval."



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

Following discussion, there was confusion between the Board members and the applicant's representative as to whether two decks or one large deck had been constructed, and whether the plats submitted with the special permit application were correct.

Mr. DiGiulian moved to defer decision on SP 88-S-106 until March 14, 1989 at 11:45 a.m. pending submission of accurate plats and pictures showing the existing deck.

Mr. Kelley seconded the motion which passed by a vote of 5-0, Mr. Ribble and Mrs. Thonen absent from the meeting.

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Page 65, March 7, 1989, (Tape 1), Scheduled case of:

8:30 P.M. EILEEN C. MELE, VC 88-P-178, application under Sect. 18-401 of the Zoning Ordinance to allow construction of room addition to dwelling to 14.4 feet from rear lot line (25 ft. minimum rear yard required by Sect. 3-207), located at 8207 Labbe Lane on approximately 11,581 square feet of land, zoned R-2(C), Providence District, Tax Map 39-3((39))16. (DEF. FROM 2/28/89 AT APPLICANT'S REQUEST)

Bernadette Bettard, Staff Coordinator, presented the staff report.

Ray Mele, 8207 Labbe Lane, the applicant, appeared before the Board to explain the request as outlined in the statement of justification contained in the staff report. He stated that the property had been purchased in 1982 and that the lot was pie-shaped with the house set back to within 30 feet of the rear property line. Mr. Mele stated that he wanted to build a sunroom and deck on the rear of the house to help exclude the noise from Electric Avenue and that this addition would not be visible to either adjoining property owner. He added that the proposed addition had been approved by the Architectural Committee of the Homeowners Association.

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

Mr. Kelley moved to grant VC 88-P-178.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-P-178 by EILEEN C. MELE, under Section 18-401 of the Zoning Ordinance to allow construction of room addition to dwelling to 14.4 feet from rear lot line, on property located at 8207 Labbe Lane, Tax Map Reference 39-3((39))16, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2(C).
3. The area of the lot is 11,581 square feet of land.
4. The lot is exceptionally shallow and exceptionally shaped. The Architectural Committee and the Homeowner's Association have no problem with this request and it is properly screened.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 4-1 with Chairman Smith voting nay, Mr. Ribble and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 66, March 7, 1989, (Tape 1), Scheduled case of:

8:40 P.M. HAMEL HEALTH VENTURES, INC., SP 88-8-095, application under Sect. 5-503 of the Zoning Ordinance to allow health club at 4429 Brookfield Corporate Drive, Suite 100, on approximately 5.02 acres of land, zoned I-5, Springfield District, Tax Map 44-1((3))2. (DEF. FROM 2/21/89 FOR NEW PLATS) (DEF. FROM 2/28/89 FOR NEW PLATS)

Mr. DiGiulian stated that since his office had prepared the plats for the application he would not be participating in the discussion or the vote.

Lori Greenleaf presented the staff report for Denise James, Staff Coordinator. She noted that development conditions number five and eight should be changed to read as follows:

Development Condition number five

"There shall be a minimum of 49 parking spaces reserved for the proposed health club use. In accordance with Condition 2 above, the applicant shall submit revised plats delineating the location and number of the spaces reserved for the proposed health club use."

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Development Condition number eight

"There shall be a maximum of 100 patrons on site at any one time."

Diana Hamel, 12896 Grays Point Road, Fairfax, the applicant, appeared before the Board to answer questions about the proposed health club.

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

Mr. Hammack moved to grant SP 88-S-095 with changes in the development conditions and the condition that this permit would not be valid until new plats were presented which indicated the minimum number of parking spaces and the maximum number of patrons on site.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-S-095 by HAMEL HEALTH VENTURES, INC., under Section 5-503 of the Zoning Ordinance to allow health club, on property located at 4429 Brookfield Corporate Drive, Tax Map Reference 44-1(3)2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 7, 1989, and

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

1. That the applicant is the lessee.
2. The present zoning is I-5.
3. The area of the lot is 5.02 acres of land.
4. This permit shall not be valid until new plats are presented which indicate the minimum number of parking spaces and the maximum number of patrons on site.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. There shall be a minimum of 49 parking spaces reserved for the proposed health club use. In accordance with Condition 2 above, the applicant shall submit revised plats delineating the location and number of the spaces reserved for the proposed health club use.
6. The hours of operation shall be limited to 9:00 am to 9:00 pm Monday - Friday and 10:00 am - 6:00 pm on Saturday.

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7. There shall be a maximum of fifteen (15) employees associated with this use on site at any one time.

8. There shall be a maximum of 100 patrons on site at any one time.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of this Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion.

The motion carried by a vote of 4-0 with Mr. DiGiulian abstaining; Mr. Ribble and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 68, March 7, 1989, (Tape 1), After Agenda Item #1:

Nelson F. Getchell and Martha L. Getchell Appeal

Mr. DiGiulian moved that the appeal of Nelson F. Getchell and Martha L. Getchell be scheduled for May 9, 1989 at 11:00 a.m.

Mr. Hammack seconded the motion which carried by a vote of 5-0, Mr. Ribble and Mrs. Thonen absent from the meeting.

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Page 68, March 7, 1989, (Tape 1), After Agenda Item #2:

Out-of-Turn Hearing Request  
Dr. and Mrs. Joseph H. Kaufmann, VC 89-V-017

Mr. Kelley moved to approve the Out-of-Turn hearing request for VC 89-V-017 and schedule the application for April 20, 1989.

Mr. DiGiulian seconded the motion which passed by a vote of 4-1 with Chairman Smith voting nay; Mr. Ribble and Mrs. Thonen absent from the meeting.

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Page 68, March 7, 1989, (Tape 1), After Agenda Item #3:

Out-of-Turn Hearing Request  
Luck Stone Corporation, SPA 81-S-064-2

Mr. Hammack moved to deny the out-of-turn hearing request for SPA 81-S-064-2.

Mr. DiGiulian seconded the motion which passed by a vote of 5-0, Mr. Ribble and Mrs. Thonen absent from the meeting.

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Page 68, March 7, 1989, (Tape 1), After Agenda Item #4:

February 28, 1989 Resolutions

Mr. Kelley moved to approve the BZA resolutions for February 28, 1989.

Mr. DiGiulian seconded the motion which passed by a vote of 5-0, Mr. Ribble and Mrs. Thonen absent from the meeting.

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

Judy L. Moss  
Judy L. Moss, Acting Associate Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED 4/4/89

APPROVED 4/29/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 14, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Paul Hammack; Robert Kelley; Martha Harris; John Ribble and Mary Thonen.

Chairman Smith called the meeting to order at 9:22 a.m. and led the prayer.

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Page 71, March 14, 1989, (Tape 1), Scheduled case of:

9:00 A.M. DAVID W. AND MARGARET B. NEERMAN, VC 88-M-184, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.8 feet from one side lot line and 9.03 feet from the other side lot line (12 ft. min. side yard required by Sect. 3-307), located at 6131 Brook Drive on approximately 9,600 square feet of land, zoned R-3, Mason District, Tax Map 51-3((19))20.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, David Neerman, 6131 Brook Drive, Falls Church, presented his statement of justification, stating he had a screened-in porch along the south property line and this request is to build a room over the existing porch.

Mrs. Harris observed that, at the back corner, the addition would not be in direct alignment with the side wall of the existing dwelling, but would be .83 feet off. Mr. Neerman stated that the architects felt that, if the addition were set back a small amount, it would make the wall appear less massive along that side.

Chairman Smith and Mr. DiGiulian discussed the setback with Mr. Neerman and it was determined that, at the juncture, the addition is offset further away from the side yard line than the existing dwelling.

Rory Clark, with the law firm of Mackall, Mackall, Walker & Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, represented the applicant's neighbor to the right, Jane Strong, 6133 Brook Drive, Falls Church, who was in the hospital at the time of the hearing. Mr. Clark showed some photocopies to the Board Members, stating that the distance between the two houses in question is very small.

Chairman Smith made the observation that all the houses in that neighborhood were built in 1941 and all are close to the property line. Mr. Clark agreed that this was true.

Mr. Clark stated that his client spent a great deal of time in her screened-in porch and was concerned that she would not be able to see through the applicant's yard, into the wooded area behind the houses. Mrs. Thonen asked if Mrs. Strong could not use the rest of the view which would not be obstructed by the applicant's request and Mr. Clark stated that, of course, she could.

Mrs. Thonen pointed out that Mrs. Strong's house was built right up to the property line, sitting almost on the property line.

Mr. Clark submitted photographs for the record.

Mr. Neerman spoke in rebuttal, stating that he had not seen any of the material submitted by Mr. Clark. Mr. Neerman pointed out that the variance requested was only 2.2 feet and that no changes were being made to the front of the house, thus not changing the appearance of the neighborhood. Mr. Neerman stated that he just had his property resurveyed and found that toward the front, Mrs. Strong's fence is one (1) foot over the property line, on his property.

Mr. Hammack observed that the proposed addition is just an extension of the house. He also noted that the lot is narrow. He said the addition will be no closer to the side lot line than the existing dwelling. Mr. Hammack further stated that the applicant is requesting a minimum variance. He said the applicant could build by right just 2.2 feet further away from the side lot line and the neighbor's view would still be restricted.

Mr. Hammack moved to grant VC 88-M-184.

Mrs. Thonen requested that the resolution be amended to include a development condition stating that the proposed addition shall be constructed no closer to the side lot line than the existing dwelling, with the exception of the chimney.

The Board voted unanimously to accept the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-M-184 by DAVID W. & MARGARET B. NEERMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.8 feet from side lot line and 9.03 feet from the other side lot line, on property located at 6131 Brook Drive, Tax Map Reference 51-3((19))20, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,600 square feet of land.
4. The lot is narrow.
5. The addition will be no closer to the side lot line than the existing dwelling.
6. The applicant is requesting a minimum variance.
7. The applicant could build by right just 2.2 feet further away from the side lot line and the neighbors view would still be restricted.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a



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request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.
4. The proposed addition shall be constructed no closer to the side lot line than the existing dwelling, with the exception of the chimney.

Mr. Ribble seconded the motion.

The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 73, March 14, 1989, (Tape 1), Scheduled case, of:

9:15 A.M. RONALD G. MILLER, SP 88-A-105, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 1.5 feet from side lot line (20 ft. min. side yard required by Sects 3-107 and 10-104), located at 8513 Virginia Avenue on approximately 20,344 square feet of land, zoned R-1, Annandale District, Tax Map 59-3((10))48.

Lori Greenleaf, Staff Coordinator, presented the staff report, explaining that the structure is located 4 feet from the side lot line and not 2.5 feet as stated on page 2 of the staff report. She stated that the canoe racks which extend toward the side lot line are 2.5 feet in width; therefore, the structure in its entirety is located 1.5 feet from the side lot line. She further stated that the figure of 2.5 feet should also be changed to 4 feet in the development condition section.

Mrs. Thonen inquired of Ms. Greenleaf as to the status of the shed amendment. Ms. Greenleaf stated that she did not know when the amendment would go to the Board. She stated this special permit would not be necessary if that amendment is approved.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the shed amendment would go to the Board of Supervisors in the latter part of March.

The applicant, Ronald G. Miller, 8513 Virginia Avenue, Annandale, Virginia, presented the statement of justification. Mr. Miller stated that his son asked him a year ago to build a tree house in the back yard. At that time, an objection was raised by a neighbor, which prompted an investigation by the Zoning Enforcement Division. In the process of that investigation, three violations were noted: the shed, the tree house, and a backstop for sports activities. He said that all of the violations were based on the 7-foot-high limitation for improvements to the property. Mr. Miller said he was unaware of the restriction at the time he made the improvements.

When Mr. Miller was notified of the violations, he said that two of the three infractions were immediately rectified: the tree house and the backstop. Relocation of the shed or reduction in height of the shed presented a greater problem, Mr. Miller stated.

Mr. Miller said the shed was unintentionally constructed in violation of the zoning Ordinance, but he believes it is in no way detrimental to the surrounding properties. He requested that it be allowed to remain as is.

In response to a question from Chairman Smith, Mr. Miller said the size of the shed is 12 feet from north to south by 8 feet east to west, with a 5 foot overhang, or lean-to, facing Lots 49 and 50 to the west.

Mr. Hammack asked staff if tree houses are regulated by the zoning Ordinance. Ms. Greenleaf replied that they are, with the respect to the height.

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

Mrs. Thonen said would support this request because of the controversy over sheds in the past, and the amendment now under consideration.

Mrs. Thonen moved to grant SP 88-A-105, correcting the development condition to read that the wall is 4.0 feet from the side lot line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-A-105 by RONALD G. MILLER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 1.5 feet from side lot line, on property located at 8513 Virginia Avenue, Tax Map Reference 59-3((10))48, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
4. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

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

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

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

1. This approval is granted for the location and the specific shed shown on the plat included with this application and is not transferable to other land. It is noted that the wall of the shed is located 4.0 feet from the side lot line. The canoe racks are located 1.5 feet from the side lot line.

Mr. Ribble seconded the motion.

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The motion carried by a vote of 5-1; Chairman Smith voted nay. Mr. Kelley was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 76, March 14, 1989, (Tape 1), Board Matter:

Mr. Hammack asked staff if zoning has had any communication with the Building Permit Section to ask them to refer people who come in with shed applications over to zoning.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that both she and Jane W. Gwinn, Zoning Administrator, have discussed this subject with the employees of the Department of Environmental Management (DEM). Ms. Kelsey said she called the person in charge of that office concerning one of the applications that came before the Board recently, to say that the applicant's justification was that DEM did not make the applicant aware of the zoning requirements. Ms. Kelsey advised the Board that there is an agreement between the Zoning Administration Division (ZAD) and DEM whereby DEM would make any caller aware that there are zoning regulations which might impact upon an application. Ms. Kelsey stated that the brochures distributed by DEM include information on zoning, such as where to call, etc.

Ms. Kelsey stated that turnover in DEM may have been responsible for a new employee not providing an applicant or a caller with the correct information, or advising them to contact ZAD.

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Page 77, March 14, 1989, (Tape 1), Scheduled case of:

9:30 A.M. PETER J. BOYLE, VC 88-A-182, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 5.0 feet from side lot line (7 ft. min. side yard required by Sect. 3-307 and 2-412), located at 5305 Juxon Place on approximately 16,616 square feet of land, zoned R-3, Annandale District, Tax Map 70-3((2))(8)16.

Denise James, Staff Coordinator, presented the staff report.

The applicant, Peter J. Boyle, 5305 Juxon Place, Springfield, Virginia, presented the statement of justification.

Chairman Smith asked the applicant why an 11 foot carport would not suffice. The applicant stated that the fireplace extends out 1-1/3 feet out from the house and would present a hardship for the senior citizens in the household. The additional two feet would ease the hardship.

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

Mrs. Thonen observed that the applicant's property was very narrow. She stated that the carport proposed is of minimum size when considering the intrusion of the fireplace, and a minimum variance is being requested.

Mrs. Thonen moved to grant VC 88-A-182.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-A-182 by PETER J. BOYLE, under Section 18-401 of the zoning Ordinance to allow construction of carport addition to dwelling to 5.0 feet from side lot line, on property located at 5305 Juxon Place, Tax Map Reference 70-3((2))(8)16, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1989; and

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

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1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,616 square feet of land.
4. The lot is narrow.
5. The proposed addition is a minimum-sized carport.
6. A minimum variance is being requested.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion.

The motion carried by a vote of 5-1, Chairman Smith voted nay. Mr. DiGuilian disqualified himself because his office had prepared the plat.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this variance.

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9:45 A.M. WALLACE H. AND CAROLYN C. MINETT, VC 88-D-185, application under Sect. 18-401 of the Zoning Ordinance to allow carport addition to dwelling to 3.0 feet from side lot line (10 ft. min. side yard required by Sects. 3-207 and 2-412), located at 1137 Buchanan Street on approximately 15,000 square feet of land, zoned R-2, Dranesville District, Tax Map 30-2((20))(B)7 and 8.

Denise James, Staff Coordinator, presented the staff report, noting that in the original application the applicant's statement appeared to address personal convenience, rather than the nine variance standards. Ms. James stated that the applicant submitted a revised statement of justification which was distributed to the Board that morning for their review.

The applicant, Carolyn Minett, 1137 Buchanan Street, McLean, Virginia, presented the statement of justification.

John Hogan, 1680 Chain Bridge Road, McLean, Virginia, the architect for the applicant, presented his justification for the design of the carport.

Helga Berger, 1203 Buchanan Street, McLean, Virginia, next-door neighbor of the applicant on the side of the proposed carport, spoke in favor of this application.

Mrs. Harris asked Ms. Berger if, in her opinion, screening was necessary near the carport. Mrs. Harris asked if there was existing screening between the two properties. Ms. Berger said there is a fence on both properties, between the two properties.

There were no other speakers, so Chairman Smith closed the public hearing.

Mr. Ribble noted the exceptional narrowness of the property and the extraordinary situation of this being an older subdivision, the house having been built in 1925.

Mr. Ribble moved to grant VC 88-D-185.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-D-185 by WALLACE H. AND CAROLYN C. MINETT, under Section 18-401 of the Zoning Ordinance to allow carport addition to dwelling to 3.0 feet from side lot line, on property located at 1137 Buchanan Street, Tax Map Reference 30-2((20))(B)7 and 8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,000 square feet of land.
4. The application particularly meets the standards of paragraphs 2(A) and 2(F) because the property has exceptional narrowness and an extraordinary situation in that it is an older development.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.

Mr. Kelley seconded the motion.

The motion carried by a vote of 6-1; Chairman Smith voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 78, March 14, 1989, (Tape 1), Scheduled case of:

10:00 A.M. FRANK H. AND ALISON F. BERNHART, VC 88-V-183, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 25.0 feet from front lot line (30 ft. min. front yard required by Sect. 3-407), located at 6034 Grove Drive on approximately 12,060 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3(14)(2)40.

Kathy Reilly, Staff coordinator, presented the staff report, and called the Board's attention to the fact that the proposed building height on the plat contained in the staff report was indicated as 38 feet; whereas, it should have read 32 feet. She stated that revised plats had been placed before the Board Members.

The applicant, Frank Bernhart, 6034 Grove Drive, Alexandria, Virginia, presented the statement of justification. He submitted letters from two neighbors and a picture, which had been used to design the addition.

Mrs. Harris inquired if the applicant would be using the same siding and roof for the addition as on the existing house. The applicant replied that he would, as shown in the picture presented to the Board.

Mr. Kelley moved to grant VC 88-V-183.

Mr. Hammack asked Mr. Kelley to consider an additional development condition requiring the applicant to construct the addition with details and materials compatible with the existing dwelling unit.

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The Board voted unanimously to accept the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-183 by FRANK H. AND ALISON P. BERNHART, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 25.0 feet from front lot line, on property located at 6034 Grove Drive, Tax Map Reference 83-3(14)(2)40, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 12,060 square feet of land.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a

request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.
4. The applicant shall construct the addition with architectural materials compatible to the existing dwelling unit.

Mr. Ribble seconded the motion.

The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 80, March 14, 1989, (Tape 1), Scheduled case of:

10:15 A.M. ST. CLARE MISSION, SP 88-S-091, application under Sect. 3-103 of the Zoning Ordinance for a church and related facilities as approved by SP 85-S-058, which is now expired, located at 12409 Henderson Road, on approximately 15 acres of land, zoned RC and WS, Springfield District, Tax Map 85-4((1))7.

Chairman Smith advised that, according to the information he had, the notices were not in order on this application.

Mrs. Thonen moved to defer SP 88-S-091 until March 28, 1989 at 10:15 a.m.

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

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Chairman Smith asked if the Board Members had an opportunity to read the draft Resolution which was to be presented to Mrs. Ann Day.

Mrs. Thonen moved to adopt the draft Resolution. Mr. DiGuilian seconded the motion which carried unanimously.

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Page 80, March 14, 1989, (Tape 1), After Agenda Item:

Request for Waiver of 12-month Limitation  
Edward and Geraldine Grundler, VC 88-A-144

In response to Mrs. Thonen's question on the proper procedure for this action, Jane Kelsey, Chief, Special Permit and Variance Branch, explained the correct procedure and advised that the applicant had complied with this procedure.

Mr. DiGuilian requested clarification of the difference between the original application and the new application.

The applicant, Edward Grundler, 5521 Yorkshire Street, Springfield, Virginia, stated that he had redesigned his plan. He had formerly asked for a variance to go to 1-1/2 feet from the neighbors property line in the back. He changed his plans to go up to 3-4/5 feet at that point and 5-1/2 feet at the front section.

Mr. DiGuilian moved to grant a waiver of the 12-month limitation on VC 88-A-144. Mr. Ribble seconded the motion which carried unanimously.

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Page 80, March 14, 1989, (Tape 1), After Agenda Item:

Approval of Resolutions from the March 7, 1989 Hearing

Mrs. Thonen moved to accept the resolutions as presented. Mr. DiGuilian seconded the motion which carried unanimously.

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Page 81, March 14, 1989, (Tape 1), After Agenda Item:

Reconsideration of Denial of Out-of-turn Hearing Request  
Luck Stone Corporation, SPA 81-S-064-2

Mrs. Thonen moved to defer this request until the end of the meeting because the applicant's representative was not present. Mr. DiGuilian seconded the motion which carried unanimously.

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At 10:35, Mrs. Thonen moved that the Board recess since the next application was not due to be heard until 11:00 a.m. Mr. DiGuilian seconded the motion which carried unanimously.

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Page 81, March 14, 1989, (Tape 2), Scheduled case of:

11:00 A.M. ANITA'S BRIDAL SHOP APPEAL, A 89-S-001, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that appellant's home occupation is in violation of the use limitation precluding customers or clients, located at 14710 Cranoke Street, on approximately 10,004 square feet of land, zoned R-3, Springfield District, Tax Map 54-1((5))6.

Mike Congleton, Assistant to the zoning Administrator, presented the staff report.

Mr. Hammack asked how the County felt a person could implement their home occupation if they could not have customers or clients come to the home.

Mr. Congleton replied that, as with all other home occupations, a seamstress would be able to visit the homes of her clients to do fittings, perform the actual work on her premises, and deliver the finished pieces to the clients' homes.

The applicant, Edward T. Climo, Sr., 14701 Cranoke Street, Centreville, Virginia, presented his justification for appealing the determination of the Zoning Administrator, stating that fittings must be conducted on the premises.

Mr. Climo stated that a County employee, whose name he did not know, had told him he could have clients call at his home if he served them a beverage, which technically made them his guest. Mr. Climo could not produce any factual evidence or the name of the County employee who supposedly gave him this advice.

Chairman Smith reminded Mr. Climo that any statement which a random County employee possibly made to him, contrary to the Zoning Ordinance, would not give him permission to violate the Zoning Ordinance.

Mr. Climo said his original thought was to flood the Zoning Division with a list of all people he supposedly knew of who were in violation of the Zoning Ordinance. He said that, when he went to talk with Mr. Ash at zoning, Mr. Ash was "super," so he did not want to start flooding them with this type of thing.

Mr. Climo said his neighbors had no complaints. He described the fitting aspect of his business as an attempt to justify why fitting should be allowed to be done on premises.

Mrs. Harris questioned Mr. Climo about the letter from Jackie E. Ash wherein it stated that the home occupation permit was for an office only for the making of bridal head pieces. Mr. Climo said he did not go for a permit for an office only for the purpose of making head pieces. He said he told (them) he would be making custom headpieces and gowns, and there would be customers coming to the home. He said they had been making gowns since 1978. Mrs. Harris stated she wanted to know only what was in Mr. Climo's application. Mr. Climo stated he did not know, offhand, all he remembered was what he told (them) when he went up there.

Mrs. Harris stated that her point was that it appeared that what Mr. Climo applied for was a permit for an office for the business of making bridal headpieces.

Chairman Smith stated he would like to go back to the application that Mr. Climo made, which stated he wanted a permit to make bridal headpieces, and that is all the permit allowed him to do. Chairman Smith stated the application was signed by the appellant, indicating she understood the purpose for which the permit was granted.

Mr. Hammack referred to Attachment 5 and asked Mr. Climo if the writing was his or his wife's. He asked who had filled in the portion stating, "making bridal headpieces." Mr. Climo identified the printing as his wife's.

Mr. Hammack referred to a copy of the license attached and asked Mr. Congleton if the applicant had a license which obligated her to pay retail tax. Mr. Congleton said he believed so, because goods were produced and sold to the ultimate consumer, so it is a retail sale type of business.

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Chairman Smith stated that a retail license is required by anyone who buys and sells, handed down from the General Assembly and dispensed by the County. The zoning category is governed by the County Zoning Ordinance.

Mr. Hammack asked Mr. Congleton if there was any zoning category where the applicant's type of business would be permitted. Mr. Congleton replied that, as a secondary use to a residence, he did not believe so. Mr. Congleton stated that the applicant could go into a commercial district.

Paula Farraday, 7833 Cedar Landing Court, Alexandria, Virginia, introduced herself as the person who requested the initial zoning inspection and spoke in support of the Zoning Administrator's determination. She stated that Mrs. Climo is running a full scale retail business. Ms. Farraday stated that, because she and others like her who operate bridal shops, pay rent, overhead, salaries, etc., Mrs. Climo can unfairly undercut them. She stated that, unless she was also allowed to operate under the same conditions as Mrs. Climo, and be governed by the same laws, she could not compete with the appellant.

Ms. Farraday stated that customers come into her store and take up 1-1/2 to 2 hours of her time, just to try dresses on, and then go to Mrs. Climo and order the same merchandise at 25-40% less. She said she and other bridal shops cannot compete with the appellant. She stated that the only fair way would be for Mrs. Climo to work out of a mall and be governed by the same laws as her competition.

Mr. Climo spoke in rebuttal to Ms. Farraday's comments. He explained that he also ran a discount mail order business and explained the operation, stating that it did not involve clients coming to the house.

In response to questions from Mrs. Harris, Mr. Climo stated the discount mail order business was done strictly by phone. Mr. Climo stated that, as far as the custom-made business was concerned, it could only operate if customers were fitted on the premises. Mr. Climo stated that he was planning to expand his discount mail order business.

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

Mr. Hammack stated that, having heard the evidence by the appellant, he was sympathetic to the problem faced by Mrs. Climo, but she did not seem to fall into any of the categories which would allow a business of her type to operate in Fairfax County in the home. Mr. Hammack stated that, ten years ago, Mrs. Climo did sign the application clearly acknowledging that she is aware that no clients, customers or visitors, relating to the home occupation should be permitted on the premises. He said that Mrs. Climo does admittedly have clients come to her home.

Mr. Hammack stated he felt Jane W. Gwinn, Zoning Administrator, was correct in her interpretation, and moved that the Board uphold her determination.

Mrs. Thonen seconded the motion. She called attention to Paragraph 3 of the Section relating to home occupations: Except for articles produced on the premises, no stock and trade shall be stored, displayed or sold from these premises. Mrs. Thonen said this represented another violation by the applicant.

The motion carried by a vote of 7-0.

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Page 82, March 14, 1989, (Tape 2), Scheduled case of:

11:15 A.M. LAWRENCE L. SIEMIANSKI, D.D.S., SPA 80-D-035-1, application under Sect. 3-103 of the Zoning Ordinance to amend SP 80-D-035 for a home professional (dentist) office to permit continuation of the use without term, located at 1300 Beulah Road, on approximately 35,247 square feet of land, zoned R-1, Dranesville District, Tax Map 19-3(1)12. (DEF. FROM 2/21/89 AT APPLICANT'S REQUEST)

Denise James, Staff Coordinator, presented the staff report, and advised that the applicant had submitted a revised affidavit dated February 23 1989.

Grayson P. Hanes, of the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P.C., 3110 Fairview Park Drive, Fairfax, Virginia, represented the applicant and presented the statement of justification. Mr. Hanes brought the Board's attention to a package which he had submitted that morning for the record, including an appraisal of the applicant's business.

There was some discussion between the Board and Jane Kelsey, Chief, Special Permit and Variance Branch, regarding the package which Mr. Hanes had submitted. It was agreed among the Board Members that there appeared to be some discrepancies in the information put forth.

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Mr. Hammack asked Mr. Hanes if he had any problem with the development conditions in the staff report. Mr. Hanes said he did not.

Mrs. Harris asked Mr. Hanes if the signage met all of the qualifications, stating that she used to live in Great Falls and knew many people who objected to the sign. Mr. Hanes stated that the applicant had a permit for the sign and that the sign does meet the requirements of the Zoning Ordinance.

The following people spoke in support of the application: Roger Campbell, 1409 Whitley Drive, Vienna, Virginia; Nader Mameghani, 1310 Beulah Road, Vienna, Virginia; Edgar H. Newkirk, 9905 Julliard Drive, West Bethesda, Maryland.

Mr. Hammack stated that, because the applicant has been in practice at this location for nine years without any violations, and the zoning Administrator can monitor the applicant for violations, he moved to grant-in-part SPA 80-D-035-1.

Mr. Hammack stated he would like the applicant to be able to continue his practice until retirement without the necessity to again come before the Board. He requested that the development conditions state that this permit shall automatically expire without notice, fifteen (15) years from June 13, 1990.

Mr. Kelley seconded the motion.

Mrs. Thonen explained that she would have to vote against the motion for that length of time because of the uncertainty of future conditions in the area.

Chairman Smith stated he also would have to vote against the motion because he believed that fifteen years, unrestricted, is not in keeping with the recommendation of the staff. He agreed with Mrs. Thonen about changing conditions in the area and said that a five-year term would give the zoning Administrator an opportunity to review the situation at five-year periods.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 80-D-035-2 by LAWRENCE L. SIEMIANSKI, D.D.S., under Section 3-103 of the Zoning Ordinance to amend SP 80-D-035 for a home professional (dentist) office to permit continuation of the use without term (THE BOARD GRANTED A 15 YEAR TERM), on property located at 1300 Beulah Road, Tax Map Reference 19-3((1))12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. That 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 of land.
4. The applicant has been in practice at this location for nine years without any violations.
5. The Zoning Administrator can monitor the applicant for violations.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or

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not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform with the approved Special Permit plat and these conditions.
5. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.
6. The transitional screening requirement shall be modified so as to allow the existing vegetation to remain to satisfy the transitional screening requirement. Additional supplemental evergreen plantings, as may be required by the County Arborist, shall be provided to screen the parking lot from the adjacent properties and from both Beulah Road and Leesburg Pike. The barrier requirement shall be waived.
7. The maximum number of employees including the applicant shall be four (4). The applicant shall be the only dentist operating from this property
8. The hours of operation shall be limited to 8:30 a.m. to 5:30 p.m., Monday - Friday, with occasional emergency hours.
9. There shall be a minimum and maximum of twelve (12) parking spaces, including two garage spaces. All parking shall be on site.
10. The home professional office shall occupy no more than 1200 square feet of the dwelling.
11. This permit shall automatically expire without notice, fifteen (15) years from June 13, 1990, the expiration date of SP 80-D-035.

Mr. Kelley seconded the motion.

The motion carried by a vote of 5-2; Chairman Smith and Mrs. Thonen voted nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 84, March 14, 1989, (Tape 2&3), Scheduled case of:

11:30 A.M. MESSIAH LUTHERAN CHURCH AND UNITED COMMUNITY MINISTRIES, INC., SPA 81-V-028-1, application under Sect. 3-403 to amend SP 81-V-028 for a church and related facilities to permit addition of a public benefit association use, located at 1906 Belle View Boulevard, on approximately 69,050 square feet of land, zoned R-4, Mount Vernon District, Tax Map 93-1((25))1, 2, 3, 4, 10 and 11. (CONCURRENT WITH SE 88-V-069. DEF. FROM 12/20/88, 1/17/89 and 2/14/89 IN ORDER FOR THE BOARD OF SUPERVISORS TO HEAR SE 88-V-069.)

Lori Greenlief, Staff Coordinator, presented the staff report, stating that Ron Derrickson, Planning Technician, was handing out excerpts of Minutes from the Board of Supervisors' meeting of February 27, 1989, when Supervisor Hyland made a motion, which was approved, to allow a parking reduction in the required number of spaces on the site.

Ms. Greenlief further stated the applicant had a letter from the Park Authority, giving the church the benefit of their parking spaces on Sunday mornings.

Mrs. Harris asked for a clarification of the parking situation. Ms. Greenlief stated that the spaces for use by the church and the health screening could be combined. Chairman Smith stated that the two uses would not be occurring at the same time and would not be conflicting.

Jane Kelsey, Chief, Special Permit and Variance Branch advised the Chairman that a gentleman in the audience had approached her for permission to speak. She said that she

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had advised him that, to the best of her recollection, the hearing had been closed, except for the issue of parking. Chairman Smith acknowledged that this was true.

Mrs. Thonen asked what number Supervisor Hyland had stated the parking spaces could be reduced to. It was determined that Supervisor Hyland did not state a number. Chairman Smith reasoned that Supervisor Hyland had intended to reduce the number of spaces to that which was available on the site and Ms. Greenlief agreed that was probably true.

Chairman Smith stated that the additional parking provided by the Park Authority was for the use of the health screening, or other facilities.

Ms. Greenlief stated that development condition 6 of the Special Permit and condition number 8 of the Special Exception were essentially the same, except that condition number 8 of the Special Exception was worded more appropriately.

Mr. Kelley stated it was his recollection that the expected use would not be more than six months for United Ministries.

Mr. Hammack stated he believed that use of the property as a health care facility was supposed to expire this summer, but he felt the intention was to use it indefinitely as a residential facility, or home for the women.

Someone from the audience attempted to offer some information and it became necessary for Chairman Smith to reopen the hearing in order for him to be heard.

Mr. Hammack moved to reopen the hearing for the purpose of taking additional testimony. Mr. Kelley seconded the motion which carried unanimously.

Robert Bidwell, 6503 Bluebell Lane, Alexandria, Virginia, stated he doubted the stated duration of the medical facility would be adhered to, since United Community Ministries had received a grant of \$7,500 in matching funds for this purpose. He added that the Minister did not live in the house designated for his use, and that the house in question was being rented for in excess of \$900 per month. Mr. Bidwell went into issues involving covenants, and Mr. Ribble stated that covenants are not within the jurisdiction of the Board of Zoning Appeals. Chairman Smith and Mrs. Thonen stated that the use of the house was not an issue.

In response to Mr. Bidwell's statements, Sharon Kelso, Executive Director of United Ministries, came forward and stated that the \$7,500 referred to by Mr. Bidwell was funding for the fiscal year 1989, which ends June 30, 1989. Ms. Kelso stated that the County is moving forward to leasing other property; and that, in the Carry-Over Budget, there is a request for money to assure there will be two medical centers functioning in the County.

Carla Kent, 8710 Mercedes Court, Alexandria, Virginia, President of the Church Council of Messiah Lutheran Church, answered a question posed by Mr. Hammack about the location of the upper and lower parking lots.

Mr. Kelley asked Ms. Kent if she could assure him that people will no longer park on Fort Hunt Road and Belle View Boulevard, in front of the church, and across the street from the gas station, on Sundays. He said he would hope no one would park there because it is dangerous. Ms. Kent said she could not assure him of that. Chairman Smith stated that this should be brought to the attention of the Zoning Enforcement Branch.

A discussion ensued concerning the problem of parking outside the approved parking areas.

Ms. Harris asked if there would be any signs directing people to the parking areas. Ms. Kelso said the only sign they planned to have was on the door of the health screening center, only when the center was open.

Mrs. Thonen stated that rental of the facility was in conflict with the intent of a church/public benefit association function. She believed that a donation type situation would have better covered the intent of the participants.

There being no other speakers, Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant SPA 81-V-028-1, with changes in the development conditions as follows:

Development condition 6 - Substitute condition 8 from Special Exception, to read: An additional 5 feet of road right-of-way shall be dedicated to the Board of Supervisors and conveyed in Fee Simple and necessary ancillary easements shall be provided on Belle View Boulevard to accommodate road widening at such time as requested by the Virginia Department of Transportation and/or Fairfax County in conjunction with an approved project.

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Add development condition 11: This special permit will expire on June 30, 1989.

Mrs. Thonen stated she hoped the applicant would work out the parking problems, noting that it was illegal to park anywhere off site without approval.

Chairman Smith expressed doubt about when the applicant intended to stop using the house as temporary living quarters for three women, so Mrs. Thonen asked the applicant to come back up to the podium.

Chairman Smith seconded the motion previously made by Mrs. Thonen.

Mr. Hammack stated that he could support the transitional housing but he could not support the health screening facility because he considers it a commercial use.

A discussion ensued between Chairman Smith and Mr. Hammack regarding the health screening. Chairman Smith stated he believed it to be a community use which would soon be transferred to County jurisdiction, so the people using it should not be turned away. Mr. Hammack said he believed it was necessary for the applicant to show compliance with the standards for this type of use, since they intend to operate the facility in the evening, which he believes to be an intensification of the use. He stated he did not believe that health screening done during evening hours was in compliance with residential uses.

A vote was taken on Mrs. Thonen's Resolution.

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NOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 81-V-028-1 by UNITED COMMUNITY MINISTRIES AND MESSIAH LUTHERAN CHURCH, under section 3-403 of the zoning Ordinance to amend SP 81-V-028 for a church and related facilities to permit addition of a public benefit association use, on property located at 1906 Belle View Boulevard, Tax Map Reference 93-1((25))(1)1, 2, 3, 4, 10 and 11, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 69,050 square feet of land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

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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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. Subject to VDOT approval, the entrance from Fort Hunt Road shall be closed or the direction of traffic flow shall be such that Fort Hunt Road is an exit only and the entrance shall be from Belle View Boulevard. Signs shall be placed on the sides of these two curb cuts to make it clear that the road is a one way drive, as determined by the Department of Environmental Management.
6. An additional 5 feet of road right-of-way shall be dedicated to the Board of Supervisors and conveyed in Fee Simple and necessary ancillary easements shall be provided on Belle View Boulevard to accommodate road widening at such time as requested by the Virginia Department of Transportation and/or Fairfax County in conjunction with an approved project.
7. The minimum of seventy-five (75) parking spaces shall be required for the church use and a minimum of fifteen (15) parking spaces shall be required for the public benefit association on site. However, the applicant may obtain a cooperative parking agreement from the Board of Supervisors in order to utilize parking spaces off-site to satisfy this requirement. If the cooperative parking agreement is approved, the number of spaces provided on site may be reduced accordingly. If additional on-site parking spaces above the twenty-nine now shown, are required, approval of those spaces shall be subject to an amendment to this Special Permit.
8. The maximum seating capacity in the main area of worship shall be limited to 300.
9. The dwelling on the property may be used for church related functions to include its use as a domicile for transitional housing for four unrelated persons in conjunction with the church use.
10. The Transitional Screening requirement shall be waived along all lot lines to allow existing vegetation to satisfy that requirement. The barrier requirement shall be waived.
11. This special permit will expire on June 30, 1989.

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.

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Chairman Smith seconded the motion.

The motion FAILED by a vote of 2-4; Mr. Kelley, Mr. Ribble, Mrs. Harris and Mr. Hammack voted nay. Mr. DiGiulian was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989.

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Mr. Hammack made a motion to grant SPA 81-V-028-1, allowing the single family dwelling to be used as transitional housing for the three adult women, and making the following changes to the development conditions:

Development condition 6 - Substitute condition 8 from the Special Exception Resolution, to read: An additional 5 feet of road right-of-way shall be dedicated to the Board of Supervisors and conveyed in Fee Simple and necessary ancillary easements shall be provided on Belle View Boulevard to accommodate road widening at such time as requested by the Virginia Department of Transportation and/or Fairfax County in conjunction with an approved project.

Development condition 7 - Changed to read: The minimum of seventy-five (75) parking spaces shall be required for the church use. However, the applicant may obtain a cooperative parking agreement from the Board of Supervisors in order to utilize parking spaces off-site to satisfy this requirement. If the cooperative parking agreement is approved, the number of spaces provided on site may be reduced accordingly. If additional on-site parking spaces above the twenty-nine now shown, are required, approval of those spaces shall be subject to an amendment to this Special Permit.

Mr. Hammack made a request on the record that United Community Ministries and Messiah Lutheran Church come back within the next year and ask that this site be deleted from the special permit application.

Ms. Kelso stated a concern that the church's long range use of the property might be jeopardized by invalidating the special amendment.

A discussion ensued between Chairman Smith, Mr. Hammack and Mr. Ribble regarding the validity of using this facility as a homeless shelter, the use by a third party of church property as a homeless shelter, and other facets of this application.

Chairman Smith seconded the motion.

Ms. Greenleaf observed that the use by applicants, United Community Ministries and Messiah Lutheran Church, was advertised as "a public benefit use." She stated she believed that, when the Zoning Administrator made her determination, she was thinking that the housing and the screening, together, constitute a public benefit use. Ms. Greenleaf stated that the uses were advertised together. Mr. Hammack stated that he moved to grant-in-part because he wished to deny one of the uses.

Mrs. Harris stated that this was terribly confusing and a discussion again ensued into some of the facets of the application.

Chairman Smith stated that Ms. Kelso could request the Board to delete the health screening facility and grant the rest of the request.

Mrs. Thonen stated that if the screening were taken out, she could not support this motion.

The board expressed regret for the failure of the motions.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SPA 81-V-028-1 by UNITED COMMUNITY MINISTRIES AND MESSIAH LUTHERAN CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 81-V-028 for a church and related facilities to permit addition of a public benefit association use, on property located at 1906 Belle View Boulevard, Tax Map Reference 93-1((25))(1)1, 2, 3, 4, 10 and 11, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 69,050 square feet of land.

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

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

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



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1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. Subject to VDOT approval, the entrance from Fort Hunt Road shall be closed or the direction of traffic flow shall be such that Fort Hunt Road is an exit only and the entrance shall be from Belle View Boulevard. Signs shall be placed on the sides of these two curb cuts to make it clear that the road is a one way drive, as determined by the Department of Environmental Management.
6. An additional 5 feet of road right-of-way shall be dedicated to the Board of Supervisors and conveyed in Fee Simple and necessary ancillary easements shall be provided on Belle View Boulevard to accommodate road widening at such time as requested by the Virginia Department of Transportation and/or Fairfax County in conjunction with an approved project.
7. The minimum of seventy-five (75) parking spaces shall be required for the church use. However, the applicant may obtain a cooperative parking agreement from the Board of Supervisors in order to utilize parking spaces off-site to satisfy this requirement. If the cooperative parking agreement is approved, the number of spaces provided on site may be reduced accordingly. If additional on-site parking spaces above the twenty-nine now shown, are required, approval of those spaces shall be subject to an amendment to this Special Permit.
8. The maximum seating capacity in the main area of worship shall be limited to 300.
9. The dwelling on the property may be used for church related functions to include its use as a domicile for transitional housing for four unrelated persons in conjunction with the church use.
10. The Transitional Screening requirement shall be waived along all lot lines to allow existing vegetation to satisfy that requirement. The barrier requirement shall be waived.

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.

Under Sect. 9-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Chairman Smith seconded the motion.

The motion FAILED by a vote of 3-3; Mrs. Harris, Mrs. Thonen and Mr. Ribble voted nay. Mr. DiGiulian was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989.

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1:45 P.M. STANLEY MARTIN COMMUNITIES, INC., SP 88-S-106, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 15.7 feet from pipestem lot line (25 ft. min. front yard required by Sect. 2-416), located at 10735 Beechnut Court on approximately 30,498 square feet of land, zoned R-C, Springfield District, Tax Map 87-3((11))28. (DEF. FROM 3/7/89 FOR ADDITIONAL INFORMATION.)

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the decision on this application had been deferred from March 7, 1989, for submission of accurate plats and pictures showing the existing deck, which the applicant had now provided. The applicant had also submitted what he said was a copy of the building permit application. Ms. Bettard stated that her research into the Zoning Administration files did not reveal a copy of the building permit application. Ms. Bettard noted that the variance request had been reduced from 15.7 feet to 16.8 feet.

The Board Members took time to review the submissions by the applicant.

Mr. Ribble asked how many lots are served by the pipestem. Ms. Bettard stated the applicant informed her that Lots 26 and 27 are served by the pipestem.

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

Mr. Ribble moved to grant VC 88-S-106.

Mrs. Thonen seconded the motion which carried by a vote of 5-1; Chairman Smith voted nay. Mr. DiGullian was not present for the vote.

Lori Greenleaf, Staff Coordinator, addressed Chairman Smith to request a clarification of development condition 2, which requires the applicant to obtain a building permit. Discussion revealed that the applicant had obtained a building permit on May 11, 1988.

Mrs. Thonen moved to amend the resolution to change development condition 2 to read: A Building Permit dated May 11, 1988, was obtained by the applicant and satisfies the standard requirement.

Mr. Hammack seconded the motion which carried unanimously. Mr. DiGullian was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-S-106 by STANLEY MARTIN COMMUNITIES, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 16.8 feet from pipestem lot line, on property located at 10735 Beechnut Court, Tax Map Reference 87-3((11))28, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and

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- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
4. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

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

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

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

- 1. This Special Permit application is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
- 2. A Building Permit dated May 11, 1988, was obtained by the applicant and satisfies the standard requirement.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 5-1; Chairman Smith voted nay. Mr. DiGuilian was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 91, March 14, 1989, (Tape 3), After Agenda Item:

Reconsideration of Denial of Out-of-Turn Hearing Request  
Luck Stone Corporation, SPA 81-S-064-2

Mr. Kelley moved to grant this request. Mr. Ribble seconded the motion which carried unanimously.

Mr. Kelley questioned the Parliamentary Procedure because his motion to grant reconsideration for an out-of-turn hearing was only for a portion of the application.

Chairman Smith said the letter had requested a reconsideration of the denial. He said if the Board was going to reconsider, they would have to move to take any other action.

Chairman Smith asked for a vote to accept the procedure and all Members of the Board voted aye.

Chairman Smith said now was the time to take action.

Mrs. Thonen stated that this was the time to reschedule this application.

Mr. Kelley asked Lori Greenlief, Staff Coordinator, if she had an available date for only the portion relating to the crushing.

Page 92, March 14, 1989, (Tape 3), (Reconsideration of Denial of Out-of-Turn Hearing Request, Luck Stone Corporation, SPA 81-S-064-2, continued from Page 91 )

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Royce Spence, applicant's agent, said the applicant favored being heard any time in April.

Mr. Hammack stated that his impression was that that applicant wanted an out-of-turn hearing for only that portion of the application involving crushing, and that other aspects of the application would be heard at a later date. Mr. Spence said this was true.

Chairman Smith stated that, in order for the Board to grant an out-of-turn hearing on only a portion of the application, the applicant must submit new plats covering only the portion to be heard out-of-turn. Mr. Spence said he could do that.

After such discussion, Mr. Kelley moved to hear the entire application on April 25, 1989, at 9:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 6-1; Mr. Smith voted nay.

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Page 92, March 14, 1989, (Tape 3), After Agenda Item:

Approval of Resolutions from March 7, 1989 Hearing

Mrs. Thonen moved to accept the Resolutions as presented. Mr. DiGullian seconded the motion which carried unanimously.

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Page 92, March 14, 1989, (Tape 3), Adjournment

Since there were no other matters to come before the Board, the meeting was adjourned at 1:47 p.m.

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk to the  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 6/13/89

APPROVED: 6/22/89

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 21, 1989. The following Board Members were present: Chairman Daniel Smith, Paul Hammack, Martha Harris, Robert Kelley, Mary Thonen, and John Ribble. Vice-Chairman John DiGiulian was absent from the meeting.

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Chairman Smith called the meeting to order at 9:10 a.m. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board.

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Page 93, March 21, 1989, (Tape 1), Scheduled case of:

9:00 A.M. SECURITY AMERICAN INTERNATIONAL, SP 88-C-052, application under Sect. 5-505 of the Zoning Ordinance to allow indoor firing range, located at 2816-2818 Towerview Road, on approximately 5.62 acres of land, zoned I-5 and WS, Centreville District, Tax Map 24-2((1))12A. (DEF. FROM 1/17/8 AT APPLICANT'S REQUEST.)

Lori Greenlief, Staff Coordinator, presented the staff report. This case has been deferred from January 17, 1989 at applicant's request. Ms. Greenlief advised the Board that there was an addendum to the staff report since prior to the public hearing on January 17, 1989, the applicant requested deferral due to a possible relocation of the facility within the industrial park.

The first speaker was Ms. Marie Travesky, 3900 Jermantown Road, Fairfax, Virginia 22030, the applicant's representative. Mrs. Travesky confirmed that there is adequate parking on site, but was concerned about staff's requirement for implementation of a van pool policy as described in Development Condition Number 6 of the staff report. Mr. Hammack asked if there would be adequate parking without a van pool policy, and Ms. Travesky assured him there would be. Mrs. Thonen pointed out that there could only be 10 persons on the firing range at one time. Ms. Travesky was asked if people currently use a van pool, and she replied that agencies normally send people out in groups who usually arrive in a van. The Board agreed that Development Condition Number 6 was no longer applicable.

Ms. Travesky made reference to Development Condition Number 7 stating hours of operation of the firing range shall be limited to 9:00 a.m. to 10:00 p.m., Monday through Friday. She said Saturday use was crucial to the operation and an occasional Sunday use may be necessary, from classroom to firing range. She requested deletion of that condition. Chairman Smith asked staff if the hours could not be changed to read from 8:00 a.m. to 10:00 p.m., 7 days a week, and Ms. Greenlief, having no opposition, agreed to the deletion of that condition.

Ms. Travesky then requested a waiver of the 8-day waiting period if approval of the special permit were granted in order to expedite release of funds from the bank. Chairman Smith said the request would be taken under consideration if approval were granted.

Ms. Harris questioned the soundproofing issue, and Ms. Travesky replied it was no problem to reach the 65 dBA's and stated that a noise specialist has prepared a plan anticipated to satisfy County requirements.

Mr. Hammack asked if the 10 person limitation included instructors. Ms. Travesky stated that classroom capacity was 40 persons, some of who would move into the firing range to the 10 permitted stations. She said that meant a total of 10 people, plus 5 instructors. It was determined that these 15 persons were covered under Development Conditions Numbers 8 and 9. Ms. Travesky explained that the standard was one instructor to every 4 people, except in unusual circumstances where a 1:1 ratio might be required.

Chairman Smith asked if there were anyone else present who wished to either support or oppose the application. There being no further comments, the public hearing was closed.

Mr. Hammack moved that SP 88-C-052 be granted since special permit use standards have been met. He moved approval in accordance with the Development Conditions.

1. Development Condition Numbers 1 through 5 remain the same.
2. Development Condition Number 6 can be deleted.
3. Development Condition Number 7 shall be changed to read: "The hours of operation shall be limited to 8:00 a.m. to 10:00 p.m."
4. Development Condition Number 8 shall be amended to read: "There shall be a maximum of five (5) employees associated with the firing range use on this site at any one time."
5. Development Condition Number 9 shall be amended to read: "There shall be a maximum of ten (10) students in the firing range at any one time."
6. Development Conditions Numbers 10 through 12 remain as stated in the staff report, except Numbers 7 through the end will be renumbered.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-C-052 by SECURITY AMERICAN INTERNATIONAL, under Section 5-505 of the Zoning Ordinance to allow indoor firing range, on property located at 2816-2818 Towerview Road, Tax Map Reference 24-2(1)16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 21, 1989; and

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

1. That the applicant is the lessee of the land.
2. The present zoning is I-5 and WS.
3. The area of the lot is 5.62 acres of 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 Section 8-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the area delineated on the special permit plat for special permit use at 2816-2818 Towerview Road. Any changes in this special permit use other than minor engineering details, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. There shall be a minimum of fourteen (14) parking spaces associated with the firing range use. A corrected parking tabulation shall be provided to the Director, Department of Environmental Management at the time of site plan review which indicates that adequate parking is available for this use and all other uses currently occupying the building. All parking for this use shall be on-site.
6. The hours of operation shall be limited to 8:00 a.m. to 10:00 p.m.
7. There shall be a maximum of five (5) employees associated with the firing range use on site at any one time.
8. There shall be a maximum of ten (10) students in the firing range at any one time.
9. Any signs erected shall be in conformance with Article 12 of the Zoning Ordinance.
10. Soundproofing shall be provided which is designed to reduce noise generated on-site to 55 dBA or less in units adjacent to the firing range.
11. The firing range will not be open to the general public.

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.

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Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack motioned for approval of SP 88-C-052 with development conditions, as amended. Mr. Ribble seconded the motion.

The motion carried unanimously by a vote of 6-0, with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 1989. The Board agreed to waive the 8-day waiting period at applicant's request. This date shall be deemed to be the final approval date of this special permit.

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Page 95, March 21, 1989, (Tape 1), Scheduled case of:

9:15 A.M. JOHN W. SHERMAN, VC 88-S-186, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 19.3 feet from front lot line and 5.8 feet from side lot line (30 ft. min. front yard, 12 ft. min side yard required by Sect. 3-307), located at 6723 Caneel Court, on approximately 13,406 square feet of land, zoned R-3, Springfield District, Tax Map 89-2((2))17.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the applicant was requesting approval of a variance to the Zoning Ordinance requirements of 6.2 feet from the minimum side yard requirement and 10.7 feet from the minimum front yard requirement. She mentioned this applicant applied for a building permit in 1971 to enclose the existing carport for use as a garage. Ms. Greenlief said the applicant currently wishes to erect a garage in front of the existing garage and convert the existing garage to laundry room space.

John W. Sherman, the applicant, 6723 Caneel Court, Springfield, Virginia spoke in justification of his request as contained in the staff report.

Mrs. Thonen addressed the Chair extending her sympathy for this family's needs, but felt this application could not be approved due to the fact that the proposed garage's location so close to the front and side lot lines would create practical difficulties. Mrs. Thonen stated that the applicant had not satisfied the Board with physical conditions which, under strict interpretation of the Zoning Ordinance, would result in unnecessary hardship that would deprive the user of all reasonable use of land.

Mrs. Thonen moved to deny VC 88-S-186. Mr. Hammack seconded the motion. The motion for denial carried unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

Mr. Kelley suggested that Mr. Sherman might be able to build his proposed garage behind his house rather than in front of it. Mrs. Thonen said if the applicant wished a waiver of the 12-month waiting period and returned with the proposed garage moved to the rear, she felt it might be viewed more favorably.

Mr. Hammack stated that Mr. Sherman already had a usable garage, and felt that a larger garage which would need two variances would have an adverse impact on other houses along Caneel Court, since no one else in the area has a two car garage. He said reasonable use of the homeowner's property is not denied by the Board's refusal of this request, and the applicant should try to build toward the rear of the property.

There being no further comments, the public hearing was closed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-S-186 by JOHN W. SHERMAN, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 19.3 feet from front lot line and 5.8 feet from side lot line, on property located at 6723 Caneel Court, Tax Map Reference 89-2((2))17, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,406 square feet of land.
4. The building is going too close to the lot line and will create a problem for the homeowners.

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

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

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

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

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

Mr. Hammack seconded the motion.

The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 29, 1989.

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Page 96, March 21, 1989, (Tape 1), Scheduled case of:

9:30 A.M. IMMANUEL BIBLE CHURCH, (formerly Immanuel Baptist Church), SPA 80-A-058-1, application under Sect. 3-203 of the Zoning Ordinance to amend S-80-A-058 for a church and related facilities to permit additions to church building and parking additions, located at 5211 Backlick Road, on approximately 12.9 acres of land, zoned R-2, Lee District, Tax Map 71-4((1))35, 36A and 71-4((2))1, 2, 3.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that today's request is the second part of a two-part application; Phase 1 which included the addition of three trailers to the property, the addition of land area, change in name,



and the use of existing dwellings on the property for church purposes was approved by this Board in October 1988. Ms. Greenlief stated that the current request includes building and parking lot additions to the existing structure; one in the rear and one in the front corner. She said the applicant had also filed a Special Exception application to be heard by the Planning Commission on April 12 which includes the additions presented here, plus an increase in the current enrollment in the school of general education and a change in hours. Ms. Greenlief summed up by stating that the most serious concerns are the land use impacts. Thus, although staff recommends approval of the small front addition, it recommends denial of the large addition and part of the parking additions.

David S. Houston, McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, VA 22102, attorney for the applicant, presented the proposed revisions stating that this application has been pending for a year. He said that his client had agreed to the deletion of the dustless surface waiver, and addition the stormwater BMP, and that they had filed for a Special Exception for expansion of the existing school due to be heard by the Planning Commission April 12, 1989. Mr. Houston stated that porous concrete had been proposed for a portion of the parking area.

Alan D. Fischer, Pastor of Administration and Trustee of Immanuel Bible Church, 13520 Ford Road, Nokesville, Virginia, stated that in October 1987 the current plan was presented to the congregation and approved.

Donald F. Crigler, architect for the Church, 5278 Lyngate Court, Burke, Virginia, gave the architectural presentation and addressed staff's objections. The Board felt the 2-story portion of the church would be massive without screening. Mrs. Harris asked about the "L" shaped portion facing Braddock Road and was told that the purpose was to keep the distances from the classrooms equal. Mrs. Harris said she felt the bulk should be reduced.

Michael Hogue, 7015 Leesbrad Street, Springfield, Virginia, a resident across the street from the Church, said that he had lived in the area 11 years and the property was below grade level so that only the tops of structures were visible from his residence.

David Treadwell, 6153 Lucas Pond Court, Burke, Virginia, Chairman of Immanuel's Sunday School, spoke about Church growth and its necessity.

James Carter, 5507 Shooter's Hill Lane, Fairfax, Virginia, involved in Immanuel's Youth Program, along with Rev. Richard Moyer, 1-520 Judicial Drive, Fairfax, Virginia; Richard Baker, 1016 So. Wayne Street, #510, Arlington, Virginia; and Robert Anderson, 7001 Bradwood Court, Springfield, Virginia, all expressed their support of the application, with Mr. Anderson stating he had moved there to be close to the church.

Mr. Houston stated there were plans to make Braddock Road a 4-lane, undivided highway.

Ms. Greenlief felt that due to high water tables, the porous concrete parking surface may not work. Regarding Development Condition Number 2, she stated staff's recommendation would require submission of a new plat since if the County does not approve the vacation of Matthews Place, the parking shown within that area will need to be removed. Mrs. Thonen questioned the availability of appropriate recreation areas, and Ms. Greenlief said recreation requirements had been satisfied.

Mr. Hammack expressed interest in seeing County approval of the vacation of Matthews Place before voting. Mr. Hammack moved for deferral until that could be accomplished and until after the Board of Supervisors had heard the application. The motion was seconded by Mr. Kelley.

Ms. Greenlief said the vacation hearing would take place in approximately two months and they were recommending approval in part. The Board agreed that if the Planning Commission grants the Special Exception, then only the facts regarding changes need to be presented, and only the portion regarding the vacation of Matthews Place would be heard.

After consulting with staff, Chairman Smith stated that the deferral date would be May 23, 1989 at 10:30 A.M.

Chairman Smith asked if there were anyone else present who wished to speak either in support or opposition of the application. There being no further comments, the public hearing was closed.

Mr. Hammack moved that SP 88-C-052 be granted since the special permit standards have been met, along with amended Development Conditions. Mr. Ribble seconded the motion. Mr. DiGiulian was absent from the meeting.

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Page 98, March 21, 1989, (Tape 1), Scheduled case of:

9:45 A.M. VULCAN ANNUAL REVIEW PURSUANT TO SECT. 8-104 OF THE ZONING ORDINANCE

Vulcan Quarry is reviewed annually for the purpose of BZA continuing approval of its annual report.

Lori Greenlief, Staff Coordinator, presented the staff report.

David Houston, McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, attorney for the applicant, was asked by Mrs. Harris if the applicant had agreed to adhere to sediment stormwater controls, and Mr. Houston assured her that they had. Chairman Smith inquired about the air quality monitoring. Ms. Greenlief said the Health Department has responsibility for installation of that equipment. Chairman Smith questioned the water quality. He was informed that Vulcan reports to the State Board of Control monthly and that nothing adverse has been found. Mr. Houston stated that Vulcan runs the state-of-the-art in the quarry business.

Mr. Hammack moved for approval of the Annual Report. Chairman Smith seconded the motion, and suggested that the Health Department be sent a letter requesting the installation of the air quality monitoring equipment.

The Vulcan Quarry Annual Report was unanimously approved by a vote of 5-0. Mr. Kelley was not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 98, March 21, 1989, (Tape 1), Scheduled case of:

10:15 A.M. H. P. AND ELOISE S. SEAMON, VC 88-V-167, application under Sect. 18-401 of the Zoning Ordinance to allow creation of a single buildable through lot from combination of two (2) outlots, one having a width of 10.52 feet and the other 22.79 feet (80 ft. min. lot width required by Sect. 3-306) located at Popkins Lane and Davis Street on approximately 19,399 square feet of land, zoned R-3, Mount Vernon District, Tax Map 93-1((1))11A, 12B.(DEP. FROM 1/24/89 AT APPLICANT'S REQUEST.)

Denise James, Staff Coordinator, presented the staff's position, stating that it does not support this application because the applicant fails to satisfy standards which are required for variance approval.

Patrick M. Via, Hazel, Thomas, Fiske, Beckhorn & Hanes, attorney for the applicant, came forward. Mr. Via stated the creation of a through lot would be consistent with other development in the area, and distributed handouts indicating other pipetew lots in the surrounding area. He also had the signatures of two local homeowners indicating approval of the applicant's request. Mr. Via also claimed that the applicant does not currently have reasonable use of the property.

Mr. Hammack asked if Mr. Seamon had created Outlot B as indicated and Mr. Via affirmed.

Ms. Esther Valkenburg, realtor with Mt. Vernon Realty, 1700 Diagonal Road, Suite 310, Alexandria, Virginia, was the first speaker and stated she felt the application would have a positive effect. Ms. Kathy J. Sens, 2702 Popkins Lane, Alexandria, VA 22306 said she had spoken with the Seamons about their plans and did not object.

JoAnn McBride, 7004 Davis Street, Alexandria, Virginia spoke in opposition of the applicant's request since she felt the driveway which would be created would be detrimental to her property and the surrounding area. Richard G. Bottorff, 7012 Davis Street, Alexandria, Virginia stated that this variance request would cause congestion and make the driveway appear to be an alley.

Chairman Smith said the Board has received a letter with seven additional signatures of neighboring homeowners who are opposed to the application.

In response to the Board's question, Ms. James and Ms. Kelsey stated that it appears the lot width was not sufficient to allow a subdivision of three lots prior to Lot 12 being subdivided. However, the plat in the file of the original Lot 12 was reduced making it impossible to accurately scale. Attorney Via disagreed.

Mr. Ribble stated that he questioned whether or the application meets the standard for a variance and stated that Outlot B was a self-created hardship. Mr. Ribble moved to deny VC 88-V-167. The motion was seconded by Mr. Hammack. The motion passed unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-V-167 by H. P. AND ELOISE S. SEAMON, under Section 18-401 of the Zoning Ordinance to allow creation of a single buildable through lot from combination of two (2) outlots, one having width of 10.52 feet and the other 22.79 feet, on property located at Popkins Lane and Davis Street, Tax Map Reference 93-1((1))11A and 12B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 19,399 square feet of land.
4. The variance would have adverse impact on adjacent properties.
5. The applicant created a self-imposed hardship.

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

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

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

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

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

Mr. Hammack seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 29, 1989.

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Page 100, March 21, 1989, (Tape 1), Scheduled case of:

10:30 A.M. DR. AND MRS. SOBHANY, VC 88-V-179, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling 15 feet from side lot line and 45 feet from the front lot line (20 ft. minimum side and 50 ft. minimum front yards required by Sect. 3-E07), located at 11809 River Drive on approximately 31,655 square feet of land, zoned R-E, Mount Vernon District, Tax Map 122-2(2)10. (DEFERRED FROM 2/28/89 AT APPLICANT'S REQUEST.)

Chairman Smith advised that the applicant had made a request to withdraw VC 88-V-179 and inquired if anyone in the room had an interest in this application. No interest was voiced.

Mrs. Thonen moved to allow withdrawal of VC 88-M-075. Mrs. Day seconded the motion, which carried unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Page 100, March 21, 1989, (Tape 1), Scheduled case of:

11:00 A.M. DRW APPEALS, A 88-C-011 and A 88-C-012, Department of Environmental Management's decisions refusing to approve geotechnical reports and issue Residential Use Permits for nine (9) lots in Section 2 of the Chantilly Farms Subdivision.

The Board of Zoning Appeals was notified by Jane W. Gwinn, Zoning Administrator, DEM, of a request to defer the DRW Appeals.

Mr. Hammack moved for deferral. The motion was seconded by Mr. Kelley. The request to defer passed unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting. The new date was set for June 22, 1989 at 11:00 a.m.

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Page 100, March 21, 1989 (Tape 2), After Agenda Item:

Korean United Methodist Church, SPA 82-D-090-2  
Request for Additional Time

Mrs. Thonen moved to grant this request for additional time. The motion was seconded by Mr. Ribble, and passed unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

The new expiration date is March 18, 1990.

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Page 100, March 21, 1989 (Tape 2), After Agenda Item:

Ballantrae Development, Inc., VC 89-D-027  
Request for Out-of-Turn Hearing

Mr. Ribble moved for denial of the out-of-turn hearing request. Mr. Hammack seconded. The motion carried unanimously by a vote of 6-0 to deny this request. Mr. DiGiulian absent from the meeting.

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Page 100, March 21, 1989 (Tape 2), After Agenda Item:

Hunter Development of Fairfax, Inc., SP 89-S-009, Out-of-Turn Hearing

Mrs. Thonen moved that this request be granted. Mr. Hammack seconded. The motion carried unanimously by a vote of 6-0 to grant this out-of-turn hearing request since this applicant has been previously approved and there should be no additional problems. Mr. DiGiulian was absent from the meeting.

The scheduled public hearing date was set for May 9, 1989.

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Page 100, March 21, 1989, (Tape 2), After Agenda Item:

Messiah Lutheran Church and United Community Ministries, Inc.  
SPA 81-V-028-1  
Request for Reconsideration

At a Board of Zoning Appeals hearing on March 14, 1989, the applicant was denied a request under SPA 81-V-028-1 to amend SP 81-V-028, for a church and related facilities to permit addition of a public benefit association use located at 1906 Belle View

Page 101, March 21, 1989, (Tape 2), (Messiah Lutheran Church and United Community Ministries, Inc., SPA 81-V-028-1, Request for Reconsideration, continued from Page 100)

Boulevard. By letter dated March 20, 1989, the applicant requested a waiver of the 12-month time limitation for resubmission in order to restructure their program in accordance with acceptable conditions.

Ms. Sharon Kelso came before the Board to state their new position.

Mr. Hammack moved to reschedule a new hearing. Chairman Smith seconded the motion. The motion failed 3-3 with Messrs. Kelley, Hammack and Smith voting aye, and Messrs. Ribble and Harris, and Mrs. Thonen voting nay.

Mr. Kelley suggested that Ms. Kelso request an out-of-turn hearing when she files a new application, and moved that the 12-month waiting period be waived so the application may be re-filed. Mr. Kelley also suggested that the applicant attend services at the church on Sunday mornings in order to see the traffic impact.

The motion to grant a waiver of the 12 month waiting period was seconded by Mr. Harris and passed by a vote of 5-1. Mr. Ribble voted nay. Mr. DiGiulian was absent from the meeting.

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Page 101, March 21, 1989, (Tape 2), After Agenda Item:

Approval of March 14, 1989 Resolutions

The Resolutions of the meeting of the Board of Zoning Appeals of March 14, 1989 were approved by Mrs. Thonen, as amended. The motion was seconded by Mr. Ribble and passed unanimously by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Page 101, March 21, 1989, (Tape 2), Information Item:

Luncheon to Honor Ann Day

The luncheon to honor Ms. Ann Day was set for Wednesday, May 10, at 12:00 noon at the Fairfax Country Club. Ms. Kelsey asked to be advised if any one of the Board could not attend.

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Page 101, March 21, 1989, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Joanne R. Kiser  
Joanne R. Kiser, Associate Clerk to the Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman Board of Zoning Appeals

SUBMITTED: 4/20/89

APPROVED: 4/25/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 28, 1989. The following Board Members were present: Chairman Daniel Smith, John DiGiulian, Vice-Chairman, Paul Hammack, Martha Harris, Mary Thonen, and John Ribble. Robert Kelley was absent from the meeting

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Chairman Smith called the meeting to order at 9:20 a.m. and gave the invocation.

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Page 123, March 28, 1989, (Tape 1), Scheduled case of:

9:00 A.M. FIRST CHURCH OF CHRIST, SCIENTIST, SP 88-L-093, application under Sect. 3-203 of the Zoning Ordinance to allow parking lot additions, rearrangement and paving for existing church and related facilities, located at 5315 Backlick Road, on approximately 109,062 square feet of land, zoned R-2, Lee District, Tax Map 80-2(1)2 and 3A. (DEF. FROM 1/17/89 AT THE APPLICANT'S REQUEST)

Chairman Smith noted that a letter requesting a deferral had been received from the applicant because they are still involved in the process of reaching an agreement with the county Arborist on the tree preservation plan.

Mrs. Thonen moved to defer SP 88-L-093 until June 13, 1989 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote, Mr. Kelley absent from the meeting.

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Page 123, March 28, 1989, (Tape 1), Scheduled case of:

9:15 A.M. BARCROFT BIBLE CHURCH, SP 88-A-107, application under Sect. 3-103 of the Zoning Ordinance to allow church and related facilities, located at 9401 Little River Turnpike, on approximately 15.269 acres of land, zoned R-1, Annandale District, Tax Map 58-3(1)2.

Kathy Reilly, Staff Coordinator, presented the staff report. She stated that on January 31, 1984 the Board of Zoning Appeals granted a similar application to construct a 1,214 seat church and related facilities but that the special permit expired prior to commencement of construction. The applicant has now requested approval to construct a 468 seat church with 131 parking spaces. She stated that staff recommended approval of SP 88-A-107 subject to the development conditions.

Sarah Reifsnnyder, attorney with the law firm of Blankenship and Keith, 4020 University Drive, Fairfax, Virginia, came forward to represent the applicant. She stated that the applicant had met with supervisor Bulova and the neighbors and have agreed to construct a fence in addition to screening. Ms. Reifsnnyder asked that development condition number 12 be revised to allow the entrance on Route 236 to remain open. She stated that the church had no plans at this time to use that entrance but perhaps would at a later date.

In response to comments from Mr. Hammack regarding the development conditions, Ms. Reifsnnyder indicated that the applicant agreed with staff's recommendations with the exception of the condition previously mentioned.

There were no speakers to address this request and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SP 88-A-107 as he believed that the applicant had met the standards. The approval was subject to the development conditions contained in the staff report with the deletion of the following words from number 12: "... all access to the site shall be from the proposed entrance on Pickett Road."

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#### COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 88-A-107 by BARCROFT BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to allow church and related facilities, on property located at 9401 Little River Turnpike, Tax Map Reference 58-3(1)2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 15.269 acres of 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 Section 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum seating capacity for the church shall be limited to a total of 468 seats.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 132 spaces. All parking shall be on site.
7. Transitional Screening and Barriers shall be provided as follows:

A thirty-five (35') foot unbroken transitional screening strip shall be provided along the southern and eastern lot lines where adjacent to residential properties. Plantings equivalent to Transitional Screening 1 shall be provided in this strip and shall be supplemented with low level evergreen plantings or earthen berms along the parking areas to ensure that vehicle headlights do not impact adjacent residential properties as determined by the County Arborist.

A twenty-five foot (25') unbroken screening strip shall be provided along that portion of the northern lot line located in Fairfax County. The applicant shall submit a landscape plan which includes a mix of evergreen and deciduous trees to the County Arborist for review and approval showing the proposed landscaping and plantings for this strip in order to soften the visual impact of this use and to retain the residential character of the site. This landscape plan shall complement any proposed landscaping measures the City of Fairfax may require along the northern lot line.

The existing chain link fence which surrounds the entire property shall be removed and may be replaced with a Barrier F along the southern lot line and along the portion of the eastern lot line which is adjacent to residential properties.

Barrier H shall be provided along that portion of the eastern lot line that abuts the adjacent special permit use (Calvary Hill Baptist Church). The existing vegetation along this lot line may be used to satisfy this screening requirement in whole or in part, if the vegetation is supplemented to the satisfaction of the County Arborist. The vegetation along the eastern lot shall be used to screen the visual impact of the proposed use from the existing adjacent non-residential use.

The barrier requirement along the northern lot line shall be waived.



8. An on-site stormwater management facility shall be provided so that post development peak flow is 50% of pre-development peak flow. The two existing on-site ponds may be used to satisfy this requirement, if they are enhanced to provide for extended detention of stormwater runoff from the site. A dam integrity study shall be provided if required by the Department of Environmental Management (DEM) to ensure the safety and suitability of using the existing ponds for stormwater management. All stormwater management facilities shall meet requirements as determined by DEM and the applicant shall provide access and maintenance easements to the County. Any wetlands damaged during construction of the stormwater management facility shall be reestablished.
9. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
10. A tree preservation plan showing the limits of clearing and grading and the areas of trees to be saved shall be submitted to the Department of Environmental Management (DEM) for review and approval prior to the commencement of any site clearance. This plan shall demonstrate preservation of as much existing vegetation as possible.
11. Any proposed lighting of the parking areas shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - o The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
  - o Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
12. All access to the site shall be from the proposed entrance on Pickett Road.
13. The existing parking lot and driveway shall be removed and reseeded.
14. Foundation plantings shall be provided around the church to soften the visual impact of the structure. The size and type and location of these plantings shall be determined by the County Arborist.
15. The applicant shall submit the necessary papers and documentation to the Fairfax County Water Authority (FCWA) to request and obtain the vacation of the existing FCWA easement located on this site. If requested by FCWA, the applicant shall dedicate and convey a new easement elsewhere on this site.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 5, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 106, March 28, 1989, (Tape 1), Scheduled case of:

- 9:30 A.M. LORD OF LIFE LUTHERAN CHURCH, SPA 79-A-124-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-124-79 for a church and related facilities to permit addition to existing building and add land area, located at 5114 Twinbrook Road, on approximately 3.8946 acres of land, zoned R-1, Annandale District, Tax Map 69-3((1))17 and 69-3((1))pt. of H.
- 9:45 A.M. LORD OF LIFE LUTHERAN CHURCH, SPA 80-A-099-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-80-A-099 for a nursery school by adding a child care center, increasing maximum daily enrollment to 99, and changing hours of operation to 7:00 a.m. to 6:30 p.m., 5 days a week, located at 5114 Twinbrook Road, on approximately 3.8946 acres of land, zoned R-1, Annandale District, Tax Map 69-3((1))17 and 69-3((1))pt. of H.

Denise James, Staff Coordinator, presented the staff report and stated that the applicant was seeking to amend SPA 79-A-124 to permit construction of a building addition, related parking, and the addition of land area. The applicant was also seeking to amend SP 80-A-099 by adding a child care center, increasing the maximum daily combined enrollment to 99 children, changing the hours of operation to 7:00 am to 6:30 p.m., Monday through Friday, and modifying the screening requirements on the northern and eastern boundaries of the site.

In 1979, the Board of Zoning Appeals (BZA) approved S-124-79 to permit an addition to the existing church and to add 10 additional parking spaces for a total of 64. In 1980, the BZA approved S-80-A-099 to permit an increase in the nursery school enrollment from 24 to 50 children and to allow the hours of operation to be extended from 8:30 a.m.-12:00 p.m. to 8:30 a.m.-3:30 p.m.

Staff noted that the applicant was issued a Notice of Violation in November, 1987 for failing to meet all the development conditions stipulated on S-124-79. Specifically, the applicant had constructed 9 additional parking spaces on the site without obtaining approval from the BZA. The applicant had not implemented the screening specified by the County Arborist nor obtained the required Non-Residential Use Permit. The applicant is requesting approval of the present concurrent amendment applications, in part, to correct the noted violations of the previous special permit conditions approved under S-124-79. If the present special permit amendment applications are not approved, the applicant must comply with the development conditions approved under Special Permit S-124-79.

In closing, Ms. James stated that staff does not believe that the applications meet the general standards, particularly 1 through 5, therefore staff recommended denial.

In response to questions from the Board, Ms. James replied that the current enrollment limitation is 50 children and the traffic at present exceeds 20,000 vehicles per day. She added that there are no plans at present to widen this section of Twinbrook Road, however the transportation report notes that the volume of traffic warrants widening.

Sarah Reifsnnyder, attorney with the law firm of Blankingship and Keith, 4020 University Drive, Fairfax, Virginia, came forward to represent the applicant. She stated that all the R-1 requirements have been met, the applicant would provide 46 percent open space, the site is surrounded on two sides by park land and which can never be developed, the property is slated on the Master Plan for R-2 to R-3 development, and the request is in harmony with the surrounding area. Ms. Reifsnnyder read a letter in support of the request into the record from Mr. and Mrs. Sheets who live adjacent to the church site.

Ms. Reifsnnyder stated that the real issue is development condition number 13 which addresses the left turn lane. She stated that the trip generation does not warrant this lane. She stated that there are 72 students with 36 in the morning, 36 in the afternoon and the staff report should have been based on 72 students daily not 30. Based on this, the increase in the daily enrollment would be from 72 children to 99, an increase of 27. Ms. Reifsnnyder stated that the school encourages carpooling and they do everything to make it work.

Mrs. Thonen asked how the carpooling was working and Ms. Reifsnnyder replied that it was working beautifully. She added that the Director of the pre-school would address the carpooling in more detail.

Ms. Reifsnnyder continued by stating that the left turn lane cannot be built because the right-of-way east of Twinbrook Road is no longer there and the church cannot get right-of-way from the private property owners. She stated that if paragraph 4 of development condition number 13 remains, the project cannot go forward. The church is proposing a number of road improvements such as 45 feet of dedication from the centerline of Twinbrook Road, a deceleration lane on Twinbrook Road, and one curb cut rather than two. The applicant disagrees with staff on the parking because staff has recommended that the church be limited to 120 spaces and the church is requesting 157, which is desperately needed.

A discussion took place among the Board regarding the new Parking Ordinance. Mrs. Thonen questioned staff as to whether or not the new Ordinance had been adopted. Jane

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Kelsey, Chief, Special Permit and Variance Branch, replied that church parking was still being studied but that the amendment reducing the size of the parking spaces had been approved.

In response to questions from Mr. Hammack, Ms. James replied that 16.5 foot length parking spaces is not unusual but does require a waiver of the FPM standards because, in this instance, excess parking is provided. She stated that in staff's opinion if the site can accommodate the excess parking, staff would not object but staff does not believe that this site falls within that category.

Ms. Reifsnnyder took exception to the word "excess," that this is an existing church and are well aware of their parking requirements.

Mrs. Harris commented that people would rather see grass than asphalt and it seemed that the requested expansion was causing the need for additional parking. Ms. Reifsnnyder agreed but added that the church has grown and they are meeting all the requirements. Mrs. Harris pointed out that that was true but it was at the very high end of the range.

Sue Arnegard, Director of the pre-school, came forward and stated that the school has been operating for 16 years and initially served Kings Park and Kings Park West but now many of the children walk to the pre-school from the surrounding neighborhood. For the fall term, Ms. Arnegard stated that children would be coming to the pre-school from Little Rocky Run, Clifton, Annandale, and Fairfax Station. She stated that there is a waiting list of children that the school cannot presently accept because of space limitations. Ms. Arnegard added that many families carpool, carpools are encouraged, and a staff person meets each car to escort the children into the school. The school year begins in September and ends in May with a class ratio at 5 to 1 for the very young and 6 to 1 for the older children.

In response to questions from Mrs. Thonen, Ms. Arnegard replied that the morning hours were 9:00 a.m. to 11:45 a.m. and the second group arrived at 12:30 p.m. and left at 3:15 p.m.

Ms. Reifsnnyder added that the church wants to expand the hours of operation in order to accommodate the working mothers.

Mrs. Harris expressed concern with the children having to cross the parking lot to reach the playground. Ms. Arnegard explained that the circular driveway is not used during the school week. The driveway is blocked off with orange cones, the parents must make a u-turn and go back out the same driveway.

Ms. Reifsnnyder explained that the pre-school will be on the first floor of the building and the children would not be crossing the driveway unsupervised. Mrs. Thonen asked why the playground could not be relocated. Ms. Reifsnnyder stated that the playground was quite expensive and had been approved by the health department. Mrs. Thonen stated the children would still be crossing the parking lot to get to the playground.

Ms. Arnegard stated again that this parking lot is not used during the time the school is in operation.

Chairman Smith called for speakers in support of the request and Carol Breglib, 7528 Rambling Ridge, Drive, Fairfax Station, Virginia, came forward. Ms. Breglib stated that she had two children, one of which attends the school, and she believed this to be a wonderful program. She added that she had never experienced any difficulty with entering/exiting the site and she was not concerned with her child crossing the parking lot to get to the playground.

There were no speakers in opposition to the request. Chairman Smith noted for the record that all letters received in connection with this application would be made a part of the record.

During rebuttal, Ms. Reifsnnyder distributed to the Board revisions to the development conditions:

8. The barrier requirement shall be waived; however, a fence may be installed along the property's northern boundary as indicated on the special permit drawing dated March 27, 1989.
13. Right-of-way to forty-five (45) feet from existing centerline of Twinbrook Road shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand, with an appropriate advance density credit, or at the time of site plan approval, whichever occurs first. Ancillary temporary access easements shall be provided to facilitate any future improvements.

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15. The Park Authority property used in conjunction with the uses approved by these Special Permits will not, except for landscaping and temporary construction and grading easements, extend beyond those areas indicated on the special permit drawing dated March 27, 1989.
16. The playground area will be surrounded by a fence 6 feet high."

Mr. Ribble asked where Commonwealth Boulevard, where the traffic study had been conducted, was in relation to the church and Ms. James pointed to the intersection on the viewgraph.

In response to a question from Ms. Harris, Ms. James replied that the planned range for this area is 2 to 3 dwelling units per acre which staff believed to be low density.

During staff's closing comments, Ms. James stated that the previous approval stipulated an enrollment of 50 students. She added that staff did believe that there is a need for day care facilities and that this is an excellent facility, however staff does believe that the enrollment should be limited to 50 students. Ms. James suggested that the applicant could eliminate the parking in front of the building across from the residential properties, thus lessening the visual impact.

Ms. Reifsnnyder asked if she could respond to staff's comments and Mr. Ribble called her back to the podium.

Ms. Reifsnnyder called the Board's attention to the Special Permit which was granted in 1976 showing the hours of operation revised to include an afternoon session. She pointed out that it also stated that it allowed 24 students on site at any one time. Ms. Reifsnnyder also noted that the Health Department permit stated a maximum of 50 children, four hours or less at any one time. She agreed that the Resolution in 1980 should have stated 50 children at any one time but believed that when the overall picture was reviewed that was clearly the intent. She requested that development condition number 6 be revised to show 157 maximum parking spaces and development condition number 7 that the screening area be a minimum of 25 feet in depth along Twinbrook Road. Ms. Reifsnnyder added that the applicant would agree to amend development condition number 5 that there shall never be more than 80 children in attendance at any one time.

A discussion took place among the Board members and Ms. Reifsnnyder regarding the number of children.

Ms. James pointed out that in the previous approval the condition stipulates that the maximum number of children shall be 30 and an amendment further limited the number of children to 24 on site at any one time.

As there were no speakers to address this application, Chairman Smith asked staff if they objected to there being one Resolution in these applications.

Mr. DiGiulian made a motion to grant SPA 79-A-124-1 and SPA 80-A-099-1 as he believed that the applicant had met the standards. The approval was subject to the development contained in the staff report dated March 21, 1989 with the following modifications:

Conditions 1 through 4 remain the same.

Condition 5 - ". . . limited to 99. There shall be no more than 80 children on the site at any one time."

Condition 6 - The maximum number of parking spaces should be changed to 157 rather than 120.

Condition 7 - ". . . minimum of 25 feet . . ."

Condition 8 - "The barrier requirement shall be waived; however, a fence may be installed along the property's northern boundary as indicated on the special permit drawing dated March 27, 1989.

Conditions 9 through 12 remain the same.

Condition 13 - Paragraph 1 revised to read: "Right-of-way to forty-five (45) feet from existing centerline of Twinbrook Road shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand, with an appropriate advance density credit, or at the time of site plan approval, whichever occurs first. Ancillary temporary access easements shall be provided to facilitate any future improvements." Paragraphs 2 and 3 remain the same. Delete paragraph 4.

Condition 14 remains the same.

Add Condition 15 - "The Park Authority property used in conjunction with the uses approved by these Special Permits will not, except for landscaping and temporary construction and grading easements, extend beyond those areas indicated on the special permit drawing dated March 27, 1989.

Add Condition 16 - "The playground area will be surrounded by a fence 6 feet high."

Mr. Hammack seconded the motion and Chairman Smith called for discussion.

Mrs. Thonen stated that she would oppose the application because she believed that the use is too dense and the motion is not consistent with staff's recommendation on the parking. She added that she is not questioning whether or not this is a good school but she cannot support the applicant's request.

Mrs. Harris stated that she agreed with Mrs. Thonen's comments and that the trip generation per day is too great.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Applications SPA 79-A-124-1 and SPA 80-A-099-1 by LORD OF LIFE LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend S-124-79 for a church and related facilities to permit addition to existing building and add land area and to amend S-80-A-099 for a nursery school by adding a child care center, increasing maximum daily enrollment to 99, and changing hours of operation to 7:00 a.m. to 6:30 p.m., 5 days a week, on property located at 5114 Twinbrook Road, Tax Map Reference 69-3(1)17 and 69-3(1)1pt. of B, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.8946 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum seating capacity for Lord of Life Lutheran Church shall be limited to a total of 404. The maximum daily enrollment for the nursery school and

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child care center shall be limited to 99. There shall be no more than 80 children on the site at any one time. The hours of operation for the nursery school and child care center shall be limited to 7:00 am to 6:30 p.m. Monday through Friday.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 157 spaces.
7. Transitional Screening 1 (25') shall be provided along the northern lot line. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist.

Transitional Screening 1 shall be modified along the eastern lot line along Twinbrook Road in favor of the landscape plan dated March 27, 1989. In order to screen the expanded building and parking lot from adjacent properties, the proposed berm across the site frontage shall be a minimum of four (4) feet in height measured from the Twinbrook Road side of the berm and shall be planted with a combination of an evergreen hedge and flowering trees. The trees shall be a minimum of 6 feet in height. The berm shall be located within a landscape and screening area which shall be a minimum of 25 feet in depth along Twinbrook Road. A planting tabulation indicating the size and type of plantings shown on the landscape plan shall be submitted to the County Arborist for final approval.

8. The barrier requirement shall be waived; however, a fence may be installed along the property's northern boundary as indicated on the special permit drawing dated March 27, 1989.
9. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
10. A tree preservation plan shall be implemented by the applicant as approved by the County Arborist with the intent of identifying and preserving as many existing quality trees as possible, and to incorporate existing trees into the required screening along the northern lot line except where removal is necessary to accommodate construction. The boundaries for tree clearance shall be determined to the satisfaction of the County Arborist before approval of a building permit or commencement of site clearance and/or construction.
11. All stormwater management shall be coordinated with the Storm Drainage Branch of the Department of Public Works (DPW). The applicant shall maximize the use of vegetative infiltration areas and other infiltration management practices wherever possible as determined by the Department of Public Works and in accordance with the Public Facilities Manual.
12. A geotechnical engineering study in accordance with Chapter 107 of the Fairfax County Code shall be provided if requested by the Director of the Department of Environmental Management (DEM) for approval by DEM and shall be implemented as determined by DEM.
13. Right-of-way to forty-five (45) feet from existing centerline of Twinbrook Road shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand, with an appropriate advance density credit, or at the time of site plan approval, whichever occurs first. Ancillary temporary access easements shall be provided to facilitate any future improvements.

A right turn lane along Twinbrook Road shall be constructed to VDOT standards as shown on the plat submitted with the application dated March 27, 1989.

The small traffic island at the center of the entrance to the site shall be relocated further west out of the dedicated public right-of-way.

14. Any proposed lighting of the parking areas shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - o The lights shall be a design which focuses the light directly onto the subject property.
  - o Shields shall be installed, if necessary, to prevent the light and glare from projecting beyond the facility.

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15. The Park Authority property used in conjunction with the uses approved by these Special Permits will not, except for landscaping and temporary construction and grading easements, extend beyond those areas indicated on the special permit drawing dated March 27, 1989.
16. The playground area will be surrounded by a fence 6 feet high.

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 the established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of this Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion.

The motion carried by a vote of 4-2 with Mrs. Harris and Mrs. Thonen voting nay; Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 5, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page ///, March 28, 1989, (Tapes 1 and 2), Scheduled case of:

10:00 A.M. ROBERT W. PIERCE, VC 88-P-187, application under Sect. 18-401 of the Zoning Ordinance to allow 10 foot high fence at one end of tennis court to remain on a side lot line and 10 feet from rear lot line (20 ft. min. side yard and 10 ft. min. rear yard required by Sects. 3-107 and 10-104), located at 3613 Prosperity Avenue, on approximately 47,340 square feet of land, zoned R-1, Providence District, Tax Map 59-1((5))35.

Bernadette Bettard, Staff Coordinator, presented the staff report.

In response to a question from Mr. Ribble concerning the complaint which caused this application to be filed, Ms. Bettard replied that she was uncertain as to the nature of the complaint.

Following a discussion among the Board regarding whether or not the applicant could use the tennis court if the fence was removed, Jane Kelsey, Chief, Special Permit and Variance Branch noted that a 7 foot high fence could be constructed.

The applicant, Robert Pierce, 3613 Prosperity Avenue, Fairfax, Virginia, came forward. He stated that the tennis court is located to the rear of his property and met the standards for a variance. Mr. Pierce added that the fence was constructed approximately 6 to 7 years ago and that because of a slope in the yard a 10 foot high fence was needed to stop the tennis balls from going over the fence. He added that he would be willing to landscape beside the fence in his neighbor's yard in order to screen the tennis court.

In response to a question from Mr. Hammack, Mr. Pierce replied that the original complaint was brought about by his neighbors' belief that the fence was constructed on their property. When Zoning Enforcement came out on an inspection, the Inspector noticed the height of the fence. He stated that he had the land surveyed and discovered the fence was indeed on his neighbors' property and he then had the fence moved back.

Following a discussion among the Board members and staff, it was the consensus of the Board that a new plat needed to be submitted prior to the Board proceeding with the application.

Mr. Ribble made a motion to defer this application for the submission of new plats. Mr. DiGiulian seconded the motion.

Prior to calling for the vote, Chairman Smith polled the audience to determine whether or not there were any interested parties in the room.

Lester and Mable Knapp, 3617 Prosperity Avenue, Fairfax, Virginia, the applicant's next door neighbors, came forward and agreed to the deferral. Mrs. Knapp stated that her

Page 112, March 28, 1989, (Tapes 1 and 2), (Robert W. Pierce, VC 88-P-187, continued from Page 111)

main concern was that the height of the fence might possibly affect the value of their house when they decided to sell their house.

When Mr. Hammack questioned the speaker about the applicant's offer to landscape, Mrs. Knapp replied that she and her husband already had too many leaves to rake on their property.

Mr. Ribble asked staff for a deferral date and time. Ms. Kelsey suggested April 25, 1989 at 10:15 a.m. She asked if additional testimony would be accepted at that time. The Board indicated that new testimony might be pertinent based on the new survey.

Chairman Smith called for the vote and the motion to defer VC 88-P-187 until April 25, 1989 at 10:15 a.m. carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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At 11:10 a.m. the Board met with James Cook, Director of Comprehensive Planning, and Barbara Byron, Director of Zoning Evaluation Division, Office of Comprehensive Planning. The Board reconvened the public hearing at 11:30 a.m.

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Page 112, March 28, 1989, (Tape 2), Scheduled case of:

10:15 A.M. ST. CLARE MISSION, SP 88-S-091, application under Sect. 3-103 of the zoning Ordinance for a church and related facilities as proved by SP 85-S-058, which is now expired, located at 12409 Henderson Road, on approximately 15 acres of land, zoned RC and WS, Springfield District, Tax Map 85-4((1))7. (DEF. FROM 3/14/89 - NOTICES NOT IN ORDER)

Kathy Reilly, Staff Coordinator, presented the staff report. She stated that on December 10, 1985 the Board of Zoning Appeals approved SP 85-S-058 to construct a 340 seat church and 91 parking spaces on the application property. However, the applicant did not implement the special permit within the required time limit of eighteen months and the special permit expired. The applicant is now requesting approval to construct a 300 seat church and 86 parking spaces with one service on Saturday and two on Sunday.

Ms. Reilly stated that the staff report dated March 7, 1989 recommended denial of the proposed use because of insufficient landscaping and buffering along the eastern and southern lot lines and the inappropriate siting of the proposed stormwater management pond. She added since that time the applicant has submitted new plans addressing staff's concerns and that staff now recommends approval of the application. She did note, however, that staff did believe that the pond ideally should be moved closer to the proposed building and parking lot. In view of this, staff can only support this application if all the development conditions are implemented, particularly the condition relating to the relocation of the Stormwater Management Facility.

William Enderle, Property Manager for the Catholic Diocese, 200 North Glebe Road, Arlington, Virginia, came forward to represent the church. He introduced the pastor of the church.

Father Cornelius O'Brien, 13807 Poplar Tree Road, Chantilly, Virginia, pastor of St. Clare Mission, came forward and commended staff for their cooperation throughout the application process. He added that the church was more than willing to relocate the pond but hoped that this would not prohibit the church from proceeding with construction as the process had been ongoing for six years.

Ms. Reilly noted that the Department of Environmental Management (DEM) had agreed to expedite the application as much as possible.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Peyton Walker, 12421 Henderson Road, Clifton, Virginia, came forward. Mr. Walker stated that his property is right next door to the subject property and that he has lived there for 15 years and 35 years in Fairfax County. He added that the road is too small to handle the additional traffic which would be generated by the church and that he would like to see the area remain residential.

During rebuttal, Mr. Enderle stated that the church had bought the subject property 40 years ago and are now ready to proceed with the construction of a church to serve the people in the Clifton area.

Mr. Hammack questioned Mr. Enderle about the development conditions. Mr. Enderle stated that the church would like to go forward and would comply with the development conditions.



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Ms. Harris stated that she lived in the Clifton area and questioned whether or not there was a horse back riding trail on the subject property. Mr. Enderle replied there was not. He added that the applicant has dedicated 50 to 65 feet and will provide a stone shoulder the entire width of the front of the property which the horseback riders could use.

Staff had no closing comments and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SP 88-S-091 as he believed that the applicant had satisfied the standards. The approval was subject to the development conditions contained in the staff report dated March 7, 1989.

Ms. Reilly pointed out that there was an addendum to the staff report dated March 21, 1989 and perhaps Mr. Hammack would like to amend his motion.

Mr. Hammack asked Ms. Reilly to note the changes. Ms. Reilly stated that development condition number 7, paragraph 2, had been revised to reflect the revised plat and to show the larger screening yard along the front, eastern, and southern lot lines.

Mr. Hammack asked if the applicants had seen these changes and Ms. Reilly replied yes.

Mrs. Thonen seconded the motion and the motion carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

Ms. Kelsey thanked the applicant for working so diligently and so cooperatively with staff.

Father O'Brien thanked staff for their understanding.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-S-091 by ST. CLARE MISSION, under Section 3-103 of the Zoning Ordinance to allow a church and related facilities as approved by SP 85-S-058, which is now expired, on property located at 12409 Henderson Road, Tax Map Reference 85-4((1))7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is RC and WS.
3. The area of the lot is 15 acres of land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum seating capacity for St. Clare Mission shall be limited to a total of 300.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall not exceed a maximum of 86 spaces. All parking shall be on site.
7. Transitional Screening shall be provided as follows:  
  
 Transitional Screening 1 (25') shall be provided along the western and northern lot lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented so that the result is equivalent to Transitional Screening 1 to the satisfaction of the county Arborist.  
  
 Along the entire eastern (front) and southern (side) lot lines screening and landscaping approximately sixty-five (65') and fifty (50'), in depth respectively, shall be provided. The existing vegetation may be used to satisfy this screening requirement in whole or in part if the vegetation is supplemented with evergreens to the satisfaction of the County Arborist. Along the edges of the proposed parking lot, the proposed landscaping shall also be supplemented with a low level evergreen hedge or shrub to the satisfaction of the County Arborist. The vegetation along both lot lines and low level evergreen hedge or shrub along the edge of the parking lot shall be used to soften the visual impact of the proposed church and parking lot.  
  
 The barrier requirement shall be waived.
8. Stormwater management Best Management Practices shall be implemented on site in order to conform to the requirements of the Water Supply Protection Overlay District Requirements as determined by the Director, Department of Environmental Management. The stormwater management BMP(s) shall be located upstream closer to proposed church structure, as determined by the Department of Environmental Management in coordination with the Environmental and Heritage Resources Branch of the Office of Comprehensive Planning and an easement shall be provided to Fairfax County for maintenance and inspection by the appropriate agencies.
9. The limits of clearing and grading shall be those as shown on the submitted plat dated November 24, 1988. No structures shall be constructed in this area, and no vegetation shall be removed except for dead or dying trees as determined by the County Arborist. However, minor alterations may be permitted to accommodate engineering changes, as outlined in Condition 8 above if approved by Department of Environmental Management (DEM).
10. A tree preservation plan showing, at a minimum, the limits of clearing and the areas of trees to be saved as shown on the special permit plat shall be submitted to the Department of Environmental Management (DEM) for review and approval prior to the commencement of any site clearance activity.
11. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
12. Right-of-way to 45 (forty-five) feet from the existing centerline of Henderson Road necessary for future road improvements shall be dedicated on demand of Fairfax County or at the time of site plan approval, whichever shall first occur for public street purposes to the Board of Supervisors of Fairfax County in fee simple. Ancillary temporary access easements shall be provided to facilitate these improvements.
13. At the time of site plan approval, adequate sight distance in accordance with VDOT standards for the proposed entrance on Henderson Road shall be provided.
14. A right/turn declaration lane as shown on the submitted plat, shall be constructed to VDOT standards along Henderson Road. A standard shoulder, as shown on the submitted plat, shall be constructed across the entire frontage of the site on Henderson Road. This shoulder shall be constructed to VDOT standards.
15. Any proposed lighting of the parking areas shall be in accordance with the following:

- o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
- o The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or nuisance off the property.
- o Shields shall be installed, if necessary, to prevent the light or glare from projecting beyond the facility.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 5, 1989. This date shall be deemed to be the final approval date of this special permit.

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Resolutions for March 21, 1989

Mrs. Thonen moved to approve the resolutions as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 noon.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/2/89

APPROVED: 5/9/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 4, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley and John Ribble.

Chairman Smith called the meeting to order at 8:00 P.M. and led the prayer.

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Page 117, April 4, 1989, (Tape 1), Scheduled case of:

8:00 P.M. IRENE E. LEWKOWICZ, VC 88-P-160, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 22.0 feet from street line of a corner lot and 5.2 feet from side lot line (30 ft. min. front yard, 12 ft. min. side yard required by Sect. 3-307), located at 2425 Claremont Drive, on approximately 13,414 square feet of land, zoned R-3, Providence District, Tax Map 40-3(3)78. (DEF. FROM 1/10/89 - NOTICES NOT IN ORDER)

Tisha Weichmann, Staff Coordinator, presented the staff report.

Irene Lewkowicz, 2425 Claremont Drive, Falls Church, the applicant, appeared before the Board to explain the request as outlined in the statement of justification contained in the staff report. She stated that she had worked with an architect to design the garage addition and that after an evaluation of the layout of her property, it was decided that the garage should not be cited on the Pinecastle Road side of the property due to the topography of the land and an existing drainage problem which would require a significant change in the terrain. In addition, a garage on that side of the house would require entering the home through the dining room which was impractical, and would also cause the removal of many mature bushes and other landscaping. Ms. Lewkowicz stated that her house had been situated on the property in such a position that a garage could not be added without a variance.

Ms. Lewkowicz stated that she had just recently learned of her neighbor's strong objections to the proposed garage and she requested that the Board defer their decision until she could redesign the garage addition to be flush with the house. In addition, instead of a garage where two cars would sit side-by-side, it would be redesigned so that one car would sit one in front of the other.

Mrs. Thonen suggested that the garage possibly could be built at the back of the house without requiring a variance.

Chairman Smith called for speakers with regard to the deferral request.

Sidney Briggs, 2427 Claremont Drive, Falls Church, adjacent to the application property, stated that he did not object to a deferral as long as the garage was not constructed in the front yard and was designed so that it would not cause drainage problems in his yard.

John Barnett, President of the Falls Hill Civic Association, 7401 Lanham Road, stated that the hearing had already been deferred once and that another deferral would again inconvenience the twenty people in the audience that were immediate neighbors of the applicant. He indicated that if Ms. Lewkowicz had given the citizens ample notice of her intended deferral request, she could have avoided causing all these people to show up for the hearing.

John D. Blanchard, 2422 Claremont Drive, Falls Church, directly across the street from the application property, indicated that he had lived in the neighborhood for twenty-five years and that the request was totally out of character with the Falls Hill community. He stated that he was surprised that Ms. Lewkowicz had not known of the neighbor's objections until recently.

Mr. Kelley asked Mr. Barnett when the Falls Hill Civic Association had gone on record as being opposed to the variance request. In response, Mr. Barnett replied that he had provided Ms. Lewkowicz with a copy of the neighborhood covenants in September or October of 1988. Prior to that time, she had not known that the neighborhood covenants prohibit that type of construction in the community. Mr. Barnett stated that the Association had met in January of 1989 and had passed a resolution to oppose the variance request. In addition, a petition had been circulated which had been signed by every adjacent neighbor within a block radius opposing the request.

In response to a question from Mr. Ribble, Mr. Barnett stated that the recorded covenants required that: "No building shall be located on any lot nearer to the front lot line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than thirty-five feet to the front lot line or nearer than ten feet to any interior lot line." In the case of the Lewkowicz property, the setback was forty-eight feet from the curb.

Chairman Smith stated that the Board members should take all the opposition to a deferral into consideration. He informed Ms. Lewkowicz that if she intended to defer the application, she would have to submit new plats and the application would have to be readvertised.

Ms. Lewkowicz stated that she had been unaware that a petition had been circulated until March 22, 1989, when she had called Mr. Barnett to ask him what the position of the civic association was with respect to the variance application, despite the fact that the previous weekend she had shown the garage plans to several neighbors. She stated that she was planning to get the approval of the civic association after the variance application had been granted.

Following discussion, Ms. Lewkowicz requested a withdrawal of the application and indicated that she would submit a new application with a redesigned garage in the near future.

Mr. DiGiulian moved that variance application VC 88-P-160 be withdrawn. Mr. Ribble seconded the motion which passed by a unanimous vote of 7-0.

At the request of the applicant, Mr. Kelley moved to grant a waiver of the limitation on rehearing contained in Section 18-108 of the Zoning Ordinance. Mr. DiGiulian seconded the motion which passed by a vote of 5-2 with Chairman Smith and Mrs. Thonen voting nay.

Ed Ryan, 2426 Claremont Drive, Falls Church, directly across the street from the proposed variance, stated that he wondered why the Board had not taken a definitive action that evening based on the applicant's plans for the future, and indicated that any garage built along the side of the house would be unacceptable to him.

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Page ~~118~~ <sup>118</sup>, April 4, 1989, (Tapes 1-2), Scheduled case of:

8:15 P.M. JAMA'IT-UL-MUSLIMEEN, SP 88-A-097, application under Sect. 3-203 of the Zoning Ordinance to allow a place of worship and related facilities located at 5300 Backlick Road, on approximately 1.0668 acres of land, zoned R-2, Annandale District, Tax Map 71-4((3))10A.

Kathy Reilly, Staff Coordinator, presented the staff report and called the Board's attention to the revised affidavit that had been provided to them. She stated that the mosque would have 160 seats and would contain approximately 9,015 square feet. The Floor Area Ratio (FAR) for the proposed development was 0.195 and the maximum FAR allowed in the R-2 district was 0.20. Ms. Reilly stated that based on the analysis contained in the staff report, staff recommended denial of the application.

Larry Becker, 2714 Dolley Madison Blvd, McLean, representative of the applicant, appeared before the Board. He stated that the staff report made great issue of the fact that the proposed development was not compatible with the residential character of this neighborhood, although he pointed out that within two blocks of the proposed development there were five churches, a private educational facility and a funeral home. In addition, there was a fairly large shopping center at the corner of Braddock Road and Backlick Road.

Mr. Becker discussed the proposed screening requirements specifically with respect to the southern boundary line. He noted that the parking lot for the mosque would provide for parking spaces all the way to the back edge of the lot. This would place a parking lot next to another parking lot. With regard to the northern boundary line, Mr. Becker indicated that there would be substantial landscaping which would cover approximately 43% of the property. Mr. Becker stated that there were homes behind the western boundary line and that there was a heavily forested area between these homes and the proposed use.

Mr. Becker discussed the comments in the staff report regarding the visual impact the proposed mosque would have on the neighborhood and passed out pictures to the Board members showing the five existing churches in the area. He stated he was only asking for something that was similar to what already existed in that same neighborhood.

Mr. Becker stated that the applicant had no objection to the development conditions regarding the alignment of Edsall Road with Backlick Road and providing interparcel access.

Mr. Becker noted that the availability of land in Fairfax County that was affordable and close to the families it would serve was poor. He stated that this was an appropriate place for this group and that it did not impact upon the neighborhood.

Mrs. Thonen asked how many of the people that would use the mosque lived in the adjacent residential development.

In response, Shakkar Asaaid, President of the Moslem Community Development in the Washington Metropolitan area, 5550 Columbia Pike, Arlington, stated that the moslems had been looking for property for their mosque and were always asked whether they lived in the neighborhood. He stated that the moslem community was small and that there were few

mosques in the area, one on Route 7 and one in Washington, D.C. He felt that the moslem residents of Northern Virginia deserved to build one that was not such a long distance away from their homes.

Chairman Smith called for further speakers in support of the application.

Apolle Cozzi, Department of State, Washington, D.C., stated that it was inconvenient to live in Fairfax County and have to travel to Maryland or the District to worship.

Dr. Kahn stated that he had lived in Fairfax County since 1973 and that he had been attending the mosque on Massachusetts Avenue which was a great distance away from his home. He indicated his desire to have a place of worship closer to where he lived.

Sandy Bailey, 10511 Cedar Avenue, Fairfax, the listing agent for the application property, stated that the owner had been trying to sell the property as residential for many years but had been unable to do so due to the adjacent funeral home and school.

Mohamad Abuss, 5550 Columbia Pike, Arlington, discussed the comparison in the staff report regarding what was required and what was provided for the proposed application. He stated that all the required conditions were provided except the side yard requirements.

Chairman Smith called for speakers in opposition to the application.

Kevin Burke, 7016 Woodland Drive, Springfield, brought up a statement made by Mr. Becker regarding the existing screening on the western part of the application property. Mr. Burke stated that the trees were on his property and that any non-residential development there would affect his quality of life from a visual standpoint. Mr. Burke indicated that the mosque would be too intense of a use and stated that he would prefer a doctor's or lawyer's office.

Matt Abrahams, 7017 Braddock News Place, representing the Braddock News Homeowners Association, discussed a meeting that had been held in the District Supervisor's Office between the citizens and the applicants. He stated that the homeowners respected the applicants for their devotion to their faith and that they had acted to respond to community concerns by filing a number of revisions to the original application, although even the latest revision was not appropriate for the site and much too intense for the small tract of land. Mr. Abrahams discussed the current traffic congestion at the intersection at Edsall Road and Backlick Road. He stated that this was not a good location to receive additional traffic and he urged the Board to deny the application.

Dennis Winn, 7031 Braddock News Place; Pat Simes, 7004 Braddock News Place; and Vernon Futterman, 7012 Braddock News Place, Board Member, Braddock News Homeowners Association. All the speakers discussed the fact that the mosque was too intense for such a small area that was already crowded. In addition, they discussed the existing traffic problems in the area of the application property.

Tom Williams, 7096 Leewood Forest Drive, Civic Affairs Chairman, pointed out that there was significant opposition to the application. He stated that the traffic flow during rush hour was bad enough without additional cars from the sunrise and sunset services the mosque would hold.

Lu Wagner, speaking for the North Springfield Civic Association; Robin King, representing the Board of Trustees from Saint John's Church, 5225 Mitchel Street; Barry Wise, 7015 Braddock News Place; Ken Walsh, 7008 Woodland Drive; and Windsor Demaine, President of Demaine Funeral Home, 5308 Backlick Road, discussed their concerns with the intended use being located on such a small lot, the lack of screening that would be provided, and the further traffic problems that would be created.

Charles Fraas, Esquire, 10505 Judicial Drive, Fairfax, representing James Parker, 7004 Woodland Drive, stated that Mr. Parker would be one of the landowners who would be most adversely affected by the construction of the mosque. He stated that the trees in the area were not as dense as the applicant's representative had indicated. Mr. Fraas discussed the fact that the staff report contained negative comments regarding just about every aspect of the application from land use to environment to transportation.

During rebuttal, Mr. Becker stated that with regard to the intensity of the use, the application was within the requirements of all the bulk regulations required. He discussed the fact that the piece of property selected for the mosque was located on two main arterials and that the applicant's were in agreement with making improvements to the intersection. Mr. Becker stated that vans would be used to help alleviate traffic congestion.

Ms. Reilly noted that the Board had been provided with an addendum to the staff report which included a revised plat to clarify the side yard setback. She stated that with this plat, the side yard setbacks would be met.

There being no further speakers, Chairman Smith closed the public hearing.

Mr. Hammack moved to deny SP 88-A-097. Mr. Ribble seconded the motion which passed by a unanimous vote of 7-0.

At the request of the applicant, Mr. Hammack moved to grant a waiver of the limitation on rehearing contained in Section 18-106 of the Zoning Ordinance. Mr. Kelley seconded the motion.

Mr. Hammack indicated that he did not want to see the same application come back before the Board.

Mrs. Thonen stated that there was no way a church could be built on this narrow piece of ground and that she would not support the waiver request.

The question was called on the motion which passed by a vote of 4-3 with Chairman Smith, Mrs. Thonen and Mr. Ribble voting nay.

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COURTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-A-097 by JAMAIT-UL-MUSLIMEEN, under Section 3-203 of the Zoning Ordinance to allow a place of worship and related facilities, on property located at 5300 Backlick Road, Tax Map Reference 71-4((3))10A, 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 4, 1989; and

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

Mr. Hammack included the following statements in the motion:

1. That the applicant is the contract purchaser/lessee.
2. The present zoning is R-2.
3. The area of the lot is 1.0668 acres of land.
4. Basically, Mr. Becker made some very good points on behalf of the mosque and the congregation. This kind of an application is always difficult for this Board to deal with because we recognize the need for churches and places of worship. We know that the land is expensive in Fairfax. We don't like to deny these applications. My motion is not based on the fact that it is a moslem religion, it's based on land use only. I think that the application is too intensive development for the site and for other reasons. I'll explain a bit further. First, we have a .195 FAR, which couldn't be much closer to the maximum that would be allowed on that site. But it's not just that. FAR is just one indicator.

Part of the decision, or my motion, is based upon the shape and configuration of the lot. It's a long, narrow lot. It doesn't lend itself to screening or buffering very well. And while Mr. Becker points out that the site is between existing institutional uses and really surrounded by institutional uses, I think there unfortunately comes a time when you just have to say no to an additional use. Because the Comprehensive Plan does have the area zoned for residential and churches are allowed in Fairfax to exist in residential neighborhoods, but if you had a solid mile of churches side to side it would change the character of the neighborhood and would not really be compatible with the residential neighborhood in many respects. So, I think that that particular argument, which is an interesting one, can cut both ways. I'm not sure what could be done with this site. Perhaps some other type of use could be put in but certainly one that would be less intense.

Dealing with the site a little bit more specifically, the application proposes 9,061 square feet of building. It is a large, fairly bulky building from the rear. It's 106 and a half feet long and 60 feet wide and positioned very far to the rear of the site so that it impacts on the residential neighborhood that exists back there. The rear of that building which is 60 feet wide and 30 feet high is only 30 feet from the rear lot line. Albeit there's some screening in there, that's a large bulk to place that close to the rear of the lot. In addition, it was only proposed to be 15 feet off of one lot line and 25 feet



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off of the other, although those sides are facing properties with existing institutional uses. I think it's too close to the rear lot line and I think 8 feet is really too close to the north lot line for that parking lot that exists from almost the start of the building, the front of the building, up to Backlick Road.

I might add that if I had any thought of granting this motion or the application I would have done it certainly with all of the recommendations of the staff report and maybe then some. And I would note that on the transitional screening, on the south lot line the staff recommended 35 feet where you all have allowed only 25. And 50 feet on the western lot line where you only have the 30 feet, the depth of the building. Basically, I think that it's just that and 43 parking spaces is too intensive development for the site. In addition, if the staff recommendations were implemented, interparcel access would take off all of the front yard and destroy what little yard and screening that would exist between Backlick Road and the parking lot.

Now, on another matter, I do have traffic concerns as well. I feel that a lot of the prayer services, a lot of the use of the church, would be during periods of either rush hour or heavy traffic movement in the area, being in the morning at sunrise, there's already rush hour traffic being generated then. Lunch time, lunch prayers, again you have heavy use in the middle of the day and you have more use again at night. Backlick Road is already heavily congested and I'm afraid that the services and the turning movements would exacerbate the problem that exists on Backlick Road already.

I guess there's another matter, but this is not a reason necessarily to turn down an application, but I always wonder where a church that builds on a small site is going to expand to, one of the staff's concerns. That's not really one of the reasons to deny it, but any church around here that has any moderate success wants to expand their operations. And I feel it would do a disservice to recommend approval and cut it down to such a size that it would make it not useful and yet, I can't go along with the size that's proposed.

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 and the additional standards for this use as contained in Sections 3-203 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion.

The motion carried by a unanimous vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 12, 1989.

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Page 121, April 4, 1989, (Tape 2), After Agenda Item #1:

Peter and Norma Mae Nordlie, VC 85-C-082  
Additional Time

Mrs. Thonen moved to grant the request for additional time for VC 85-C-082. This would extend the expiration date to September 21, 1989.

Mr. DiGiulian seconded the motion which passed by a vote of 4-0, Mr. Ribble, Mr. Hammack and Ms. Harris not present for the vote.

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Page 121, April 4, 1989, (Tape 2), After Agenda Item #2:

Request for Additional Time  
Edgar C. Berry  
VC 87-M-068

Mrs. Thonen moved to grant the request for additional time for VC 87-M-068. This would extend the expiration date to September 11, 1990.

Mr. DiGiulian seconded the motion which passed by a vote of 4-0, Mr. Ribble, Mr. Hammack and Ms. Harris not present for the vote.

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Page 122, April 4, 1989, (Tape 2), After Agenda Item #3:

Out-of-Turn Hearing Request  
Woody's Golf Range  
SPA 79-D-176-1

Mrs. Thonen moved to approve the Out-of-Turn hearing request for SPA 79-D-176-1 and schedule the application for May 2, 1989.

Mr. DiGiulian seconded the motion which passed by a vote of 4-1 with Chairman Smith voting nay; Mr. Hammack and Mrs. Harris not present for the vote.

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Page 122, April 4, 1989, (Tape 2), After Agenda Item #4:

Submission of new plats  
Hamel Health Ventures  
SP 88-S-095

Mrs. Thonen stated that Chairman Smith needed to sign the new plats that had been submitted for Hamel Health Ventures, SP 88-S-095.

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Page 122, April 4, 1989, (Tape 2), After Agenda Item #5:

Application for Appeal  
Ridgemont Montessori School, Inc.

Mrs. Thonen moved that the appeal of Ridgemont Montessori School, Inc., be scheduled for May 23, 1989 at 11:00 a.m.

Mr. Ribble seconded the motion which carried by a vote of 5-0, Mr. Hammack and Ms. Harris not present for the vote.

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Page 122, April 4, 1989, (Tape 2), After Agenda Item #6:

It was the consensus of the Board to reschedule the time of the meeting to be held on April 25, 1989, with James Zook, Director, Office of Comprehensive Planning and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning from 11:00 a.m. to 10:00 a.m.

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Page 122, April 4, 1989, (Tape 2), After Agenda Item #7:

Approval of Resolutions  
March 28, 1989

Mrs. Thonen moved to approve the BIA resolutions for March 28, 1989.

Mr. Ribble seconded the motion which passed by a vote of 5-0, Mr. Hammack and Ms. Harris 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 10:25 P.M.

Judy L. Mass  
Judy L. Mass, Acting Associate Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED 5/9/89

APPROVED 5/8/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 11, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Paul Hammack; Robert Kelley; and Martha Harris; John Ribble and Mary Thonen.

Chairman Smith called the meeting to order at 9:22 a.m. and led the prayer.

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Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that Kathy Reilly, Staff Coordinator, would be leaving Fairfax County to accept a position with Maryland Capitol Park and Planning Commission. The Board Members said they were sorry to see Ms. Reilly leave and wished her well. They thanked her for the fine job she had done.

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Page 123, April 11, 1989, (Tape 1), Scheduled Case of:

9:00 a.m. FRANKLIN GLEN GOVERNANCE, SPA 83-C-079-1, application under Sects. 3-203 and 3-503 of the Zoning Ordinance to amend SP 83-C-079 for community recreation center to permit addition of a community center building and additional parking spaces to existing facilities, located at 13396 Springhaven Drive, on approximately 3.807 acres of land, zoned R-2, R-5, Centreville District, Tax Map 35-3((1)8D.

Lori Greenlief, Staff Coordinator, presented the staff report.

Eugene Osborn, 3603 Elderberry Place, Fairfax, Virginia, current Chairman of the Franklin Glen Building Committee, introduced himself and Mrs. Sharon Goodrich who is the Manager of the Franklin Glen Governance.

Mr. Osborn represented the applicant and said he had nothing further to add to the previously submitted statement of justification.

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

Mr. Hammack moved to grant SPA 83-C-079-1 with the conditions outlined in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-C-079-1 by FRANKLIN GLEN GOVERNANCE, under Section 3-203 and 3-503 of the Zoning Ordinance to amend SP 83-C-079 for community recreation center to permit addition of a community center building and additional parking spaces to existing facilities, on property located at 13396 Springhaven Drive, Tax Map Reference 35-3((1)8D, 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 11, 1989; and

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

- 1. That the applicant is the owner of the land.
2. The present zoning is R-2 and R-5.
3. The area of the lot is 3.807 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-403 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum number of employees on the premises at any one time shall be five (5).
6. The hours of operation shall be limited to the following:
  - o Community Room - 9:00 a.m. to 10:00 p.m.
  - o Tennis Courts - 7:00 a.m. to 10:00 p.m.
  - o Multi-purpose Court - 9:00 a.m. to 9:00 p.m.
  - o Swimming Pool - 8:00 a.m. to 9:00 p.m. for swim team and swimming lessons, 9:00 a.m. to 9:00 p.m. for general pool hours with permission for after-hours parties as follows:
    - a. limited to six (6) per season
    - b. limited to Friday, Saturday and pre-holiday evenings.
    - c. shall not exceed beyond 12:00 midnight
    - d. shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity
    - e. requests shall be approved for only (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.
7. The maximum family memberships shall be limited to seven hundred (700) families.
8. A minimum and maximum of 50 parking spaces shall be provided. All parking for this use shall be on-site. If a reduction in parking is not approved by the Department of Environmental Management, the additional five spaces shall be provided on the site.
9. Transitional Screening 1 shall be provided as follow:
  - o Existing vegetation along the eastern, northern and the portion of the southern lot line adjacent to the existing parking lot shall be deemed to satisfy the transitional screening requirement.,
  - o Additional vegetation to the level of Transitional Screening 1 shall be provided along the portion of the southern lot line adjacent to the tennis courts and between the tennis courts and the existing parking lot and along the western lot line in the area of the tennis courts. The type, size, quantity and location of these plantings shall be reviewed and approved by the County Arborist to ensure that they are planted in an area where they can survive.
10. Foundation plantings shall be provided around the proposed community center to soften the visual impact of the structure and to ensure compatibility with the existing bathhouse and the neighboring residences.
11. The community center shall be constructed of materials similar in type and color to that of the existing bathhouse as determined by the Department of Environmental Management.
12. The tennis courts may be lighted, provided: the height of the light standards do not exceed twenty (20) feet; the lights are the design which directs the light directly onto the courts; and shields are installed, if necessary, to prevent the light from projecting beyond the courts. There shall be no lights on the multi-purpose court.

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13. The applicant shall provide lights not to exceed eight (8) feet in height from the parking area to the tennis courts.
14. The use of the tennis court lights shall be regulated by an automatic cut-off device installed to ensure that the lights are automatically cut off at 10:00 p.m.
15. Pool water shall be treated to achieve a pH of 7 and a minimum dissolved oxygen content of 4.0 milligrams per liter prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.
16. Best Management Practices (BMP's) shall be provided to the satisfaction of DEM, in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.
17. The applicant shall not encroach upon the 100-year floodplain and shall abide by the Zoning Ordinance regulations regarding appropriate setbacks to the satisfaction of DEM.
18. Colonial Pipeline Company and Miss Utility shall be notified prior to any grading or construction on the property.

The above conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 19, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 125, April 11, 1989, (Tape 1), Scheduled Case of:

9:15 a.m. KENNETH W. & BARBARA S. KLINE, VC 89-M-001, application under Sect. 18-401 of the Zoning Ordinance to allow construction of detached garage to 10 feet from a side lot line (20 ft. min. side yard required by Sects. 3-107 and 10-104), located at 7205 Wilburdale Drive, on approximately 21,800 square feet of land, zoned R-1, Mason District, Tax Map 71-3(9)65.

Kathy Reilly, Staff Coordinator, presented the staff report.

The applicant, Kenneth Kline, 7205 Wilburdale Drive, Annandale, Virginia, presented his statement of justification. He stated he did not want to do anything detrimental to the community.

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

Because of the findings of fact as set forth in the Resolution, Mrs. Thonen moved to grant VC 89-M-001, with conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-001 by KENNETH W. & BARBARA S. KLINE, under Section 18-401 of the Zoning Ordinance to allow construction of detached garage to 10 feet from a side lot line, on property located at 7205 Wilburdale Drive, Tax Map Reference 71-3(9)65, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,800 square feet of land.
4. The usable width of the property is reduced by the 10 foot storm sewer easement down the west side of the property line.
5. The usable depth of the property is divided by the 20 foot wide drainage easement through the back yard which cuts the property into two pieces.
6. The yard slopes toward the west end of the house, towards the basement door, and towards the rear of the lot, reducing the level area of the yard.
7. The neighboring property on the east side, where the proposed garage will be, has a graveled area along the fence for parking.
8. To applicant's knowledge, none of the other properties in the community have the same circumstances.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGuilian seconded the motion.

The motion carried by a vote of 6-1; Chairman voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 19, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 127, April 11, 1989, (Tape 1), Scheduled Case of:

9:30 a.m. SID & MARY ANN WILSON, VC 89-C-002, application under Sect. 18-401 of the Zoning Ordinance to allow construction of sunroom to dwelling to 9.1 feet from a side lot line such that side yards total 29 feet (12 ft. min., 40 ft. total min. side yard req. by Sect. 3-107), located at 10851 Parcel Court, on approximately 26,333 square feet of land, zoned R-1(C), Centreville District, Tax Map 37-3(8)67.

Kathy Reilly, Staff Coordinator, presented the staff report.

The applicant, Sid Wilson, 10851 Parcel Court, Oakton, Virginia, presented his statement of justification, calling attention to the exceptional narrowness of the lot. He stated this poses a hardship which is not generally shared with other adjoining properties.

Because of the findings of fact as set forth in the Resolution, Mr. DiGuilian moved to grant VC 89-C-002, with conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-002, by SID & MARY ANN WILSON, under Section 18-401 of the Zoning Ordinance to allow construction of sunroom to dwelling to 9.1 feet from a side lot line such that side yards total 29 feet, on property located at 10851 Parcel Court, Tax Map Reference 37-3(8)67, Mr. DiGuilian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1(C).
3. The area of the lot is 26,333 square feet of land.
4. The application meets the nine requirements for a variance, specifically the narrowness of the lot.
5. The location of the existing dwelling and the drain field pose restrictions on the use of the lot.
6. From the tax map, this appears to be the smallest lot in the subdivision.

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

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

Page 128, April 11, 1989, (Tape 1), (Sid and Mary Ann Wilson, VC 89-C-002, continued from Page 127)

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion.

The motion carried by a vote of 6-1; Chairman Smith voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 19, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 128, April 11, 1989, (Tape 1), Scheduled Case of:

9:45 a.m. NATIONAL GARDENS BAPTIST CHURCH, SP 88-P-104, application under Sect. 3-403 of the Zoning Ordinance to allow a child care center in an existing church, located at 2937 Strathmeade Street on approximately 99,817 square feet of land, zoned R-4, Providence District, Tax Map 50-3((17))43, 45A and ((16))3A.

Chairman Smith stated he had a note indicating that this applicant had requested a withdrawal, but he did not see a copy of the request.

Lori Greenlief, Staff Coordinator, stated that the applicant had submitted a letter requesting withdrawal.

Mrs. Thonen moved to allow withdrawal of SP 88-P-104. Mr. DiGuilian seconded the motion which carried unanimously.

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Page 128, April 11, 1989, (Tape 1), After Agenda Item:

Approval of Resolutions from April 4, 1989

Mrs. Thonen moved to approve the Resolutions of April 4, 1989. Mr. DiGuilian seconded the motion which carried unanimously. Mr. Kelley was not present for the vote.

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Page 129, April 11, 1989, (Tape 1), After Agenda Item:

Approval of Minutes of February 7, 1989

Mrs. Thonen moved to approve the Minutes of the February 7, 1989 hearing. Mr. Hammack seconded the motion which carried unanimously. Mr. Kelley was not present for the vote.

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Page 129, April 11, 1989, (Tape 1), Board Matter:

Chairman Smith inquired if there were any other items requiring the attention of the Board.

WOODY'S GOLF RANGE, SPA 79-D-176-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend S-176-79 for a golf driving range to permit continuation of the use without term, addition of a baseball hitting range and request for waiver of the dustless surface requirement, located at 11801 Leesburg Pike on approximately 30.1246 acres of land, zoned R-1, Dranesville District, Tax Maps 6-3((1))33 and 33A. (OUT-OF-TURN HEARING)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that, in response to the Board's actions and comments at the last meeting, Barbara A. Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning (OCP), had prepared a memorandum concerning the out-of-turn hearing request for Woody's Golf Range, which had been approved at the previous Board meeting.

Ms. Kelsey stated the memo had been distributed to the Board. The Board took a ten-minute recess at 9:50 a.m. to review the memorandum.

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Page 129, April 11, 1989, (Tape 2), Scheduled Case of:

10:00 A.M. HAZELTON LABORATORIES AMERICA, INC., A 89-D-003, Appeal of Zoning Administrator's decision that appellant's special exception application, SE 87-D-089, was improperly accepted and changes are necessary in order for the request to be a proper application, located at 9200 Leesburg Pike on approximately 123.84 acres of land, zoned R-1, Dranesville District, Tax Map 19-4((1))16, 16A, and 31.

Attorney for the appellant, Richard Hobson, 8280 Greensboro Drive, McLean, Virginia, stated that Karloid Corporation had now verbally agreed to sign pending application SE 87-D-089, to be heard by the Board of Supervisors. If Karloid does sign, the appeal is moot.

Mr. Hobson asked the Board to defer A 89-D-003 for one month. If Karloid Corporation does sign the pending Special Exception application, this appeal will be withdrawn.

Jane W. Gwinn, Zoning Administrator, stated she had no objection to the deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that A 89-D-003 could be rescheduled for May 9, 1989 at 11:30 a.m.

Don McLott, 1306 Alps Drive, McLean, Virginia, came forward to state he had an interest in the appeal and said he had no object to the deferral.

Mrs. Thonen moved to defer A 89-D-003 to May 9, 1989 at 11:30 a.m. Mr. DiGuillan seconded the motion which carried unanimously. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 129, April 11, 1989, (Tape 2), Board Matter:

Reconsideration of Woody's Golf Range, SPA 79-D-176-1

Mrs. Thonen stated she would like to reconsider her action on SPA 79-D-176-1 after reading the memorandum from Barbara A. Byron, Director Zoning Evaluation Division, Office of Comprehensive Planning (OCP). Mrs. Thonen acknowledged that Ms. Byron informed the Board that staff did not have sufficient time to address all of the issues relating to this request before the presently scheduled hearing date.

Ms. Thonen agreed that the Board did move rather rapidly on this request and moved to reschedule the hearing date for May 18, 1989.

Mr. DiGuillan seconded the motion which carried unanimously.

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Page 130, April 11, 1989, (Tape 2), Scheduled Case of:

Hazelton Laboratories America, Inc., A 89-D-003  
Discussed earlier in this meeting

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she had asked those present in the room, who were interested in Hazelton Laboratories American, Inc., to call the BZA office prior to the May 9, 1989 scheduled hearing date, to find out whether or not the appeal had been withdrawn. She said she had also taken their names and phone numbers in order to call them.

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Page 130, April 11, 1989, (Tape 2), Information Item:

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the response from Mr. Chase of the Air Quality Monitoring Equipment at Vulcan Quarry, contained in the Board's package.

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Page 130, April 11, 1989, (Tape 2), Information Item:

Chairman Smith and other members of the Board expressed appreciation for the Article from Newsreporter, Piedmont Environmental Council.

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Page 130, April 11, 1989, (Tape 2), Adjournment:

As there were no other matters to come before the Board, Mrs. Thonen moved to adjourn. Mr. Hammack seconded the motion which carried unanimously.

Chairman Smith adjourned the meeting at 10:15 a.m.



Geri B. Bepko, Deputy Clerk to the Board of Zoning Appeals



Daniel Smith, Chairman Board of Zoning Appeals

SUBMITTED: 5/2/89

APPROVED: 5/8/89

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, April 20, 1989. The following Board Members were present: Chairman Daniel Smith, John DiGiulian, Martha Harris, Robert Kelley, Mary Thonen, and John Ribble. Paul Hammack was absent from the meeting.

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Chairman Smith called the meeting to order at 9:25 a.m. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board. There were none.

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Page 131, April 20, 1989, (Tape 1), Scheduled case of:

9:00 A.M. CATHY C. ADAMS, SP 88-P-100, application under Sect. 8-901 of the zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow detached garage to remain 0.8 feet from side lot line (20 ft. min. side yard required by Sects. 3-107 and 10-104); located at 2969 Wilson Avenue, on approximately 34,720 square feet of land, zoned R-1, Providence District, Tax Map 47-2((2))15.

Lori Greenlief, Staff Coordinator, presented the staff report.

Cathy Adams, 2969 Wilson Avenue, Oakton, Virginia, spoke in her defense stating that during the initial research, a misunderstanding had occurred regarding the original permit for a garage and family room addition. Ms. Adams said that when the garage was changed, it was built in the same location but twice the size of the original. Mrs. Harris questioned the portion on the plat before them which bore an "x". Ms. Adams replied that they had done all the work themselves and had no photos of the original garage but that it had been in very poor condition, and they were now in the process of rebuilding.

Hearing no other support or opposition, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to grant SP 88-P-100, based on an error in the building location.

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#### COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 88-P-100 by CATHY C. ADAMS, under Section 8-901 of the zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow detached garage to remain 0.8 feet from side lot line (20 ft. min. side yard required by Sects. 3-107 and 10-104), on property located at 2969 Wilson Avenue, Tax Map Reference 47-2((2))15, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 34,720 square feet of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-107 and 10-104 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific garage shown on the plat included with this application and is not transferable to other land.
2. The materials used for the siding of the garage shall be identical in type and color to those used on the dwelling.
3. A building permit and all the necessary inspections shall be obtained for the garage.

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Mr. Ribble seconded the motion.

The motion carried by a vote of 4-2, with Mrs. Harris and Chairman Smith voting nay. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 132, April 20, 1989, (Tape 1), scheduled case of:

9:15 A.M. BOBBIE SUE JONES, SP 89-S-001, application under Sect. 3-303 of the Zoning Ordinance to allow accessory dwelling unit, located at 13420 Cavalier Woods Drive, on approximately 9,894 square feet of land, zoned R-3 and WS, Springfield District, Tax Map 55-3((5))5.

Denise James, Staff Coordinator, presented the staff report.

Bobbie Sue Jones, 13420 Cavalier Woods Drive, Clifton, appeared before the Board stating that she had nothing further to add other than that which was in her application.

There being no further speakers in support or opposition and no further staff comments, Chairman Smith closed the public hearing.

Mrs. Thonen motioned to grant SP 89-S-001, in accordance with the development conditions in Appendix 1 of the staff report as amended.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-001 by BOBBIE SUE JONES, under Section 3-303 of the Zoning Ordinance to allow the establishment of an accessory dwelling unit, on property located at 13420 Cavalier Woods Drive, Tax Map Reference 55-3((5))5, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3, WSPOD.
3. The area of the lot is 9,894 square feet of 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. 3-303 and the additional standards for this use as contained in Sections 8-806, 8-903 and 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the building and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit. However, this condition shall not preclude the

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applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the zoning Ordinance and other applicable codes.

- 3. This Special Permit use is subject to the provisions of Article 17, Site Plans. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, DEM, shall be submitted and approved by DEM pursuant to Par. 3 of Sect. 8-903. And plans submitted shall conform with the approved Special Permit plat and these conditions.
- 4. The accessory dwelling unit shall occupy no more than 900 square feet of the principal dwelling.
- 5. The accessory dwelling unit shall contain no more than one bedroom.
- 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.
- 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 regulations for building, safety, health and sanitation.
- 8. This special permit shall be approved for a period of five (5) years from the approval date and with succeeding five (5) year extensions permitted with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
- 9. Upon termination of the accessory dwelling unit as a permitted use on the site, the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 133, April 20, 1989, (Tape 1), Scheduled case of:

9:30 A.M. PEOPLE KARCH INTERNATIONAL COMPANY, LTD. AND WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP, SP 89-S-002, application under Sect. 5-303 of the Zoning Ordinance to allow health club within an office building, located at 14800 Conference Center Drive, on approximately 6.32 acres of land, zoned I-3, Springfield District, Tax Map 43-4((6))15A.

Denise James, Staff Coordinator, presented the staff report.

Carson Lee Fifer, Jr., Esq., McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive #900, McLean, Virginia, attorney for the applicants, gave a comprehensive report on the geographical layout of People Karch International, and spoke briefly of the work being done by the Westfields Center for Health Promotion.

Mark Karch, 7507 Tarreytown Road, Chevy Chase, Maryland, gave an in-depth description of the activities of Westfields Corporate Center, mentioning the health club's staff and outlining the many beneficial health programs.

Mr. Fifer summed up stating that the applicants have complied with all the required standards. He clarified for the Board members that times as given in the staff report were correct and that the child care center was not part of the special permit use. In fact, it was determined that child care centers in industrial districts are by right.

Page 134, April 20, 1989, (Tape 1), (People Karch International Company Ltd., and Westfields Corporate Center Associates Limited Partnership, SP 89-S-002, continued from Page 133)

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There being no further questions by the Board, and no further speakers in support or opposition, Chairman Smith closed the public hearing.

Mrs. Harris moved to grant SP 89-S-002 having found the applicants to be in compliance with all special permit standards.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-002 by PEOPLE KARCH INTERNATIONAL COMPANY, LTD., AND WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP, under Section 5-503 of the zoning Ordinance to allow health club within an office building, on property located at 14800 Conference Center Drive, Tax Map Reference 43-4((6))15A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is I-3, AN, WSPD.
3. The area of the lot is 6.32 acres of 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 Section 5-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. There shall be a minimum of 86 parking spaces provided and reserved for the proposed health club use.
6. There shall be a maximum of 24 employees associated with this use on site at any one time.
7. There shall be a maximum of 200 patrons on site at any one time.

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

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Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-0, with Mr. Kelley not present for the vote. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 20, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 135, April 20, 1989, (Tape 1), scheduled case of:

9:45 A.M. JOSEPH H. & MARJEAN D. KAUFMAN, VC 89-V-017, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 2.1 feet from side lot line (12 ft. min. side yard req. by Sect. 3-307), located at 8709 Eaglebrook Court on approximately 21,454 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 111-2((6))(22)81. (OUT OF TURN HEARING GRANTED ON 3/7/89)

Denise James, Staff Coordinator, presented the staff report.

Dr. Joseph Kaufman, dermatologist, 8709 Eaglebrook Court, Alexandria, Virginia, outlined his proposed addition for the benefit of the Board members, and gave a full explanation for needing the variance as the addition would be a necessity due to his family's being suddenly increased by the addition of his dying sister's three teen age children whose guardianship he would be taking over effective June 15, 1989. Dr. Kaufman stated that there were no objections to the proposed addition by his neighbors.

Mr. DiGiulian questioned the narrowness of the lot in front which appeared further from the side lot line than 2.1 feet. Mrs. Thonen asked Dr. Kaufman about his neighbor's possible obstructed view, and he assured her there were no objections. Dr. Kaufman went on to describe the difficulty in securing a contractor willing to build his addition within the necessary time frame of approximately 7 weeks, and the urgency to provide housing for the three traumatized children.

Due to the exceptional closeness of the applicant's requested 2.1 feet from the side lot line, Mr. Ribble motioned to grant-in-part a variance allowing construction 4.1 feet from the side lot line, based upon the additional findings of fact, and with the satisfaction of all other physical conditions as stated in the staff report. Mr. Kelley seconded the motion which passed by a vote of 5-1, with Chairman Smith voting nay. Mr. Hammack was absent from the meeting.

The Board instructed the applicants that they would need to submit a new plat showing a 4.1 foot minimum side lot line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-017 by JOSEPH H. & MARJEAN D. KAUFMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 2.1 feet from side lot line (THE BOARD APPROVED 4.1 FROM SIDE LOT LINE) (12 ft. min. side yard req. by Sect. 3-307), on property located at 8709 Eaglebrook Court, Tax Map Reference 111-2((6))(22)81, Mr. Ribble moved that the Board of zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 21,454 square feet of land.
4. The structure 2.1 feet is too close to the lot line
5. The lot is pie shaped and narrow where the house is located
6. The house is sited unequally on the lot.
7. The neighbor does not object to this request.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Kelley seconded the motion. The motion carried by a vote of 5-1, with Chairman Smith voting nay. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 20, 1989. This date shall be deemed to be the final approval date of this variance.

Note: The Board voted to require submission of a new plat, necessitating a re-survey, indicating adherence to the 4.1 foot minimum side lot line.

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Page 137, April 20, 1989, (Tape 1), After Agenda Item:

McLean Post 8241, VC 87-D-012  
Request for Additional Time

Mrs. Thonen moved to deny the request for additional time since the Special Exception had expired, but stated that should the Special Exception and variance request be refiled, the Board of Zoning Appeals may grant an out-of-turn hearing for the variance if requested to do so by the applicant.

Mr. Kelley alluded to the County's dragging its feet, and Ms. Kelsey said the ball was now in the permittee's court to file for a request for additional time and the permittee did not do that. In addition, the SE was approved on July 6, 1987 and the site plan was not filed until October 28, 1988, only six months ago. It is the Permittee's responsibility to file for site plan approval. The County can do nothing to force a Permittee to file promptly. Therefore, in this case, it appears the County was not at fault.

The motion to deny was seconded by Mrs. Harris and passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 137, April 20, 1989, (Tape 1), After Agenda Item:

Calvary Church of the Nazarene, SP 87-M-036  
Request for Additional Time

Mrs. Thonen moved to grant the request for additional time, which was seconded by Mr. Ribble, and passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

The new expiration date is April 20, 1990.

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Page 137, April 20, 1989, (Tape 1), After Agenda Item:

Chesapeake Ability School, SP 89-L-016  
Request for an Out-of-Turn Hearing

Mrs. Thonen moved to grant the request for an out-of-turn hearing due to the length of time which has elapsed within the County since the initiation of this request. The motion to grant was seconded by Mr. Ribble and passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

Due to the urgent nature of this Special Permit request, the hearing was set for May 18, 1989.

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Page 137, April 20, 1989, (Tape 1), After Agenda Item:

Approval of April 11, 1989 Resolutions

Mrs. Thonen moved to approve the Resolutions for April 11, 1989. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 137, April 20, 1989, (Tape 1), After Agenda Item:

Approval of November 10, 1988, and January 17 & March 7, 1989 Minutes

Mrs. Thonen moved to approve these Minutes. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 137, April 20, 1989, (Tape 1), Information Item:

Karloid Corp. vs. Board of Zoning Appeals of Fairfax County, Virginia

Chairman Smith asked Jane Kelsey, Chief, Special Permit & Variance Branch, to clarify the status of the subpoena which had been served on the Board members, the Clerk and David Stitt, County Attorney.

Ms. Kelsey stated that Mr. Stitt would file a timely response and would keep the Board apprised.

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Page 138, April 20, 1989, (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

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Joanne R. Kiser

Joanne R. Kiser, Associate Clerk to the Board of Zoning Appeals

Daniel Smith

Daniel Smith, Chairman Board of Zoning Appeals

SUBMITTED: 5/18/89

APPROVED: 5/23/89

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 25, 1989. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Martha Harris; Robert Kelley; John Ribble; and, Mary Thonen. Paul Hammack was absent from the meeting.

Chairman Smith called the meeting to order at 9:17 a.m. and gave the invocation.

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Page 139, April 25, 1989, (Tape 1), Scheduled case of:

9:00 A.M. LUCKSTONE CORPORATION, SPA 81-S-064-2, application under Sect. 3-C03 of the Zoning Ordinance to amend S-81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit relocation of approved site access, addition and relocation of equipment and structures, located at 15950 Lee Highway, on approximately 200.2692 acres of land, zoned R-C, N-R, and W-S, Springfield District, Tax Map 64-1((1))1, 4, 13, 14, 15, 17, 39 and 64-1((4))7A. (OUT OF TURN HEARING GRANTED)

Lori Greenleaf, Staff Coordinator, presented the staff report. She stated that the applicant is requesting approval to amend the existing special permit to allow the relocation of the approved site access and the addition of several structures and equipment to the property. (Ms. Greenleaf used the viewgraph to indicate where the proposed structures would be constructed.) She noted for the record that the granting of an out of turn hearing had precluded staff from conducting a thorough annual review at this time but that this would be accomplished and a report furnished to the Board of Zoning Appeals (BSA) during the summer.

Ms. Greenleaf addressed the expansion of the existing office building by stating that the Zoning Administrator had determined that in accordance with the additional standards for a group 1 special permit use, the expanded office building should be located 100 feet from the right of way. She added that the applicant did not agree with this interpretation. With reference to the development conditions, she stated that the staff report had been prepared prior to receiving the Zoning Administrator's interpretation. Therefore, a development condition addressing the setback of the office building expansion had not been included. She added that condition number 23 from the previous approval had been inadvertently omitted from the staff report. She added that the Zoning Administrator has left the setback limitations for the crushers to the discretion of the BSA. In closing, Ms. Greenleaf stated that it is staff's conclusion that the application meets the standards and therefore recommends approval.

Chairman Smith questioned staff as to whether or not the applicant meets the blasting requirements. Mr. Greenleaf replied that in 1987 staff had reviewed those standards and found them to be adequate and that the applicant is in compliance.

In response to questions from Mrs. Harris regarding screening, Ms. Greenleaf stated the screening along the access road has not been implemented she assumed partially because the applicant would like to shift the entrance back to the original location.

In response to further inquiries from the Board, Ms. Greenleaf explained that there is a disagreement between staff and the applicant with respect to moving the proposed office building back to 100 feet from the right of way as the existing office building is located 65 feet from the right of way.

She added that at the time of the annual review staff requests and receives input from the County Arborist and Public Utilities and take an overall look at the site. Ms. Greenleaf replied that staff had a difficult time also as there was not sufficient time to do an annual review because the Board had granted an out-of-turn hearing but had tried to address the proposed building on the site.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that at the time the BSA granted the out-of-turn hearing staff expressed concern that there would be inadequate time to complete an annual review prior to the public hearing on the amendment application in order to hear both at the same time. She said that the BSA acknowledged that would be a problem and even said that a portion of the application might need to be deferred, but that the crushers were the main immediate problem.

Ms. Greenleaf stated that the application was filed in January but the submission requirements were not completed until March.

Royce A. Spence, 7297-F Lee Highway, Falls Church, Virginia, attorney for the applicant came forward. He stated that the BSA had expressed concern at the previous public hearing about off site drainage and the applicant had complied with the conditions which addressed that problem and had submitted quarterly water quality reports to James Pammel, with the Office of Comprehensive Planning. Because the quarterly reports had met with Mr. Pammel's approval, the applicant had been allowed to go to annual reports.

Chairman Smith asked Mr. Spence if staff had reviewed these reports. Ms. Kelsey explained that unfortunately Mr. Pammel had now left the County and the people who replaced him could not locate the reports.

A discussion took place between the BIA and Mr. Spence regarding the quarterly reports which were not available. Mr. Spence added that this could be taken care of at the time of the annual review and had no impact upon the request before the BIA today.

Mrs. Thonen expressed concern with acting upon the application without first reviewing those quarterly reports. Chairman Smith asked staff the date of the last annual review and Ms. Greenlief replied 1987.

Mr. Spence pointed out that because of problems that staff had encountered with Vulcan Quarry now all quarries must undergo an annual review by staff which Luck Quarry had not had to do in the past.

Ms. Greenlief stated that staff expects to do the annual review before the BIA's August recess.

In response to questions from Mrs. Thonen as to whether or not there were any problems at that time, Ms. Greenlief replied that this staff had not done an annual review. Mr. Spence stated that everything must have been in order because staff did not indicate otherwise.

Chairman Smith noted that the applicant has always cooperated with staff and hoped that it would continue. Mr. Spence agreed.

Mrs. Thonen asked Mr. Spence if the applicant was doing any filling on the site and Mr. Spence replied that was not the case.

Mr. Spence continued his presentation and addressed the development conditions asking that condition number 4 be deleted. Mrs. Thonen asked if the amending the condition to read "as set forth in Art. 17, Group 1" would satisfy the applicant. Ms. Kelsey stated that the landscape plan can only be implemented under Site Plan. Chairman Smith stated that he did not understand the applicant's reluctance to go through the site plan process. Mr. Spence argued that he did not believe that it was necessary to have the applicant go through the additional expense and time if it is not a requirement of the zoning Ordinance.

Mrs. Thonen stated that she would like to defer this application for at least one week in order to further research the application.

Chairman Smith polled the audience to determine if there was anyone present interested in the application. He asked if perhaps the case could be deferred to later in the agenda. Mrs. Thonen stated that she would like to personally review the site plan procedure to make certain that all the rules were being followed.

Mrs. Harris stated that she had visited the site which was very informative and that she believed that the application was a workable one.

The Board and applicant again discussed the site plan process and Mr. Spence strongly argued against having to go through the process.

Mr. Ribble noted that the Board should let the applicant complete his presentation and then ask questions. The other members agreed.

Mr. Spence asked that condition number 6 be revised to delete the word "not" in that there would be only one entrance to the site. He asked that condition number 5 reflect the correct expiration date.

Ms. Greenlief agreed that the new expiration date would be from "February 3, 1987."

Mr. Spence asked for a clarification on condition numbers 13 and 14. Chairman Smith explained that the BIA only had jurisdiction over any runoff on site.

He asked that old condition number 23 be added and stated that the applicant complies with all requirements regarding blasting which is addressed in condition number 39.

He again disagreed with the Zoning Administrator's determination regarding the setback for the expanded office building.

In response to a question from Mrs. Harris about parking, Mr. Spence replied that there would be additional parking but that the existing building could not be moved back because of other existing structures.

As there were no speakers and no further discussion, Mrs. Thonen made a motion to defer this application for two weeks in order for the Board to get an answer on the site plan. Mr. DiGiulian seconded the motion.

Mr. Ribble asked if this was for decision only and Mr. Thonen stated that she would like this information entered into the record. Chairman Smith added that the public hearing would be continued to that date.

Ms. Greenleaf suggested a deferral date and time of May 9, 1989 at 12:00 noon.

The motion carried by a vote of 6-0 with Mr. Gammack absent from the meeting.

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The Board recessed to the Conference Room at 10:17 a.m. to go into a scheduled meeting with James P. Zook, Director, Office of Comprehensive Planning, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, to discuss several BIA matters. The Board reconvened at 10:58 a.m. and continued with the scheduled agenda.

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Page 141, April 25, 1989, (Tape 1), Scheduled case of:

9:15 A.M. RODGER M. AND PATRICIA E. CARROLL, VC 89-C-004, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.0 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), located at 1892 Beulah Road, on approximately .50 acres of land, zoned R-1, Centreville District, Tax Map 28-4((1))51.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

The co-applicant, Rodger M. Carroll, 1892 Beulah Road, Vienna, Virginia, came forward. He stated that he cannot build the addition in the rear of the property because of a septic field nor on the other side of the house because of a well. Mr. Carroll stated that his house is the smallest in the neighborhood and this request would allow him to expand the existing kitchen and construct a garage.

In response to questions from the Board, Mr. Carroll stated that the first floor of the addition would be a kitchen expansion and garage and the second floor would be a bedroom. He added that he believed that he could build within 12 feet of the septic tank.

Mr. Carroll added that the exterior of the addition would be vinyl siding. Mrs. Thonen suggested that perhaps the front of the addition could be finished off with brick.

Patricia Carroll, wife of the applicant, came forward and explained that the house was built 50 years ago and believed it would be impossible to match the brick.

There were no speakers to address this application and Chairman Smith closed the public hearing.

Mr. DiGiulian moved to grant-in-part the request to allow the applicants to construct the addition within 10 feet of the side lot line rather than 7 feet as requested. The approval was subject to the development conditions contained in the staff report.

Mr. Kelley stated that he would reluctantly support the motion.

Chairman Smith informed the applicant that they would need to submit new plats to staff.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-004 by RODGER M. AND PATRICIA E. CARROLL, under section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.0 (THE BOARD GRANTED 18.0 FEET) from side lot line, on property located at 1892 Beulah Road, Tax Map Reference 28-4((1))51, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1989; and

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

1. That the applicants are the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is .50 acres of land.
4. The 7 foot setback is too close to the lot line.
5. The applicant can construct within 10 feet of the side lot line.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.

Mrs. Thones seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 142 April 25, 1989, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. GARY W. INTERNICOLA, VC 89-A-005, application under Sect. 18-401 of the zoning Ordinance to allow construction of detached garage in a front yard (accessory garage not allowed in any front yard on this lot by Sect. 10-104,) located at 5620 Gaines Street, on approximately 21,687 square feet of land, Annandale District, zoned R-2, Tax Map 78-2((1))33.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Mr. Ribble questioned whether or not this was a front yard as he had discussed a similar case with staff and it was explained to him that if a road is not part of a County or

State system it was not classified as a front yard. Ms. Kelsey indicated that she could not remember the case but that this street meets the definition of a "street," therefore must meet the front yard and accessory structure requirements.

Jeffrey Twardy, 7369 McWhorter Place, Annandale, Virginia, attorney for the applicant, came forward. He stated that he believed that this might be considered a street historically because when Old Burke Village was originally laid out as a village, the plans showed Gaines Street as part of that layout. However, when the Byrd Amendment was passed, Gaines Street was not taken into the State system and in 1954 or 1956, the County tax maps began to show the property lines as solid lines rather than a dashed line and no one on County staff had an explanation as to why. Mr. Twardy pointed out that under the criteria for a public highway Gaines Street cannot be taken into the State system because it is only a 30 feet wide.

Mr. Twardy continued by stating that in 1983, all of the contiguous property owners entered into a road maintenance agreement to be recorded that ran with the land. The applicant has been solely responsible for the maintenance of Gaines Street since he and his wife purchased the property in December 1983 until the adjacent Lot 34 was developed making that owner also subject to the road maintenance agreement. Mr. Twardy stated that this is the only feasible location for the garage because of the number of large trees that would have to be removed and because of a septic field which was abandoned only sixteen months ago when the Department of Public Works brought a spur from Gaines Street into the neighborhood. Following discussions with the Department of Public Works, the applicant and his neighbors granted an easement across the neighboring property so that the public sewer would not be brought up to its terminus on that spur and destroy the trees. (Mr. Twardy submitted photographs to the Board showing the trees.)

In closing, Mr. Twardy stated that there are no objections from the neighbors, that this is the only feasible location for the addition, and that the applicant is willing to reduce the size of the garage.

Mrs. Thonen asked Mr. Twardy to point out the front of the house and he did so using the viewgraph. Mr. Twardy indicated the exact location of the trees as requested by Mrs. Harris.

Following a discussion among the Board and Mr. Twardy with respect to the septic field, Mr. Twardy explained that Public Works had told the applicant that no construction could take place in the vicinity of the septic field "in the foreseeable future" because it is considered to be active although it is no longer in use.

The applicant, Gary Internicola, 5620 Gaines Street, Burke, Virginia, came forward and explained that he would like the garage to be in keeping with the character of the neighborhood and that this addition would bring his property value in line with the surrounding properties.

In response to questions from Mrs. Thonen, Mr. Internicola replied that there is a steep hill in the rear of the yard with several large trees which prohibits construction.

Chairman Smith pointed out to the applicant that the request is not in character with the zoning Ordinance and that it was his belief that the Board could not grant such a request. Mr. Internicola stated that he believes the lack of having a garage on his property negatively impacts his property value as all new construction in the neighborhood have two car garages.

As there were no speakers to address this request, Chairman Smith asked staff for closing comments.

Ms. Kelsey noted that the septic field had not been shown on the plat but staff had contacted the Health Department which had indicated that there was no particular time limitation following the closing of a septic field before construction could take in that location.

There were no speakers in opposition to the request and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny the request as she believed that the applicant had not satisfied the standards, particularly with respect to hardship, and that to locate a structure of this type so close to the street and so close to the property line was not appropriate.

Chairman Smith added that he would support the motion because this was strictly prohibited by the zoning Ordinance.

Mr. Kelley questioned why this application was even accepted if the Board could not grant such a request. Chairman Smith stated that the applicant had the right to submit the application. Mrs. Thonen noted that she believed that the Board could grant any request if the Board determines that there is an existing hardship.

Mr. Kelley added that as far as he was concerned the application met all his "tests."

Mr. Ribble stated that he believed this was a close call because there is a private lane making this an unusual situation, but would support the motion.

Mrs. Thones added that she would also support the motion because the request is for the front yard and because she believed that it was too close to the property line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-005 by GARY W. INTERNICOLA, under Section 18-401 of the Zoning Ordinance to allow construction of detached garage in a front yard, on property located at 5620 Gaines Street, Tax Map Reference 78-2(1)33, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1989; and

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

1. That the applicant is the co-owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,687 square feet of land.

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

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

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

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

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

Mr. Ribble seconded the motion.



The motion carried by a vote of 5-1 with Mr. Kelley voting nay; Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1989.

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Page 145, April 25, 1989, (Tape 2), Scheduled case of:

9:45 A.M. WALTER P. AND MARGRIT ENGEL, VC 89-P-003, application under Sect. 18-401 of the zoning Ordinance to allow construction of deck addition to dwelling to 12.8 feet from side lot line (20 ft. min. side yard req. by Sects. 3-107 and 2-412), located at 3806 Woodburn Road, on approximately 21,938 square feet of land, zoned R-1, Providence District, Tax Map 59-3((5))5.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Walter P. Engel, 3806 Woodburn Road, Annandale, Virginia, came forward and stated that this request is for approval to construct a deck attached to the house. He stated that the lot is a small, narrow, pie shaped parcel which is heavily wooded in the rear. Mr. Engel added that the neighbor who would be the most impacted has voiced no objection to the request.

There were no speakers to address this request and no further staff comments and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant VC 89-P-003 as he believed that the applicants have satisfied the requirements for a variance and that the lot had an exceptional shape and diverging lot lines to the rear. The approval was subject to the development conditions contained in the staff report dated April 18, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-003 by WALTER P. AND MARGRIT ENGEL, under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 12.8 feet from side lot line, on property located at 3806 Woodburn Road, Tax Map Reference 59-3((5))5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,938 square feet of land.
4. The lot has an exceptionally narrow shape and diverging lot lines toward the rear.

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

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

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Page 146, April 25, 1989, (Tape 2), (Walter P. and Margrit Engel, VC 89-P-003, continued from Page 145)

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.

Mrs. Thones seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian not present for the vote; Mr. Hammack absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 146, April 25, 1989, (Tape 2), Scheduled case of:

10:00 A.M. ARTHUR MITCHELL & ELISABETH DALLAN KOPPELMAN, VC 89-M-006, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 7.8 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), located at 4521 Park Road, on approximately 32,038 square feet of land, Mason District, zoned R-2, Tax Map 72-1((6)185.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, A. Mitchell Koppelman, 4521 Park Road, Alexandria, Virginia, came forward and referenced his statement of justification submitted with the application. He stated that he and his wife moved into the house in 1983 and that the house is located in a nice, old, established neighborhood. Mr. Koppelman added that he and his wife have two children and one on the way, thus necessitating the need for additional living space. In closing, Mr. Koppelman stated that the house is sited at an angle on the lot and there is a swale in the rear of the lot which prohibits construction in that area.

In response to questions from the Board, Mr. Koppelman used the viewgraph to show the proposed addition and explained that the first floor will be one bedroom and study, and the second floor will be bedrooms for the children.

As there were no speakers to address the request and no further comments from staff, Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant the request because he believed that the applicants met the requirements for a variance in that, the lot had exceptional narrowness, and the house is placed at an unusual angle on the property. The approval was subject to the development conditions contained in staff report dated April 18, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-006 by ARTHUR MITCHELL AND ELISABETH DALLAM KOPPELMAN, under Section 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 7.8 feet from side lot line, on property located at 4521 Park Road, Tax Map Reference 72-1(6)85, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 3, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 32,038 square feet of land.
4. The placement of the original home on the lot with encroachments.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.

Page 148, April 25, 1989, (Tape 2), (Arthur Mitchell and Elizabeth Dallan Koppelman, VC 89-M-806, continued from Page 147)

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thones seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mr. DiGiulian not present for the vote; Mr. Hammack absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 148, April 25, 1989, (Tape 2), Scheduled case of:

10:15 A.M. ROBERT W. PIERCE, VC 88-P-187, application under Sect. 18-401 of the Zoning Ordinance to allow 10 foot high fence at one end of tennis court to remain on a side lot line and 10 feet from rear lot line (20 ft. min. side yard and 10 ft. min. rear yard required by Sects. 3-107 and 10-104), located at 3613 Prosperity Avenue, on approximately 47,340 square feet of land, zoned R-1, Providence District, Tax Map 59-1((5))35. (DEF. FROM 3/28/89 IN ORDER FOR THE APPLICANT TO PREPARE AND SUBMIT NEW PLATS)

Chairman Smith noted that this case had been deferred in order for the applicant to prepare new plats.

Bernadette Bettard, Staff Coordinator, stated that the new plats indicated that the fence was 1.2 feet on the neighbor's property.

The applicant, Robert W. Pierce, 3613 Prosperity Avenue, Fairfax, Virginia, explained that the fence had been moved back 1.2 feet from the neighbor's property and that the neighbors had been present when this was done. Mr. Pierce added that to cut down the height of the fence would serve no purpose as the tennis balls would then be going on to his neighbor's property and he believed that this might cause a problem.

Mr. Ribble noted that the plat still did not reflect the dimensions of the tennis court. Mr. Pierce replied that it was a standard size tennis court.

Mrs. Thones called the applicant's neighbors to the podium and asked if they were satisfied with the fence now. Lester and Mable Knapp, 3617 Prosperity Avenue, Fairfax, Virginia, came forward. Mrs. Knapp stated that she had been told that the height of the fence should be 7 feet.

Mrs. Harris questioned the applicants if they would prefer to have people going on to their property to retrieve tennis balls. Mrs. Knapp replied that she would have no objections.

Mr. Pierce stated that the applicants might not have a problem now with people going on to their property but if they sell their house the new neighbors might object.

There was no further discussion and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant VC 88-P-187. He stated that the fence has been there for 11 years, the courts are located quite a distance from the neighbor's house, that he does not believe that it adversely impacts the neighbors that much, and that he does not believe people going on to the neighbor's property is an ideal situation.

Mr. Kelley seconded the motion and stated that he did not believe that the neighbors would like to see people coming on to their property to retrieve tennis balls.

Mrs. Thones added that if the property is sold that the applicant might have a difficult time and that she could not support cutting down the height of the fence.

Chairman Smith stated that the fence could be moved further back and there would be no need for a variance and that it does adversely impact the neighbors.

Mr. Ribble pointed out again that the tennis courts have been there for 11 years.

As there was no further discussion, Chairman Smith called for the vote. The motion to grant carried by a vote of 4-1 with Chairman Smith voting nay. Mr. DiGiulian was not present for the vote; Mr. Hammack was absent from the meeting.

Chairman Smith noted for the record that the applicant would need to submit new plats showing the correct measurements of the tennis courts.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-P-187 by ROBERT W. PIERCE under Section 18-401 of the Zoning Ordinance to allow 10 foot high fence at one end of tennis court to remain on a side lot line and 10 feet from rear lot line, on property located at 3613 Prosperity Avenue, Tax Map Reference 59-1((5))35, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 47,340 square feet of land.
4. The court has been there for 11 years.
5. There is unusual topography on the applicant's property.
6. The court is quite a distance from the neighbor's house.
7. It does not adversely impact on the neighbors much.
8. Cutting the fence down would be worse because people would go onto the neighbors' property to retrieve tennis balls.

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

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

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

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

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

1. This variance is approved for the location and height of the tennis court and fence shown on the plat included with this application and is not transferable to other land.
2. There shall be no lighting associated with this tennis court.

Page 150, April 25, 1989, (Tape 2), (Robert W. Pierce, VC 88-P-187, continued from  
Page 149)

Mr. Ribble seconded the motion.

The motion carried by a vote of 4-0 with Chairman Smith voting nay; Mr. DiGiulian not present for the vote; Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 150, April 25, 1989, (Tape 2), After Agenda Item:

April 20, 1989 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Ribble and Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote.

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Page 150, April 25, 1989, (Tape 2), After Agenda Item:

Approval of Minutes for March 21, 1989

Mrs. Thonen made a motion to approve the Minutes for March 21, 1989 as submitted by the Clerk. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote.

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Page 150, April 25, 1989, (Tape 2), After Agenda Item:

Bell Atlantic Mobile Systems, Inc. Appeal

Mr. Kelley made a motion to accept the appeal as being complete and timely filed.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote.

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Page 150, April 25, 1989, (Tape 1), Information Item:

Discussion with County Attorney's Office RE: Karloid Appeal

Mrs. Thonen made a motion to request an interpretation from the Zoning Administrator and County Attorney's office as to whether or not the Board of Zoning Appeals (BZA) erred in not accepting the Karloid Appeal.

Mr. Kelley asked staff if the appellant had the right to appear before the BZA and if there is a set procedure by which the appellants are notified of the date and time that the appeal will be brought before the Board.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that all appeals are handled by the Zoning Administrator's office.

Mr. Ribble noted that if the situation came up again that the Board would have to defer the case.

Chairman Smith asked staff if something could be brought to the Board at the same time as the appeal so that the Board could be certain that the appellant had been notified.

Mrs. Thonen withdrew her motion.

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Page: 151, April 25, 1989, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 1:05 p.m.

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Betsy S. Hirtt  
Betsy S. Hirtt, Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: June 27, 1989

APPROVED: June 27, 1989

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 2, 1989. The following Board Members were present: Chairman Daniel Smith, John DiGiulian, Vice-Chairman, Martha Harris, Mary Thonen, and John Ribble. Paul Hammack and Robert Kelley were absent from the meeting.

Chairman Smith called the meeting to order at 8:12 p.m. and gave the invocation.

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Page 163 May 2, 1989, (Tape 1), Scheduled case of:

8:00 P.M. RAJDEHANI MANDIR BY PURAN C. MITTAL, SP 88-S-081, application under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities, located at 11425 Popes Head Road, on approximately 6.6681 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-4((1))7. (DEF. FROM 11/29/88 AT APPLICANT'S REQUEST)

Chairman Smith explained that the Planning Commission had requested that this case be deferred. He polled the audience to determine if there was anyone present who objected to the deferral.

While waiting for one speaker to approach the podium, Mrs. Thonen pointed out that the memorandum from the Planning Commission indicated that they wished additional time to reach a decision in the case.

Pete Wathen, President of Glendilough Civic Association, 11415 Meath Drive, Fairfax, Virginia, spoke to the deferral and added that the applicant had already had two deferrals and proceeded to discuss the case.

Chairman Smith stopped Mr. Wathen and reminded him that his remarks should be addressed to the deferral only.

Mr. Wathen stated that he understood that and suggested that the case again be scheduled for a night meeting because it is such a "hot" issue.

As there were no other speakers to address the deferral, Chairman Smith asked the representative of the applicant, William Hansbarger, attorney with Hansbarger and Testerman, if he wished to make any comments.

Mr. Hansbarger voiced no objections to the deferral and left the deferral date to the Board's discretion.

Mr. Ribble recommended that the case again be scheduled for a night meeting.

Chairman Smith questioned staff as to the Board's schedule for the June and July night meetings.

Lori Greenleaf, Staff Coordinator, stated that on June 6 there were three cases scheduled, consisting of a variance, a subdivision, and a swim club.

It was the consensus of the Board that the case should be continued until June 6, 1989. Chairman Smith asked staff for a time and Ms. Greenleaf replied 8:45 p.m.

Mrs. Thonen made a motion to defer SP 88-S-081 to June 6, 1989 at 8:45 p.m. Mr. Ribble seconded the motion.

Chairman Smith polled Mr. Hansbarger and Mr. Wathen to try to determine the length of the public hearing.

Ms. Greenleaf noted that there were approximately ten speakers at the Planning Commission meeting.

Following the discussion, the Board determined that the case would take approximately one hour.

Mrs. Thonen stated that she believed that the Board should hold the speakers and applicant to the time limitations.

There were no staff closing comments and Chairman Smith called for the vote.

The motion carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 154, May 2, 1989, (Tape 1), Scheduled case of:

8:15 P.M. COSCAN WASHINGTON, INC., SP 89-S-006, application under Sect. 3-203 of the Zoning Ordinance for a community swimming pool, located in Hampton Forest Subdivision on approximately 2.65 acres of land, zoned R-2 (WS), Springfield District, Tax Map 66-2((5))U1. (OUT OF TURN HEARING)

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that on April 28, 1987 the Board of Zoning Appeals (BZA) approved an identical special permit but construction had not commenced within the eighteen months and the permit expired. She stated that there are no outstanding issues associated with this use and called the Board's attention to the revised development conditions dated April 27, 1989. Ms. Greenlief explained that the name of the homeowners association had been changed in condition number 1 and in condition number 7 language had been added that was inadvertently omitted when the conditions of the previous approval were carried forward.

In response to questions from the Board regarding the development conditions, Ms. Greenlief replied that the applicant's agent had reviewed the conditions and had no objections.

Dennis Cate, attorney with Haight, Tramonte & Siciliano, 8221 Old Courthouse Road, Suite 300, Vienna, Virginia, came forward to represent the applicant. He agreed with Ms. Greenlief's comments and added that the site plan was awaiting approval of the special permit by the BZA. Mr. Cate stated that the community and recreation center would serve the residents of Hampton Chase and Hampton Forest Subdivisions. With regard to the development conditions, Mr. Cate pointed out that the homeowners in Sections 4 through 11 of Hampton Forest are required to join the pool but that the homeowners in Sections 1 through 3 have an option.

Chairman Smith stopped the speaker and asked him to clarify for the Board what development conditions he was addressing.

Mr. Cate explained that his comments referenced condition number 7. With regard to condition number 9, he stated that the applicant would like a waiver of the normal transitional screening requirements as the applicant preferred to landscape in order to highlight the facade. He asked the Board to waive the 8-day time limitation if it was the Board's intent to grant the request.

There were no speakers to address the request and no closing staff comments. Chairman Smith closed the public hearing.

Mr. Ribble asked how many houses there were in the subdivision and Mr. Cate replied 534 which is the same number of memberships.

Mrs. Thonen stated that she had read the staff report very carefully and saw no problems as the applicant agrees with all the development conditions. She then made a motion to grant the request subject to the revised development conditions dated April 27, 1989.

She noted that she had not seen any handicapped parking designated on the plat. Mr. Cate stated that there were two handicapped parking spaces included in the fifty-seven parking spaces.

Mrs. Thonen added the following development condition: "There shall be a maximum of two (2) handicapped parking spaces included in the fifty-seven (57) parking spaces shown on the submitted plat."

Mr. Cate asked for a clarification and Mrs. Thonen explained that she was not asking for two additional parking spaces but did want two spaces designated as handicapped.

Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

Mrs. Thonen made a motion to grant the applicant a waiver of the 8-day time limitation. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-006 by COSCAN WASHINGTON, INC., under Section 3-203 of the Zoning Ordinance to allow a community swimming pool, on property located in Hampton Forest Subdivision, Tax Map Reference 66-2((5))U1, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2(WS).
3. The area of the lot is 2.65 acres of land.
4. The applicant agrees with all the development conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, except that the application may be transferred to the Hampton Chase Recreational Association. The application is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum number of employees on the premises at any one time shall be five (5).
6. The hours of operation shall be limited to the following:
  - o Community Room - 9:00 a.m. to 12:00 a.m.
  - o Swimming Pool - 8:00 a.m. to 11:00 p.m. for swim team and swimming lessons, 11:00 a.m. to 8:00 p.m. for general pool hours with permission for after-hours parties as follows:
    - a. limited to six (6) per season
    - b. limited to Friday, Saturday and pre-holiday evenings.
    - c. shall not exceed beyond 12:00 midnight
    - d. shall request at least ten (10) days in advance and receive prior written permission from the zoning Administrator for each individual party or activity
    - e. requests shall be approved for only (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.
7. The maximum family memberships shall be limited to five hundred and thirty-four (534) families. All eleven sections in the Hampton Forest Subdivision must be offered annual right of first refusal prior to offering annual membership to anyone other than Hampton Forest residents.
8. A minimum of 55 and a maximum of 57 parking spaces shall be provided. All parking for this use shall be on-site.
9. Transitional Screening 1 and Barrier D, E, or F shall be provided along and northern, western and eastern lot lines. A modification of the screening requirement shall be granted along the southern lot line to allow landscape plantings, the type, quantity, size and location of such to be reviewed and approved by the County Arborist, to satisfy the screening requirement. An evergreen hedge, four feet in planted height, shall be located within this landscaped area. The purpose of this area shall be to screen the parking lot and to mitigate any adverse visual impact of the recreation center.

10. Foundation plantings shall be provided around the proposed recreation center to soften the visual impact of the structure and to ensure compatibility with the residential area. The type, quantity, size and location of these plantings shall be approved by the County Arborist.
11. The applicant shall provide low-intensity lights not to exceed eight (8) feet in height from the parking area to the tennis courts.
12. If lights are provided for the pool and parking lot, they shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed 12 feet for the pool and parking lot.
  - o The lights shall be focused directly on the facility.
  - o Shields shall be installed, if necessary, to prevent the light or glare from projecting beyond the facility.
13. Pool water shall be treated to achieve a pH range as close as possible to the receiving stream or a range of 6 to 9 and a minimum dissolved oxygen content of 4.0 milligrams per liter prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.
14. Best Management Practices (BMP's) shall be provided.
15. Swim meets shall be conducted between the hours of 9:00 a.m. and 9:00 p.m.
16. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and shall not be waived. There shall be no loudspeakers, bullhorns, or whistles used prior to 9:00 a.m. or after 9:00 p.m.
17. Limits of clearing and grading shall not encroach on the Transitional Screening area.
18. Interior parking lot landscaping shall be provided in accordance with Article 13.
19. Construction of the entrance ingress/egress shall be provided in accordance with VDOT standards.
20. In order to meet the intent of Proffer #6 in RX 79-S-119, a tree preservation plan shall be submitted for approval by the County Arborist that preserves specimen trees on the site. If the preservation plan and the plat conflict, the applicant shall amend the special permit.
21. A soil survey shall be completed prior to pool construction if determined necessary by the Director, Department of Environmental Management. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances resulting in instability are found in the immediate vicinity of the pool, then the pool shall be engineered and constructed to ensure pool stability, including the installation of hydrostatic relief valves and other appropriate measures.
22. There shall be a maximum of two (2) handicapped parking spaces included in the fifty-seven (57) parking spaces shown on the submitted 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. 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 sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

Page 157, May 2, 1989, (Tape 1), (Coscan Washington, Inc., SP 89-S-006, continued from Page 156)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1989. This date shall be deemed to be the final approval date of this special permit.

The Board granted the applicant a waiver of the 8-day time limitation.

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Page 157, May 2, 1989, (Tape 1), After Agenda Item:

Nelson and Martha Getchell Appeal, A 89-D-004

Chairman Smith called the Board's attention to a letter received from the appellant's attorney, Man E. Terpak with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubley, requesting a sixty day deferral. He stated that all the Board could do tonight was to issue an intent to defer the appeal as the case was officially scheduled for May 9, 1989.

Lori Greenlief, Staff Coordinator, stated that she had discussed this with Jane C. Kelsey, Chief, Special Permit and Variance Branch, and Ms. Kelsey had indicated that the Board did not necessarily need to set a deferral date and time, just the motion for the intent to defer. Ms. Greenlief further explained that there was room of the docket for the case to be deferred to the middle of July as the applicant had requested.

Mrs. Thoner made a motion that the Board issue an intent to defer A 89-D-004 at the appellant's request. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 157, May 2, 1989, (Tape 1), Scheduled case of:

Approval of April 25, 1989 Resolutions

Mrs. Thoner made a motion to approve the Resolutions as submitted. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 157, May 2 1989, (Tape 1), Scheduled case of:

Approval of Minutes for January 24, February 14, and April 11, 1989

Mr. DiGiulian made a motion to approve the Minutes for January 24, February 14, and April 11, 1989 as submitted. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 157, May 2, 1989, (Tape 1), Scheduled case of:

Andrew V. Wittner, VC 89-D-047, Out of Turn Hearing

Mr. DiGiulian made a motion to deny the request for an out of turn hearing for the applicant in VC 89-D-047. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 157, May 2, 1989, (Tape 1), Scheduled case of:

Reconsideration for Gary and Shawn Internicola, VC 89-A-005

Mr. Ribble stated that he believed that the Board had heard every aspect of the case and that the applicant's attorney had done a great job in presenting the case. He then made a motion to deny the request. Mr. DiGiulian seconded the motion.

The Board members discussed the applicant's letter and it was the consensus that it contained no additional information.

Chairman Smith called for the vote and the motion carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 158, May 2, 1989, (Tape 1), Scheduled case of:

Calvary Memorial Appeal

The Board discussed whether or not it was appropriate for this appeal to be before the Board of Zoning Appeals (BZA) as it dealt with the refusal of the Department of Environmental Management (DEM) to waive site plan requirement.

Lori Greenleaf, Staff Coordinator, quoted from the Zoning Ordinance which states that any decision made by the Zoning Administrator, or any director, who enforces the Ordinance is appealable to the BZA.

Following further discussion among the Board members, Mrs. Thonen made a motion to schedule the public hearing for July 6, 1989 at 11:00 a.m. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 158, May 2, 1989, (Tape 1), Scheduled case of:

At this time, Mr. DiGiulian made a motion to go into Executive Session to discuss legal matters. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 158, May 2, 1989, (Tape 1), Adjournment:

Following the Executive Session, as there was no other business to come before the Board, the meeting was adjourned at 9:02 p.m.

Betsy S. Hupp  
Betsy S. Hupp, Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: May 23, 1989

APPROVED: June 6, 1989

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 9, 1989. The following Board Members were present: Chairman Daniel Smith; Vice-Chairman John DiGiulian; Paul Hammack; Robert Kelley; Martha Harris; John Ribble and Mary Thonen.

Chairman Smith called the meeting to order at 9:15 a.m. and asked everyone to join with him in the invocation.

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Mrs. Thonen reminded everyone of the luncheon planned on the following day for Mrs. Day.

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Page 159, May 9, 1989, (Tape 1), Scheduled case of:

9:00 A.M. MARIANNE AND WILLIAM PRENDERGAST, VC 89-D-007, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.0 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), located at 1513 Linden Hurst Avenue, on approximately 11,250 square feet of land, zoned R-4, Dranesville District, Tax Map 30-4((3))39.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, William Prendergast, 1513 Linden Hurst Avenue, McLean, Virginia, presented the statement of justification.

The applicant, Marianne Prendergast, also stepped up to answer questions from the Board.

Mrs. Harris asked Mrs. Prendergast why they did not build in the area next to their screened porch in the back. Mrs. Prendergast said that all the plumbing was back there, which would make construction there very costly, according to several contractors. Mrs. Prendergast further said she was advised by contractors that the roof line at the back of their house presented a problem because of an existing dormer, as well as making it necessary to re-vent the heating system. The cost of building in the area next to the screened porch was estimated to be \$15,000, with the added disadvantage of precluding the proposed building of an extra bedroom.

Chairman Smith pointed out that the applicant could build a 12.8 foot addition in the proposed location without a variance. Mrs. Prendergast stated the contractor told her the narrowness would create a bowling alley affect.

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

Mr. Hammack stated that there was an unusual situation and condition at the time of the use and development of the property immediately adjacent to the subject property. He further stated that the lot was exceptionally narrow with reference to the zoning Ordinance at that time.

Because of the findings of fact stated above, Mr. Hammack moved to grant VC 89-D-007, with an added development condition that the materials used by the applicant shall be compatible with the materials used on the existing dwelling.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-007 by MARIANNE & WILLIAM PRENDERGAST, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.0 feet from side lot line, on property located at 1513 Linden Hurst Avenue, Tax Map Reference 30-4((3))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 May 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,250 square feet of land.
4. There was an unusual situation and condition at the time of the use and development of the property immediately adjacent to the subject property.
5. The lot was exceptionally narrow with reference to the zoning Ordinance at that time.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The materials used by the applicant shall be compatible with the materials used on the existing dwelling.

Mr. DiGuilian seconded the motion.

The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1989. This date shall be deemed to be the final approval date of this variance.

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9:15 A.M. EDWIN W. LYNCH, JR., AND MOLLY C. LYNCH, VC 89-V-009, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16.5 feet from side lot line (20 ft. min. side yard required by Sect. 3-E07), located at 5909 River Drive, on approximately 29,888 square feet of land, zoned R-E, Mount Vernon District, Tax Map 122-1((2))29.

At this time, Mr. DiGuilian stated that his office had prepared the plat for this application, so he would not participate in hearing or voting on the application.

Lori Greenleaf, Staff Coordinator, presented the staff report.

The applicant, Edwin W. Lynch, Jr., 7514 Rambling Ridge Drive, Fairfax Station, Virginia, presented the statement of justification.

Mr. Lynch stated that all of his neighbors had reviewed the plans and had signed off on them. He submitted letters of approval, which were included in Appendix 2 of the staff report. Mr. Lynch stated that his lot was the narrowest in the subdivision.

Mrs. Thonen stated that the applicant's lot is narrow and wedge-shaped; the tide affects the lot; the request is for a minimum variance; there is an extreme topographic condition existing here; and the septic system is located in the back.

Because of all the aforementioned findings of fact, Mrs. Thonen moved to grant VC 89-V-009.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-009 by EDWIN W., JR., AND MOLLY C. LYNCH, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16.5 feet from side lot line, on property located at 5909 River Drive, Tax Map Reference 122-2((2))29, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1989, and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 20,999 square feet of land.
4. That the lot is narrow and wedge-shaped.
5. That the tide affects this lot.
6. That this is a minimum variance request.
7. That there is an extreme topographic condition.
8. That the septic system is located in the back.

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

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

Page 162, May 9, 1989, (Tape 1), (Edwin W. Lynch, Jr., and Molly C. Lynch, VC 89-V-009), continued from Page 161)

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion.

The motion carried by a vote of 6-0. Mr. DiGuilian abstained because his company had prepared the drawings for this application.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 1989; the eight-day limitation was waived by the Board. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen moved to grant a waiver of the eight-day limitation. Mrs. Harris seconded the motion which carried by a vote of 4-1; Chairman Smith voted nay. Mr. Ribble was not present for the vote and Mr. DiGuilian had previously disqualified himself because his office had prepared the plat.

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Page 162, May 9, 1989, (Tape 1), Scheduled case of:

9:30 A.M. W. WAYNE HAYNES, SP 89-S-003, application under Sect. 8-901 of the Zoning Ordinance for modification to minimum yard requirements for an R-C lot to allow garage addition to dwelling to 12 feet from side lot line and 32 feet from front lot line (20 ft. min. side yard and 40 ft. min. front yard required by Sect. 3-C07), located at 6203 Riverland Run, on approximately 10,657 square feet of land, zoned R-C, Springfield District, Tax Map 53-4((5))102.

Lori Greenleaf, Staff Coordinator, presented the staff report.

The applicant, W. Wayne Haynes, 6203 Riverland Run, Centreville, Virginia, presented the statement of justification.

Mr. DiGuilian acknowledged that the property was the subject of the final plat approval prior to July 26, 1982; that the property was comprehensively rezoned to the R-C District on July 26 or August 2, 1982; that such modification in the yards shall result in yards not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982; and that the resultant development will be harmonious with the existing development in the neighborhood and will not adversely impact the health, safety and welfare of the area.

For the aforementioned reasons, Mr. DiGuilian moved to grant SP 89-S-003.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-003 by W. WAYNE HAYNES, under section 8-901 of the Zoning Ordinance for modification to minimum yard requirements for an R-C lot to allow garage addition to dwelling to 12 feet from side lot line and 32 feet from front lot line, on property located at 6203 Riverland Run, Tax Map Reference 53-4(5)102, Mr. DiGuilian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 10,657 square feet of land.
4. That the property was the subject of the final plat approval prior to July 26, 1982.
5. That the property was comprehensively rezoned to the R-C District on July 26 or August 2, 1982.
6. That such modification in the yards shall result in yards not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. That the resultant development will be harmonious with the existing development in the neighborhood and will not adversely impact the health, safety and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific structure shown on the plat included with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to construction of the proposed structure.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 7-0.

Mr. DiGuilian moved to waive the eight-day limitation. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 1989; the Board waived the eight-day limitation. This date shall be deemed to be the final approval date of this special permit.

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At this point in the meeting, the board was approached by a Deputy Sheriff who served Chairman Smith with a Summons. The Board recessed at 9:45 a.m. and reconvened at 10:05 a.m. Chairman Smith thanked those present for their patience, and explained that this type of action was highly unusual.

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Page 163, May 9, 1989, (Tape 1&2), Scheduled case of:

9:45 A.M. HUNTER DEVELOPMENT COMPANY OF FAIRFAX, INC., SP 89-S-009, application under Sect. 3-303 of the Zoning Ordinance to allow a community center and recreational facility, located in Little Rocky Run Subdivision, on approximately 3.5 acres of land, zoned R-3 and WS, Springfield District, Tax Map 65-4(1)7. (OUT OF TURN HEARING GRANTED)

Lori Greenleaf, Staff Coordinator, presented the staff report, explaining that on June 2, 1987, the Board of Zoning Appeals approved a Special Permit for this identical

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application for community recreational facilities; however, because the applicant did not begin construction within the eighteen month time frame, that special permit expired. Ms. Greenlief stated it was staff's understanding that the applicant does have some proposed changes to the development conditions, and she would address those changes as they were presented to the Board.

Mr. Hammack inquired of Ms. Greenlief as to the proposed changes.

Ms. Greenlief stated that a change was requested by the Health Department, reflected in development condition 13, which involved cleaning the pool waters.

Chairman Smith took this opportunity to advise that Ms. Greenlief had not prepared this staff report and that she was substituting for another staff coordinator.

Frank McDermott, attorney with the law firm of Hunton & William, 3050 Chain Bridge Road, Fairfax, Virginia, represented the applicant.

Mr. McDermott asked that the Board approve "...the Special Use Permit with the conditions shown in Appendix 4, which were the conditions approved the last time, with one change and that change would be incorporated in this paragraph 13 of the new conditions into the old ones in lieu of the old paragraph 12, and that would bring into the conditions that were approved last time the current standard of the Health Department."

A discussion ensued between the Board, Mr. McDermott, and staff, regarding requested changes to the development conditions.

Mrs. Harris moved to grant SP 89-S-009 with the following changes:

Development Condition 12, the first sentence which had begun with "Barrier F a six foot high wooden fence," was changed to read "Barrier D, a four foot high chain link fence"; and the second sentence, which had begun, "Barrier F" was changed to begin, "Barrier D."

Development Condition 13, additional wording was inserted: "...4.0 milligrams per liter during annual or semi annual drainage prior to being discharged...."

Development Condition 16, the words on site were deleted from "...shall be provided on site to the satisfaction...", to read, "...shall be provided to the satisfaction...."

Development Condition 18, all was deleted except the first two sentences, which read: "The minimum number of parking spaces shall be 47. All parking shall be on-site."

Development Condition 19, wording was added to the sentence ending "...surrounding residential uses." It now reads, "...surrounding residential uses as approved in the present site plan."

Mr. McDermott questioned the necessity of development condition 20 and a discussion ensued, precipitating a motion by Mrs. Thonen to reconsider SP 89-S-009 for the purpose of discussing changes to this condition. Mr. Hammack seconded the motion which carried unanimously. Mr. Ribble was not present for the vote.

Development Condition 20, Mr. McDermott requested that the words "If appropriate," be placed at the beginning of the paragraph, so that it now reads: "If appropriate, the existing...."

Mr. Kelley moved to adopt SP 89-S-009 in its entirety, to include the motion previously made by Ms. Harris, with changes to development conditions heretofore recorded, as amended by the change in development condition 20.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-009 by HUNTER DEVELOPMENT COMPANY OF FAIRFAX, INC., under Section 3-303 of the Zoning Ordinance to allow a community center and recreational facility, located in Little Rocky Run Subdivision, Tax Map Reference 65-4(1)7, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolutions

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 3.5 acres of 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 Section 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only. However, upon conveyance of the property to the Little Rocky Run Homeowners Association, this approval will transfer to the association. This approval for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum number of employees on site at any one time shall be six (6).
6. The maximum number of family memberships shall be 750, all from the Little Rocky Run subdivision.
7. The regular hours of operation for the swimming pool shall be from 9:00 a.m. to 9:00 p.m.. The hours of operation for the tennis courts shall be from 8:00 a.m. to 9:00 p.m. Swim team practice and swimming lessons may begin at 8:00 a.m.. There shall be no league swim meets conducted at this facility.
8. After-hour parties shall be governed by the following:
  - o Limited to six (6) per season.
  - o Limited to Friday, Saturday, and pre-holiday evenings.
  - o A written request must be received by the Zoning Administrator at least ten (10) days in advance of each event for each event.
  - o Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.
9. If lights are provided, they shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - o The lights shall be a design which focuses the light directly onto the facility.
  - o Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
10. The use of loudspeakers, bullhorns and whistles shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and the provisions of this Chapter shall not be waived.

11. Transitional Screening shall be modified as follows:
  - o Transitional screening 1 shall be provided along all lot lines as shown on the plat submitted with this application. A modification may be permitted in the northern portion of the site in the area of the trail access to Rockland Drive. In this area, an evergreen hedge, six (6) feet in height shall be planted along with low shrubs. The size, type, amount and placement of all plantings shall be reviewed and approved by the County Arborist. Trails may be allowed to cross the transitional screening yards as shown on the plat.
12. Barrier D, a four foot high chain link fence, shall be installed along the northern lot line and along the portion of the western lot line which is adjacent to residential properties. Barrier D shall also be installed at the northeastern corner of the site in the area of the multi-purpose court and shall extend for approximately 130 feet along the eastern property line. The barrier requirement shall be waived along the rest of the eastern lot and along the entire southern lot line.
13. Pool water shall be treated to achieve a pH of 7 and a minimum dissolved oxygen content of 4.0 milligrams per liter during semi-annual or annual draining prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.
24. A soil survey shall be completed if determined necessary by the Director, Department of Environmental Management (DEM), prior to site plan approval. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances resulting in instability are found in the immediate vicinity of the pool, then the pool shall be engineered and constructed to ensure pool stability, including the installation of hydrostatic relief valves and other appropriate measures, as determined by DEM.
15. The geotechnical study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan as determined by DEM.
16. Best Management Practices (BMP's) shall be provided to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.
17. The multi-purpose court shall not be used for the playing of tennis.
18. The minimum number of parking spaces shall be 47. All parking shall be on-site.
19. Foundation plantings shall be planted around the proposed meeting hall and pool house and ground cover and shrubs shall be planted around the parking lots to soften the visual impact of these structures on the surrounding residential uses as approved in the present site plan. The type, size, quantity and location of these plantings shall be reviewed and approved by the County Arborist to ensure that they are planted in an area where they can survive.
20. If appropriate, the existing storm drainage easement proposed to be vacated and relocated shall be provided elsewhere on site and shall meet requirements as determined by DEM. The applicant shall provide access and maintenance easements to the County.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning administrator prior to the expiration date.

Mr. Hammack seconded the motion.

The motion carried by a vote of 6-0; Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 167, May 9, 1989, (Tape 2), Scheduled case of:

10:00 A.M. WORD OF LIFE ASSEMBLY OF GOD BY REV. WENDEL COVER, PASTOR, SPA 81-A-078-2, application under Sect. 3-303 of the Zoning Ordinance to amend SP 81-A-078 for a church and related facilities to permit revision to size and configuration of the approved sanctuary addition, located at 5225 Backlick Road, on approximately 12.42 acres of land, zoned R-3, Lee District, Tax Map 71-4(1)40C.

Chairman Smith advised the Board of a request to defer SPA 81-A-078-2 to the next available date. He polled those present for anyone interested in speaking in opposition to the deferral request.

Patricia A. Simes, 7004 Braddock Place, Springfield, Virginia presented a letter to the Members of the Board. She expressed opposition to having this request heard. Her letter was incorporated into this file.

Mr. Hammack encouraged Ms. Simes to come before the Board in connection with any request on which she had actual facts which might be considered by the Board in making their evaluations. Ms. Simes did not have any facts pertinent to this request.

D. Wendel Cover, Pastor, Word of Life Assembly of God Church, 5225 Backlick Road, Springfield, Virginia, read a letter to the Board regarding the request for deferral.

Chairman Smith asked Pastor Cover how much time he thought was necessary to complete negotiations with County agencies before returning to appear before the Board, and requested advice from Ms. Greenleaf on an appropriate time to hear SPA 81-A-078-2. As a result of this discussion, Mrs. Thonen moved to defer SPA 81-A-078-2 until July 6, 1989 at 9:30 a.m. Mr. DiGiulian seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 167, May 9, 1989, (Tape 2), Scheduled case of:

10:15 A.M. THOMAS L. MCGEEHEE, FRANCES C. MCGEEHEE, SP 89-P-004, application under Sect. 8-901 of the Zoning Ordinance for reduction to minimum side yard requirements based on error in building location to allow second floor of dwelling to remain 24.0 feet from the front lot line (30 ft. min. front yard required by Sect. 3-407), located at 3019 Fairmont Street, on approximately 12,298 square feet of land, zoned R-4, Providence District, Tax Map 50-3(17)135.

Denise James, Staff Coordinator, presented the staff report.

Frank Stearns, Attorney, 4020 University Drive, Fairfax, Virginia, represented the applicant and presented the statement of justification.

Mr. Stearns advised that the contractor, Mr. Thomas, had removed the roof of the house before he found out that the existing dwelling was built in violation of the setback requirement of the Zoning Ordinance, since he began the project before obtaining a Building Permit.

Mr. Stearns stated that Mr. McGehee inherited this home from his father, had lived here for most of his life, had received various other building permits for this site, had a hurricane destroy the roof a few years back and replaced that roof, without ever having been told that the structure was in violation of the setback requirement.

Chairman Smith and Mrs. Thonen admonished Mr. Thomas for starting a project before obtaining a Building Permit and inquired whether Mr. Thomas had a home improvement license to do business in Fairfax County. Mr. Stearns advised that he had.

There were no speakers, so Chairman Smith closed the public hearing.

Mr. Kelley moved to grant SP 89-P-004.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-004 by THOMAS L. AND FRANCES C. MCGEHEE, under Section 8-901 of the Zoning Ordinance for reduction to minimum side yard requirements based on error in building location to allow second floor of dwelling to remain 24.0 feet from the front lot line, located at 3019 Fairmont Street, Tax Map Reference 50-3(17)115, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 9, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
4. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

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

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

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

1. This approval is granted for the location and specific addition shown on the plat included with this application and is not transferable to other land.
2. A Building Permit shall be obtained within forty-five (45) days for the addition to the dwelling.

Mr. DiGiulian seconded the motion.

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



Mrs. Thonen moved to waive the eight-day limitation. Mr. DiGuilian seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 1989; the Board waived the eight-day limitation. This date shall be deemed to be the final approval date of this special permit.

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Page 169, May 9, 1989, (Tape 2), Scheduled case of:

10:30 A.M. BURKE COMMUNITY CHURCH, SPA 77-8-269-2, application under Sect. 3-103 of the Zoning Ordinance to amend SP 77-8-269 for church and related facilities to permit addition of four (4) modular classrooms to existing facilities, additional parking, modification of development conditions, and to permit the addition of land area, located at 9988 Pohick Road, on approximately 12.4963 acres of land, zoned R-1, Tax Map Reference 88-1((1)) pt. 7A.

Denise James, Staff Coordinator, presented the staff report.

Mrs. Thonen questioned the lack of landscaping on the pictures.

Chairman Smith asked Ms. James which one of the plats meets the staff's recommended conditions for approval. Ms. James advised that it was the plat dated April 17, 1989.

Mrs. Thonen again questioned the lack of landscaping on the pictures and Ms. James addressed the subject of landscaping for the Board's edification. Mrs. Thonen referred to Paragraph 5 in the staff report, on page 9, under Conclusions, and asked Ms. James if that would take care of the landscaping. Ms. James replied that it would, as far as the trailers were concerned. Ms. James stated that the present landscaping is what was approved in 1977 by the Director of the Department of Environmental Management.

Mr. Hammack asked about the proposed relocation of the septic field. Ms. James replied that the septic field would not be relocated, simply modified, because a portion of it was going to be taken by the right-of-way for Burke Center Parkway. Ms. James stated she understood that the applicant would be hooking up with public sewers and water as soon as it is available.

Ms. Harris asked where the stormwater runoff detention area would be. Ms. James stated that staff decided the most effective method would be to provide vegetative filtration strips along the parking area.

Thomas S. Wickert, 5817 Wesssex Lane, Alexandria, Virginia, elder of the church, represented the applicant.

Chairman Smith asked Mr. Wickert if he was familiar with the conditions under which staff had recommended approval. Mr. Wickert stated that he was, and he would like to discuss four of the conditions which were included in Appendix 1 of the staff report.

Mr. Wickert stated that the photographs which Mrs. Thonen referred to did not show the wooded character of their land. He went on to describe the landscaping. Mrs. Thonen stated that there appeared to be no foundation plantings.

Wilbur Smith, 6022 Greeley Boulevard, Springfield, Virginia, the gentlemen who took the photographs, stepped forward to elaborate on them from the aspect of landscape concerns.

A conversation ensued between Mrs. Thonen and Mr. Wilbur Smith concerning the photographs and the landscaping.

Mr. Wickert said the first item of concern to the applicant was development condition 6, which he said discusses the access road. He stated they were in the process of negotiating with Virginia Department of Transportation (VDOT) as far as the condemnation of the land for Fairfax Parkway. Mr. Wickert stated the applicant is proposing an access road location closer than the 900 feet required by the County.

Ms. James stated that the original plat submitted did show an entrance approximately 400 feet from the intersection. Ms. James stated the only reason staff was concerned about changing the limitation of 900 feet was the possibility that Old Keene Mill Road might be improved to a four-lane facility at some future time. At that time, the church would not have left turn access into their site if their entrance were only 400 feet from the intersection. This recommendation by staff of 900 feet is for the benefit of the church.

Mrs. Thonen pointed out that there was no room to negotiate on this requirement if it was dictated by VDOT.

Mr. Wickert was concerned with development condition 9, which addressed the minimum number of parking spaces. He stated that, elsewhere, it stated that they may not put the modules in until those 125 spaces are in place. He stated that the condemnation of the land was tied into providing space for the additional parking.

Ms. James stated that development condition 4 tied into the concern Mr. Wickert had concerning development condition 9. Mr. Wickert stated that the applicant's engineers were in the process of designing the additional parking spaces, along with the vegetation filter strips.

Mr. Wickert stated that the applicant was under notification from VDOT that VDOT intends to take over the portion of land on condemnation within ninety days from about three weeks ago. He said this has a significant bearing on the parking situation. Mr. DiGullian observed that the condemnation would occur long before the site plan would be approved.

Mr. Wickert stated they were very anxious to get the modules installed. He said it would take approximately four weeks to install them from the date of the Board's action. He stated they would be used for Sunday School purposes only. Mr. Wickert emphasized that the applicant was enduring a very overcrowded condition.

Chairman Smith asked staff if there was any way the applicant could be allowed to go forward with the modules prior to increasing the parking, since the applicant claims the parking is now adequate. Ms. James provided valid reasons why this could not be done: It is a requirement to have a minimum of 125 spaces, notwithstanding the additional trailers; the filter strips which should be in place around all the parking areas because of the sedimentation problem at Burke Lake and the runoff condition which should be addressed as soon as possible; sidewalks should be in place concomitant with the trailers. Ms. James stated staff could not see how the site plan process could be separated from implementing the installation of the trailers.

Mr. Wickert said that the third item the applicant was concerned with was development condition 13, having to do with the ancillary temporary access easement, stating they objected to it because it was so vaguely worded. Ms. James stated this was a standard condition for this type of an application.

Mr. Wickert stated that development condition 15, concerning the use of the trailers for five years, was of concern to the applicant, because they anticipated a possible need for the trailers for more than five years since they are entering into contracts for terms of seven years. Mr. Smith advised that the Board had authority to grant for only five years, requiring the applicant to return to the zoning Administrator for renewal.

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

At this point, Mr. Kelley stated that, before a motion was made, he would like to see the parking situation resolved.

Chairman Smith stated that he believed it was the consensus of staff that the applicant needed 125 parking spaces to meet the present zoning ordinance requirements.

Mr. Kelley stated he would like to make it as easy as possible for the applicant--possibly, if appropriate, by stating that the parking would be subject to site plan provisions by a certain date.

Mr. Hammack responded to Mr. Kelley by stating that the Board had discussed years ago whether development condition 4 should even be included, and that there have been times when the Board had deleted it in order to give the applicant an opportunity to apply for a waiver.

It was agreed between Mr. Hammack and Chairman Smith that, whether or not development condition 4 was included, the applicant would be required to go through a site plan process or obtain a waiver of site plan.

Since there were no speakers, Chairman Smith stated that the public hearing was closed.

Mr. Hammack moved to grant SPA 77-8-269-2, with development conditions as modified:

development Condition 6: Modify to read, in part, "...and Pohick Road or (take out "or") as may be necessary to provide access opposite a median crossover as determined by the Department of Environmental Management and the Virginia Department of Transportation."

Development Condition 13: Delete this condition concerning ancillary temporary access easements to be provided to facilitate future improvements to Olde Keene Mill Road.

Development conditions shall be correctly renumbered.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 77-8-269-2 by BURKE COMMUNITY CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 77-8-269 for church and related facilities to permit addition of four (4) modular classrooms to existing facilities, additional parking, modification of development conditions, and to permit the addition of land area, on property located at 9988 Pohick Road, Tax Map Reference 88-1(1) pt. 7A, 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 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 13.49 acres of land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The existing vegetation along all Special Permit boundary lines shall be deemed to satisfy the transitional screening requirement. The barrier requirement shall be waived.
6. At such time as the Fairfax County Parkway is constructed, the site entrance shall be relocated to Old Keene Mill Road at a point from the intersection of Old Keene Mill Road and Pohick Road as may be necessary to provide access opposite a median crossover as determined by the Department of Environmental Management and the Virginia Department of Transportation.
7. The maximum number of seats shall be limited to a total of 500.
8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 125 spaces. Additional parking may be provided, up to a maximum of 142 spaces.
9. Building landscape foundation plantings shall be provided around the trailers to improve the visual appearance of the trailers. The number, size and type of planting shall be coordinated with and approved by the County Arborist with specific consideration given to the fact that the trailers are temporary and that the plantings provided should remain once the use is terminated.

The trailers shall be located on the site within the limits of clearing and grading shown on the special permit plat dated April 17, 1989.

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At such time as the relocated entrance and driveway are constructed, limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which might be impacted by the construction.

10. The applicant shall provide a vegetative filter strip along the northwest side of all proposed parking lot areas as they are constructed, to slow stormwater runoff and filter out pollutants before discharging it off-site. The filter shall be designed in general conformance with the methods recommended by the Metropolitan Washington Council of Governments (COG) in chapter 9 of the 1987 publication entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs or other methods approved by DEM.
11. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
12. Any proposed new lighting of the parking areas shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - o The lights shall be a low-intensity design which focuses the light directly onto the subject property.
  - o Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. The use of the trailers is approved for a period of five (5) years beginning from the date of final approval of this special permit.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 6-0.

Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 172, May 9, 1989, (Tape 2&3), Scheduled case of:

10:45 A.M. BURKE UNITED METHODIST CHURCH, SPA 81-8-057-2, application under Sect. 6-303 of the Zoning Ordinance to amend SP 81-8-057 for a child care center to permit building addition to existing church, located at 6200 Burke Center Parkway, on approximately 3.8575 acres of land, zoned PRC, Springfield District, Tax Map 78-3((17))A2.

Denise James, Staff Coordinator, presented the staff report, stating there are no changes to the Special Permit for the child care center, and staff did not find any outstanding land use or environmental issues with this application. Ms. James further stated that the only issue that did concern staff was the lack of potential for left turn access into the site at some future point.

Mrs. Harris stated she thought this was a very good staff report because it did offer support. She said that, in going out and looking at the site, one could see how the church would integrate itself into the surrounding area. She congratulated Ms. James on doing a good job; she said it was very nicely done.

Paul Haldeman, 10616 Winslow Drive, Fairfax Station, Virginia, Chairman of the Building Committee for the applicant, represented the applicant.

Chairman Smith asked Mr. Haldeman if he had any questions after hearing the staff report and subsequent comments. Mr. Haldeman stated he would like to compliment the staff on their cooperation, and that he would like to question two of the development conditions in Appendix 1: Items 13 and 14, relating to issues raised by the Virginia Department of Transportation. He stated that the concerns of the applicant were to provide some kind of a (limit) on what their financial exposure would be, and their rights concerning a left-hand turn lane off Burke Center Parkway. Mr. Haldeman proposed additional wording to development condition 14.

Mr. Haldeman questioned development condition 12, concerning the temporary ancillary easement. Chairman Smith stated that, since this condition was removed from the application previously heard, he would assume that the chances of having it deleted from this application were good.

Mr. Haldeman submitted three documents for the Board's review: A letter of approval from the Burke Center Conservancy, the Architectural Review Board has granted the applicant permission to build; a waiver of the stormwater management for the site which had been previously submitted; a letter of support from Daniel Treadwell on Locust Court. Chairman Smith stated these documents would be made a part of the record.

Some discussion ensued regarding development conditions 13 and 14 and it was Chairman Smith's recommendation that they be deleted, with which Mr. Hammack concurred.

Ms. James stated that staff would strongly object to omitting development conditions 13 and 14, to guard against the potential for future problems resulting from changes and/or improvements in the area of the church site. Chairman Smith stated that any contemplated changes in this area would involve the general public and not just the church. Mr. Hammack and Mrs. Thonen felt that, if the State should come in and take away the left turn lane now, it would be the responsibility of the State to put it back at some future time, should it become necessary.

Mr. DiGuilian moved to grant SPA 81-8-057-2, with the development conditions contained in Appendix 1 of the staff report, modified as follows:

Delete development conditions 12, 13, and 14 and renumber all conditions to read consecutively, leaving a total of 12 conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 81-8-057-2 by BURKE UNITED METHODIST CHURCH, under Section 6-303 of the Zoning Ordinance to amend SP 81-8-057 for a child care center to permit building addition to existing church, on property located at 6200 Burke Center Parkway, Tax Map Reference 78-3((17))A2, Mr. DiGuilian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 3.8578 acres of land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.

5. The maximum daily enrollment shall be limited to no more than seventy-five (75) children.
6. The hours of operation for the child care center shall be no earlier than 9:30 a.m. and no later than 2:00 p.m.
7. There shall be thirty-three (33) parking spaces associated with the child care use. A total of 172 spaces shall be provided. All parking shall be on site.
8. The number of seats shall be limited to 425.
9. Dedication to 45 feet from the centerline of Burke Lake Road shall be provided to the Board of Supervisors and conveyed in fee simple on demand or at the time of site plan approval, whichever occurs first. Access to the site from Burke Lake Road shall be closed during the hours of operation for the child care center.
10. The barrier requirement shall be waived.
11. The existing vegetation along all special Permit Boundary lines shall be retained.

In order to provide supplemental screening, a minimum of 10 evergreen trees 6 feet in height shall be planted within the existing buffer strip between the existing parking lot and the property boundary along the Prospect Knolls subdivision to the satisfaction and approval of the County Arborist. If it is determined by the County Arborist that this type or size of tree will not survive well in this location, then substitute trees shall be planted as suggested by the County Arborist to effect additional screening between the Prospect Knolls subdivision and the church boundary.

12. Any proposed new lighting of the parking areas shall be in accordance with the following:
- o The combined height of the light standards and fixtures shall not exceed twelve (12) feet in height.
  - o The lights shall be of a design which focuses the light directly onto the subject property.
  - o Shields shall be installed, if necessary to prevent the light and glare from projecting beyond the facility.

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.

Under Sect. 8-015 of the Zoning Ordinance, the Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hamack seconded the motion.

The motion carried by a vote of 6-0; Mr. Ribble was not present for the vote..

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 174, May 9, 1989, (Tape 3), Scheduled case of:

11:00 A.M. NELSON AND MARTHA GETCHELL APPEAL, A 89-D-004, to appeal Zoning Administrator's determination regarding the calculation of the maximum permitted FAR for a structure located on a split zoned lot, located at 718 Walker Road, C-5 and C-8, Dranesville District, Tax Map 13-1((1))1.

Chairman Smith advised that the Board was in receipt of a request of a deferral of sixty days from the attorney of the applicant.

Mr. Hammack questioned the fact that the request for a deferral was based on allowing the appellant time to meet with members of the community. He stated that he failed to see how this would affect the determination of the Zoning Administrator, whose decision the appellant was appealing.

Chairman Smith asked if anyone was present to represent the applicant.

A lady stepped forward and introduced herself as Lynn Stroble, with the law firm of Walsh, Colucci, et al., 950 North Glebe Road, Suite 300, Arlington, Virginia. She stated she was not familiar with this case. She said she knew that a deferral had been requested and that a letter was sent to Ms. Terpak at her office on May 4, 1989, stating that it was the intent of the Board of Zoning Appeals to grant the deferral of sixty days.

Chairman Smith acknowledged that, the previous week, the Board had expressed an intent to grant a sixty-day deferral.

Mrs. Thonen moved to defer A 89-D-004 until July 6, 1989 at 10:45 a.m. Mr. Hammack seconded the motion which carried by a vote of 4-0; Mr. Kelley, Mr. Ribble and Mr. DiGullian were not present for the vote.

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Page 175, May 9, 1989, (Tape 3), scheduled case of:

11:30 A.M. HAZELTON LABORATORIES AMERICA, INC., A 89-D-003, to appeal Zoning Administrator's decision that appellant's special exception application, SE 87-D-089, was improperly accepted and changes are necessary in order for the request to be a proper application, located at 9200 Leesburg Pike, on approximately 123.84 acres of land, zoned R-1, Dranesville District, Tax Map 19-4((1))16, 16A, and 31. (DEFERRED FROM 4/11/89 AT APPLICANT'S REQUEST)

Chairman Smith advised of a request for deferral by this applicant until July 20 or 25, 1989.

Mrs. Thonen moved to defer this A 89-D-003 until July 27, 1989 at 9:00 a.m. Mr. DiGullian seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for this vote.

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Page 175, May 9, 1989, (Tape 3), scheduled case of:

12:00 Noon LUCKSTONE CORPORATION, SPA 81-S-064-2, application under Sect. 7-305 of the Zoning Ordinance to amend S-81-064 for stone quarrying, crushing, processing, sales and accessory uses, to permit relocation of approved site access, addition and relocation of equipment and structures, located at 15950 Lee Highway, on approximately 200.2692 acres of land, zoned R-C, M-R, and MS, Springfield District, Tax Map 64-1((1))1, 4, 13, 14, 15, 17, 19 and 64-1((4))7A. (OUT OF TURN HEARING GRANTED. DEFERRED FROM 4/23/89 FOR ADDITIONAL INFORMATION)

Lori Greenlief, Staff Coordinator, stated there were three outstanding issues from the last hearing: The first issue was the water quality reports which Mrs. Thonen wanted reviewed by the Environmental Branch of Office of Comprehensive Planning. Ms. Greenlief stated that, basically, no problems were revealed with the water quality reports, but staff would like monitoring to continue; she stated this could be tied into the annual review. The second issue was that of whether a site plan was required for this use. The third issue was the location of the office building; the applicant had now submitted justification for the proposed location.

Ms. Greenlief stated that staff had received a letter from the Department of the Interior with respect to Manassas National Battlefield Park. She stated further that staff had scheduled the annual review for July 25, 1989, before the Board.

Royce A. Spence, 7297-F Lee Highway, Falls Church, Virginia, represented the applicant, mentioning the three issues as he remembered them being raised at the last meeting: One, the question by Ms. Harris as to why the office building had to remain in the same place, which he believed had been answered by his revised letter. The other two were: (2) as Mrs. Thonen mentioned, the water runoff which he said was addressed by furnishing the quarterly reports for the last year, and he had with him the first annual report which he said was due about this time; and (3) the last thing, as Mrs. Thonen mentioned, is the site plan.

Paul Krauchnas, Department of Environmental Management, participated in the ensuing lengthy discussion.

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At one point, Mr. Royce stated that Jim Pammel, formerly of the Planning Division, Office of Comprehensive Planning, deleted some of the items now listed in development condition 37. Chairman Smith questioned Mr. Pammel's deletions. Mr. Royce stated that Mr. Pammel deleted oxygen, temperature, nutrients, and chemical oxygen demand from the parameters to be monitored, by the Board's authority. Mr. Royce stated that the Board told Mr. Pammel to meet with the applicant and decide specifically what Mr. Pammel wanted them to test for.

Chairman Smith said he believed that Mr. Pammel had taken out some of the most important items, and that he did not agree with Mr. Pammel's decision. Chairman Smith stated he believed that development condition 39 should remain as it was now presented in the staff report.

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

Mrs. Thonen moved to grant SPA 81-S-064-2 with development conditions as amended:

Development condition 4 was changed to read as outlined in the resolution, with existing development condition 23 added. Also added to this condition was, "The crushers and associated equipment shall not be subject to site plan review."

Development condition 5 was changed to read "...period of five (5) years from February 3, 1987, with annual review..." with the addition of the underlined wording.

Development condition 6 was changed from "...existing entrance which will not remain open..." to "...existing entrance which will remain open...."

Development condition 23 now reads as outlined in the resolution.

Development condition 39 was changed to read as outlined in the resolution, specifically changing "...provided by the applicant quarterly..." to provided by the applicant annually...." Necessitating the deletion of "...After a full year of data has been provided monitoring reports shall continue to be provided quarterly, except the presence of metals which do not require monitoring pursuant to the standards as determined by the Office of Comprehensive Planning shall be deleted from the quarterly monitoring. Monitoring report shall be provided quarterly if no evidence of water quality problems exists as determined by OCP and the evidence of a toxic pollution problem exists additional testing shall be required in accordance with EPA guidelines...."

Add new development condition, number 41, as stated in the resolution.

Mr. Hammack stated that he would like to abstain from voting because he had not been present to hear the previous testimony.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 81-S-064-2 by LUCKSTONE CORPORATION, under Section 7-305 of the Zoning Ordinance to amend S-81-064 for stone quarrying, crushing, processing, sales and accessory uses to permit relocation of approved site access, addition and relocation of equipment and structures, on property located at 15950 Lee Highway, Tax Map Reference 64-1((1))1, 4, 13, 14, 15, 17, 39 and 64-1((4))7A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C, N-R, and W-S.
3. The area of the lot is 200.2692 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-105 of the Zoning Ordinance.



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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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. Application is approved with the Site Plan for public roads and dedication of these roads. Right and left turn lanes shall be provided for access from Lee Highway to the site in accordance with Virginia Department of Transportation standards, and the applicant shall submit this plan to the Department of Environmental Management. The applicant shall submit a landscape plan to the County Arborist in accordance with these conditions. The crushers and associated equipment shall not be subject to Site Plan Review.
5. This permit is granted for a period of five (5) years, beginning February 3, 1987, with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.
6. Landscaping and screening shall be required in accordance with a plan to be submitted and approved by the County Arborist to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway. The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be supplemented to the level of transitional Screening 3. Landscaping shall be provided along the Rt. 29 frontage in accordance with the plan which appears as Appendix 8 of this report with the exception of the plantings which are shown in front of the existing entrance which will remain open and those to either side of the asphalt plant entrance which may not be planted. Landscape and operations plans shall show preservation of the Environmental Quality Corridor as defined in Appendix 6 of this report. Maintenance of existing flow to the existing stream shall be maintained for the term of this use.
7. Fifty (50) percent of the cost of seismographic and noise monitoring equipment as required by Zoning Enforcement and the total cost of training shall be provided by the applicant.
8. Air quality monitoring equipment shall be provided by the applicant and installed as necessary and as required by the County Health Department to demonstrate the attainment and maintenance of Fairfax County ambient air quality standards.
9. The total cost of enforcement services shall be absorbed by the applicant.
10. Dedication of right-of-way to eighty (80) feet from centerline on both sides of Lee Highway for future road improvements along the site frontage shall be conveyed to the Board of Supervisors in fee simple.
11. The applicant shall not exceed the limits of excavation as established and reflected on the operations plan submitted with this application.
12. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with a landscape plan submitted and approved by the County Arborist.
13. The berm shown along the northern lot line on the north side of Rt. 29 shall be designed so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site. If the stream channel needs to be realigned, channel modifications shall be conducted in general conformance with the guidelines and recommendations set forth in the State Water Control Board manual entitled Hydrologic Modifications.

14. Run-off from the new structures on site shall be diverted through one or more of the existing settling ponds on site.
15. There will be no excavation access to and from the subject property other than by the tunnel under Route 29-211.
16. The buffers shall be provided as shown on the operations plan and shall be left in their natural state except around the pond and berm area which shall be planted in accordance with Condition 12 above.
17. The existing restoration plan shall be maintained current and shall be implemented according to the progress of the operations plan. The operations plan and the restoration plan shall be reviewed during each annual review.
18. A bond of \$2,000 per acre to ensure restoration of the property shall be continued for the duration of this mining operation.
19. The applicant shall dedicate a 50 foot strip from its property line along State Route 621 north of Route 29-211. Temporary grading and construction easements shall be provided to facilitate future construction.
20. There shall be no processing or storage of processed rock north of Route 29-211.
21. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.
22. Millisecond delay caps or their equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess of 1,000 pounds. That blasts not exceeding 15,000 pound with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site with the approval in writing of the Zoning Enforcement Division in accordance with the County and State guidelines.
23. The peak overpressure (noise) from any blast shall be limited to 0.0092 pounds per square inch (130 decibels) at any occupied structure not on quarry property.
24. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.
25. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.
26. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.
27. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.
28. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.
29. All present dust control equipment including the Hognson March Dust Control System, shall continue to be maintained and operated.
30. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.
31. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.
32. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines.
33. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.
34. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.

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35. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.
36. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.
37. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.
38. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing shall be used to satisfy the barrier requirement and completed to extend around the entire perimeter of the site. This barrier shall be a minimum of six (6) feet in height.
39. Water quality monitoring reports shall be provided by the applicant annually to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to be monitored shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, chemical oxygen demand (COD), metals and alkalinity. If any evidence of a toxic pollution problem exists additional testing shall be required in accordance with EPA guidelines.
40. Best Management Practices (BMP) shall be provided as determined by the Director of the Department of Environmental Management.
41. The office shall be built no closer to the highway than it is now.

These conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGuilian seconded the motion.

The motion carried by a vote of 5-0; Mr. Ribble was not present for the vote and Mr. Hammack abstained because he was not present the previous week to hear the previous testimony.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 179, May 9, 1989, (Tape 3), After Agenda Item:

Request for Additional Time  
Andrew Chapel United Methodist Church, SPA 83-D-045-1 and SPA 74-D-081-1

Mr. Hammack moved to grant this request for additional time. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. DiGuilian and Mr. Ribble were not present for the vote.

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Page 179, May 9, 1989, (Tape 3), After Agenda Item:

Approval of Resolutions from May 2, 1989 Hearing

Mrs. Thores moved to approve these resolutions as presented. Mr. Hammack seconded the motion which carried by a vote of 5-0; Mr. DiGuilian and Mr. Ribble were not present for the vote.

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Page 180, May 9, 1989, (Tape 3), After Agenda Items:

Approval of Minutes from January 18,  
February 28, and March 28, 1989 Hearings

Mr. Hammack moved to approved these Minutes as presented. Ms. Harris seconded the motion which carried by a vote of 5-0; Mr. DiGuilian and Mr. Ribble were not present for the vote.

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Page 180, May 9, 1989, (Tape 1), Board Matter:

Expiration of Term of John Ribble

Mrs. Thoner moved to recommend to the Court that John Ribble be reappointed for another term. Mr. DiGuilian seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Chairman Smith requested that the Clerk advise Judge Griffith of this matter.

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Page 180, May 9, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 2:00 p.m.

Gerard B. Bepko  
Gerard B. Bepko, Deputy Clerk to the  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 7/6/89

APPROVED: 7/4/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, May 18, 1989. The following Board Members were present: Chairman Daniel Smith, Paul Hammack, Martha Harris, Mary Thonen, and John Ribble. John DiGiulian and Robert Kelley were absent from the meeting.

Chairman Smith called the meeting to order at 9:17 a.m. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board. There were none.

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Page 181, May 18, 1989, (Tape 1), Scheduled case of:

9:00 a.m. JOHN S. DAVIES, JR. & KATHRYN R. DAVIES, VC 89-D-010, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 9 feet from side lot line such that side yards total 30 feet (12 ft. min., 40 ft. total min. side yard req. by Sect. 3-107), located at 9625 Locust Hill Drive on approximately 21,011 square feet of land, zoned R-1(C), Dranesville District, Tax Map 19-1(9)34.

Lori Greenlief, Staff Coordinator, presented the staff report.

Mrs. Harris asked to review the photographs of the Davies property and the photos were passed to her.

Kathryn R. Davies, applicant, 9625 Locust Hill Drive, presented her position as stated in her request for a variance dated January 31, 1989. Mrs. Davies mentioned that other garages in the area are 22 feet in width.

Mrs. Harris asked where the house on Lot 33 was located, and Mrs. Davies replied "very close to Route 7." She said it cannot be seen from her property. Mrs. Harris asked if they had considered moving the garage back further on their lot. Mrs. Davies replied that it was not recommended due to the land contours.

There being no other speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Hammack moved to grant VC 89-D-010 based on the exceptional shape of the lot, topographical constraints, the fact that the garage would not detract from the overall appearance of the neighborhood, and in accordance with development conditions.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-010 by JOHN S. DAVIES, JR. AND KATHRYN R. DAVIES, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 9 feet from a side lot line such that side yards total 30 feet, on property located at 9625 Locust Hill Drive, Tax Map Reference 19-1(9)34, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1(C).
3. The area of the lot is 21,011 square feet of land.
4. The lot has exceptional shape.
5. The lot has topographic constraints.
6. The house on the adjoining property is far from the subject property.
7. The property will retain architectural consistency in the neighborhood.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.
4. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit.

Mrs. Thonen seconded the motion.

The motion carried by a vote of 3-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 182, May 18, 1989, (Tape 1), Scheduled case of:

9:15 a.m. STUART JR. & SIDNEY BOYD SAVAGE, VC 89-M-014, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling 16.1 feet from side lot line (20 ft. min. side yard req. by Sect. 3-107), located at 6445 Eppard Street on approximately 18,375 square feet of land, zoned R-1, Mason District, Tax Map 51-3((9))10.  
Lori Greenlief, Staff Coordinator, presented the staff report.

Stuart Savage, Jr., applicant, 6445 Eppard Street, explained that they wished to build to the rear so that the addition could be sided, rather than bricked, which would cost a great deal less. Mrs. Thonen asked Ms. Greenlief if the variance granted in 1988 was still in effect. Ms. Greenlief stated that a rear yard variance would take the place of the front yard variance approved earlier. Chairman Smith mentioned this property since it is zoned as being an R-1 cluster calling for a considerable side yard.

There being no further speakers, and staff having no further comment, the public hearing was closed.

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Mrs. Thonen was joined by Mr. Hammack in the motion to grant VC 89-M-014, based on the exceptional shape of the lot, and in accordance with Development Conditions as presented in Appendix I of the staff report, as amended. Approval of this variance will effectively nullify a variance for an extension to the front of this property, VC 88-M-047, which was granted December 7, 1988 by this Board.

Mrs. Harris seconded the motion which passed unanimously with a vote of 5-0. Mr. DiGiulian and Mr. Kelley were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-014 by STUART, JR. AND SIDNEY BOYD SAVAGE, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 16.1 feet from side lot line, on property located at 6445 Eppard Street, Tax Map Reference 51-3(9)110, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 18,375 square feet of land.
4. The lot has exceptional narrowness.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BSA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. Approval of this variance will effectively nullify a Variance for an extension to the front of this property, VC 88-M-447, which was granted December 7, 1988 by this Board.

Mrs. Harris seconded the motion.

The motion carried by a vote of 5-0. Mr. DiGiulian and Mr. Kelley were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 184, May 18, 1989, (Tape 1), Scheduled case of:

9:30 a.m. TORSTEIN STEPHANSEN, VC 89-M-008, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to existing garage to 8.5 feet from side lot line (15 ft. min. side yard required by Sect. 3-207, located at 3611 Bent Branch Court, on approximately 23,590 square feet, Mason District, zoned R-2, Tax Map 60-4((20))19.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Mr. Torstein Stephansen, applicant, 3611 Bent Branch Court, Falls Church, Virginia, explained that most houses in his neighborhood already had two car garages and that his lot was very narrow. Chairman Smith asked if adding on to the existing garage to make a total width of 22 feet had been considered. Mr. Stephansen replied that it had been but was found to be unacceptable.

Chairman Smith asked if there was anyone else present to speak either in support or opposition. There being none, and staff having no further comments, the public hearing was closed.

Mrs. Harris moved to grant-in-part VC 89-M-008 to 4.5 feet to the side lot line, and in accordance with the development conditions as presented in the staff report, as amended. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit. Also, the applicant was requested to bring in a revised plat indicating the new side yard as soon as possible.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-008 by TORSTEIN STEPHANSEN, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to existing garage to 8.5 feet from side lot line (THE BOARD GRANTED 10.5 FEET FROM SIDE LOT LINE), on property located at 3611 Bent Branch Court, Tax Map

Reference 60-4((20))19, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.



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- 3. The area of the lot is 23,590 square feet of land.
- 4. The lot has exceptional narrowness.
- 5. The neighbor on Lot 18 does not object.

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

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

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

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

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

- 1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
- 2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BSA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
- 3. A Building Permit shall be obtained prior to any construction.
- 4. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit.
- 5. Applicant must submit a new plat indicating a maximum 4.5 foot side yard allowance.

Mrs. Thones seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 186, May 18, 1989, (Tape 1), After Agenda Item:

Approval of May 9, 1989 Resolutions

Mrs. Thonen moved to approve the Resolutions for May 9, 1989.

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

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Page 186, May 18, 1989, (Tape 1), After Agenda Item:

Approval of April 4, 1989 Minutes

Mrs. Thonen moved to approve the Minutes for April 4, 1989.

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

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Page 186, May 18, 1989, (Tape 1), After Agenda Item:

Request for an Out-Of-Turn Hearing  
JJ's Child Development Center, SPA 84-L-061

Lori Greenlief, Staff Coordinator, in response to a question from the Board, stated that she had not spoken to the applicant about her request for a Special Permit to put a child care center in the Mount Vernon Plaza.

Mrs. Thonen made a motion to deny the request for an out-of-turn hearing.

Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. DiGiulian and Mr. Kelley were absent from the meeting.

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Page 186, May 18, 1989, (Tape 1), After Agenda Item:

Intent to Defer Church of the Nativity, SPA 81-S-070-1

Robert L. Cohen, president of a neighboring homeowners association, requested by letter a deferral of this hearing, outlining numerous objections to the pending special permit amendment.

The Board agreed to take no action on this intent to defer as the hearing was scheduled to take place on May 23, 1989 at 10:15 a.m.

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Page 186, May 18, 1989, (Tape 1), Scheduled cases of:

9:45 a.m. ROBERT L. JR. & BERTHA A. ADAMS, VC 89-A-015, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 19.8 feet from a street line of a corner lot (25 ft. min. front yard req. by Sect. 3-207), located at 9536 Braddock Road on approximately 13, 291 square feet of land, zoned R-2(C), Annandale District, Tax Map 69-3((3))4. (CONCURRENT WITH SP 89-A-005)

10:00 a.m. ROBERT L. JR. & BERTHA A. ADAMS, SP 89-A-005, application under Sect. 3-203 of the zoning Ordinance to allow accessory dwelling unit, located at 9536 Braddock Road on approximately 13, 291 square feet of land, zoned R-2(C), Annandale District, Tax Map 69-3((3))4. (CONCURRENT WITH VC 89-A-015)

Bernadette Bettard, Staff Coordinator, presented the staff report in conjunction with special permit application SP 89-A-005 which recommended denial of the variance and approval of the special permit.

Robert L. Adams, Jr., applicant, 9536 Braddock Road, Fairfax, Virginia, stated that the requested addition would be 480 square feet in size out of 3,000 square feet in his total house. He described the addition as having a living room, bedroom, kitchen and bath, and would be for the privacy and convenience of his handicapped, widowed mother. Mr. Adams was asked the reasons for not locating the addition in any other area of the property. He replied that the setback from Braddock Road was 25 feet.

Chairman Smith called for other speakers.

Peter R. Jannet, 4729 Pickett Road, Fairfax, Virginia, was the first speaker. He said he had lived at that address for 10 years and was in favor of the variance as the addition would help screen noise from his property.

Mr. Hammack asked if Pickett Road would be improved if a traffic light were installed and Mr. Jomannet replied he did not believe so.

Members of the Board discussed the feasibility of the requested accessory dwelling and no objections were voiced.

There being no further discussion, Chairman Smith closed the public hearing.

Mr. Hammack moved to deny VC 89-A-015 on the basis that a variance to 19.8 feet from Pickett Road would adversely affect visibility and, if the addition were moved back to 7.8 feet, the variance would not be necessary. He also stated that the physical conditions did not support a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

IN Variance Application VC 89-A-015 by ROBERT L. JR. AND BERTHA A. ADAMS, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 19.8 feet from a street line of a corner lot, on property located at 9536 Braddock Road, Tax Map Reference 69-3(3)4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2(C).
3. The area of the lot is 13,291 square feet of land.
4. There is a visibility factor at the intersection.
5. It will be an impact in that it will jut out in front of other houses.

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

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

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

Page ~~187~~ 188, May 18, 1989, (Tape 1), (Robert L. Jr. & Bertha A. Adams, VC 89-A-015 and SP 89-A-005, continued from Page ~~187~~)

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

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

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 24, 1989.

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Mr. Hammack made a motion to grant SP 89-A-005 in accordance with the development conditions as presented in Appendix 1 of the staff report, with the following two additions: #13, "Revised plats shall be submitted showing footprint to be in complete conformity with setback requirement," and #14, "The architecture and materials to be used to construct the addition will be harmonious and compatible with the existing dwelling unit."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-A-005 by ROBERT L. JR. AND BERTHA A. ADAMS, under Section 3-203 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 9536 Braddock Road, Tax Map Reference 69-3((3))4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2(C).
3. The area of the lot is 13,291 square feet of 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. 8-906 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

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

1. The approval of this Special Permit is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. This should not preclude any structural additions which could be added by right for the primary dwelling unit.
3. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, Department of Environmental Management (DEM), shall be submitted and approved by DEM pursuant to Par. 3 of Sect. 8-903. Any plans submitted shall conform with the approved Special Permit plat and these conditions.
4. The accessory dwelling unit shall occupy no more than 480 square feet of the principal dwelling.
5. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11. All parking shall be on the site.

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6. The applicant should include passive infiltration techniques as stormwater management water quality measures in the design of the proposed addition. These techniques may include dry wells and French drains, or such other methods which may be approved by the Director, DEM.
7. The accessory dwelling unit shall contain no more than one bedroom.
8. The occupancy of the principal dwelling unit shall be in accordance with Par. 6 of Sect. 8-918 of the Zoning Ordinance.
9. The applicant should achieve a maximum interior noise level of 45 dBA Ldn in the proposed addition (See attached guidelines).
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 regulations for building, safety, health and sanitation.
11. Par. 12 requires that the special permit shall be approved for a period not to exceed five (5) years from the date of approval and includes a provision that the special permit may be extended for succeeding five (5) year periods with prior approval of the Zoning Administrator and in accordance with Section 8-012 of the Zoning Ordinance. Compliance with this standard has been ensured through development condition #10.
12. Upon the termination of the new addition as an accessory dwelling unit, the structure shall be internally altered so as to become an integral part of the main dwelling unit.
13. Revised plats shall be submitted showing footprint to be in complete conformity with setback requirement.
14. The architecture and materials to be used to construct the addition will be harmonious and compatible with the existing dwelling unit.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thones seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 189, May 18, 1989, (Tape 2), Scheduled case of:

10:15 a.m. STAN B. JACKSON, VC 89-A-013, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 8.1 feet from side lot line (15 ft. min. side yard req. by Sect. 3-207), located at 9306 Nester Road, on approximately 15,073.9 square feet of land, zoned R-2, Annandale District, Tax Map 58-4((22))2.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Stan B. Jackson, applicant, 9306 Nester Road, Fairfax, Virginia, reiterated his position as presented in his statement of justification.

Mr. Hammack asked Mr. Jackson if other homes in the Sussex subdivision have carports. Mr. Jackson replied that most have added a double garage. He also mentioned that Lot 13A, owned by McCormick's, was granted a variance approximately one year ago and that structure had been completed in the fall of 1988. Mr. Jackson said that as he recalled, the variance allowed a 12-13 foot side yard.

Bobbie L. Cardillo, 9384 Nester Road, Fairfax, Virginia, stepped forward to indicate no objection to Mr. Jackson's application, stating she believed two-car garage additions improved the overall community.

There being no further speakers, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant-in-part VC 89-A-013 to a side yard of 10.1 feet and a garage width of 22 feet, in accordance with other development conditions in Appendix 1 of the staff report, as amended. The garage width will be cut to a total of 22 feet, and the applicant is required to furnish a revised plat indicating a 10.1 foot side yard.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-013 by STAN B. JACKSON, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 8.1 feet from side lot line (THE BOARD GRANTED 10.1 FEET FROM SIDE LOT LINE), on property located at 9306 Wester Road, Tax Map Reference 58-4((22))2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,073.9 square feet of land.
4. The neighbor on the adjacent lot has no objection.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

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2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the SEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. A revised plat will be furnished indicating a 10.1 foot side lot line.
5. The garage width will be cut to a total of 22 feet.

Mrs. Thones seconded the motion.

The motion carried by a vote of 4-1 with Chairman Smith voting nay. Mr. DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 191, May 18, 1989, (Tape 2), Scheduled case of:

10:30 a.m. GREGORY A. & MARY ANNE MAHIN, VC 89-P-016, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.9 feet from side lot line (10 ft. min. side yard req. by Sect. 3-407), located at 7025 Jefferson Avenue, on approximately 10,805 square feet of land, zoned R-4, Providence District, Tax Map 50-3(5)(2)32.

Bernadette Bettard, Staff Coordinator, presented the staff report and added that research had indicated a 10.5 foot side yard to the neighbor.

Mary Anne Mahin, applicant, 7025 Jefferson Avenue, Falls Church, Virginia, stepped forward to reiterate their position as presented in their statement of justification and to answer any questions by the Board.

Mrs. Harris asked why they did not plan to build on the other side of their house. Mrs. Mahin replied that due to the hill on the other side, there was a runoff problem.

Mr. Hammack asked if the storage area was 4 feet from the property line, and Mrs. Mahin replied that it was actually 4 feet from the house.

Chairman Smith asked if the workshop would support a second story. Mrs. Mahin said they would look into that.

Mr. Hammack asked about the neighbor on Lot 33A, and Mrs. Mahin replied that there were no objections.

There being no speakers to support or oppose, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant VC 89-P-016 since there would be no further side yard intrusion, in accordance with Development Conditions in Appendix 1 of the staff report, with one added condition, #4, that the architecture and materials used to construct the addition be harmonious and compatible with the existing dwelling unit.

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#### COUNTY OF FAIRFAX, VIRGINIA

##### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-016 by GREGORY A. AND MARY ANNE MAHIN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.9 feet from side lot line, on property located at 7025 Jefferson Avenue, Tax Map Reference 50-3(5)(2)32, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,805 square feet of land.
4. That the house was constructed 40 years ago.
5. The property has exceptional narrowness, a condition not shared by others in the neighborhood.
6. This is an extraordinary situation where the kitchen cannot be built on the other side of the house.
7. This is an irregularly shaped lot and when applicants extend kitchens, the standards should be more flexible than normal.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.
4. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit.

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.



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\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 112, May 18, 1989, (Tape 2), Scheduled case of:

10:45 a.m. HUNG VU & HOA HUYNH THI, VC 89-M-011, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of screened porch addition to dwelling 10.1 feet from side lot line (12 ft. min. side yard req. by Sect. 3-307), located at 3117 Valley Lane, on approximately 12,628 square feet of land, zoned R-3, Mason District, Tax Map 51-3((11))213.

Lori Greenlief, Staff Coordinator, presented the staff report, which she mentioned had been prepared by Kathy Reilly, former Staff Coordinator.

Hung Vu, applicant, 3117 Valley Lane, Falls Church, Virginia, came forward to state that he wished to enclose his existing screened porch. He said that his neighbor at 3113 Valley Lane had successfully done this. Mr. Vu stated that all materials and appliances for his proposed kitchen had already been purchased and were being stored presently in his basement. Mr. Vu said he had made all these purchases before knowing that a variance would be required.

There being no further speakers, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant VC 89-M-011, in accordance with the Development Conditions in Appendix 1 of the staff report, with one additional condition, #4, that the architecture and materials used to construct the addition be harmonious and compatible with the existing dwelling unit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-011 by HUNG VU AND HOA HUYNH THI, under Section 18-401 of the Zoning Ordinance to allow enclosure of screened porch addition to dwelling 10.0 feet from side lot line, on property located at 3117 Valley Lane, Tax Map Reference 51-3((11))213, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,628 square feet of land.
4. This is an older subdivision and the setbacks have changed.
5. Construction is limited to the rear because of a storm drainage easement.
6. The house is uniquely sited on the lot.

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

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

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

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

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

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

- 1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
- 2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
- 3. A Building Permit shall be obtained prior to any construction.
- 4. The architecture and materials used to construct the addition will be harmonious and compatible with the existing dwelling unit.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-1 with Mrs. Thonen voting nay; Mr. DiGiulian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this variance.

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11:00 a.m. WOODY'S GOLF RANGE, SPA 79-D-176-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend 8-176-79 for a golf driving range to permit continuation of the use without term, addition of a baseball hitting range and request for waiver of the dustless surface requirement, located at 11801 Leesburg Pike on approximately 30.1246 acres of land, zoned R-1, Danesville District, Tax Maps 6-3(1)33 and 33A. (OUT-OF-TURN HEARING)

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that Carlos Montenegro, Esq., Shaw, Pittman, Potts, Trowbridge, 1501 Farm Credit, McLean, Virginia, had been retained by Woody's for its counsel in this special permit amendment.

Mr. Montenegro, stated that the Architectural Review Board needed to review this application prior to the BZA hearing and that there are other issues which need to be addressed. Therefore, he requested a deferral.

Chairman Smith asked if any of the members objected to a deferral to June 13, 1989. All were in agreement, and he asked that a time be set for the hearing.

Ms. Kelsey stated June 13, 1989, at 11:30 a.m.

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11:15 a.m. GOALS, INC., T/A CHESAPEAKE ABILITY SCHOOL, SP 89-L-016, application under Sect. 3-203 of the Zoning Ordinance to allow private school of general education, located at 5533 Industrial Drive, on approximately 5.56454 acres of land, zoned R-2, C-8, I-6, Lee District, Tax Map 80-2((1))38. (OUT-OF-TURN HEARING)

Denise James, Staff Coordinator, presented the staff report, recommending approval of this special permit application.

Ms. James said two corrections should be made to the development conditions as presented in the staff report, as follows: #6, add: "Parking shall be permitted in the R-2 portion of the site."; #7, second paragraph, misplaced parenthesis, should be located around "if" as in "if necessary".

Lois Gloor, School Administrator, 6308 Steinway Street, Alexandria, Virginia, stated that they currently have 44 students and the school has been in existence for 10 years. She said the building has 8,700 square feet on 4.5 acres, grades kindergarten through 12, students ages 5 through 16, and explained the immense difficulty of finding a suitable site to lease for this purpose and the joy at having finally found the site on Industrial Drive. She pointed out that some of the student body was present at the hearing as part of their civil studies.

Byron Pappas, Coordinator of Long Range Planning, Woodward & Lothrop, came forward to express Woodies' concerns with the possible traffic issue. Woodward & Lothrop has a large warehouse adjacent to the Chesapeake Ability School. Mr. Pappas stated that Woodies wished to be assured that the chain link fence now present behind the school would remain in place and that all precautions be taken to protect the students. Ms. Gloor assured Mr. Pappas that they had no plans to remove the existing fence, and that great care is exercised for the students' protection, in allowing them to pass over the parking lot to the play area only where it is totally safe from traffic.

Mr. Hammack mentioned the dustless surface waiver, and Ms. James pointed out that this requirement is to be waived in accordance with Development Condition #10 of the staff report.

There being no further speakers, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SP 89-L-016, in accordance with the development conditions in Appendix 1 of the staff report, and a change to Condition #8, second paragraph, "to put a period at the end of the State of Virginia, deleting the text that follows."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-L-016 by GOALS, INC., T/A CHESAPEAKE ABILITY SCHOOL, under Section 3-203 and 8-901 of the Zoning Ordinance to allow private school of general education and waiver of dustless surface requirement, on property located at 5533 Industrial Drive, Tax Map Reference 80-2((1))38, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1989; and

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

1. That the applicant is the lessee of the land.
2. The present zoning is R-2, C-8 and I-6.
3. The area of the lot is 5.56454 acres of 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. 8-806 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

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2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum daily enrollment shall be limited to a total of 99 students and a maximum of 12 employees.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11. In addition to the 24 parking spaces shown on the special permit plat, additional parking shall be provided as determined by the Director, Department of Environmental Management based on occupancy load of the classrooms or other pertinent factors as listed under Par. 17 of Sect. 11-106. Parking shall be permitted in the R-2 portion of the site.
7. At the time of Site Plan Review, the applicant shall submit a noise study certified by an acoustical engineer which demonstrates that interior noise levels of 45 dBA Ldn and exterior noise levels in the play yard of 65 dBA Ldn may be achieved through appropriate noise mitigation measures.  
  
 Acoustical treatment of windows and doors and noise attenuation fencing around the play area and around the heating and air conditioning unit (if necessary to achieve acceptable noise levels) shall be implemented prior to the issuance of a Non-Residential Use Permit.
8. In accordance with the Federal Asbestos Hazard Emergency Response Act of 1986 which requires implementation by July 1989, the applicant shall provide an assessment of friable and non-friable asbestos conditions in the building. Such assessment shall be conducted by a certified asbestos inspector licensed in the State of Virginia.  
  
 If any asbestos is found in the building, the applicant shall ensure that a management plan is developed by a certified asbestos management planner licensed in the State of Virginia. The management plan shall address the implementation schedule for the necessary clean-up of such material and must begin no later than July 9, 1989.
9. In accordance with guidelines and recommendations of the Environmental Protection Agency, the applicant shall test the building to determine if radon gas is present and if necessary, develop a repair plan which will reduce the levels of radon gas in the building.
10. In accordance with Sect. 8-915, the Dustless Surface Requirement is waived. The surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), which shall include but not be limited to the following:
  - o Travel speeds on the drive should be limited to 10 MPH or less.
  - o During dry periods, application of water should be made in order to control dust.
  - o Routine maintenance should be performed to prevent surface unevenness, wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.
  - o Runoff should be channeled away from and around the parking areas.
  - o The property owner should perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of the stone surface.
11. Entrance into the site shall be limited to the southernmost entrance on the site. The applicant shall post a sign indicating that entrance to the site is not permitted from the northernmost driveway.

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- 12. Existing trees on site in the area of the play yard and around the building shall be preserved in order to provide additional acoustical buffering against the noise impacts on the site.

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

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion.



The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 197, May 18, 1989, (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

	
Joanne R. Kiser, Associate Clerk to the Board of Zoning Appeals	Daniel Smith, Chairman Board of Zoning Appeals

SUBMITTED: 6/22/89

APPROVED: 6/27/89

6/22 K

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 23, 1989. The following Board Members were present: Chairman Daniel Smith, John Digiulian, Vice-Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 9:05 a.m. and gave the invocation.

Mr. Digiulian then made a motion to go into the Scheduled Monthly Meeting with James P. Cook, Director of the Office of Comprehensive Planning, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, to discuss BZA related matters. This meeting was held in the Board Conference Room.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that this was an open meeting until such time as the Board discussed legal matters and anyone who wished to could attend.

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

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The board reconvened the hearing in the Board Room at 10:27 a.m. and took up the regularly scheduled agenda.

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Page 199, May 23, 1989, (Tape 1), Scheduled case of:

9:45 A.M. THOMAS P. MCKAVITT, VC 89-V-021, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 13.0 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-507), located at 8316 Frosty Court on approximately 9,432 square feet of land, zoned R-5, Mt. Vernon District, Tax Map 99-4((5))147.

Lori Greenleaf, Staff Coordinator, presented the staff report.

The applicant, Thomas P. McKavitt, 8316 Frosty Court, Lorton, Virginia, came forward and distributed exhibits showing the proposed addition. Mr. McKavitt stated that there were no objections from the surrounding neighbors, that the house was oddly sited on the lot, that there are topographical conditions which prohibit him from constructing elsewhere on the lot, and that the addition would not be detrimental to the neighborhood. He added that the neighborhood homeowners association had approved the addition.

Mrs. Harris questioned the applicant as to the distance between the existing porch and his neighbor's porch. Mr. McKavitt replied that at the nearest point the distance would be approximately 38 feet.

Mr. McKavitt responded to a question from Chairman Smith by stating that the house had been constructed nine years ago.

There were no speakers to address the request nor any closing staff comments and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant the request subject to the development conditions contained in the staff report dated May 18, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-021 by THOMAS P. MCKAVITT, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 13.0 feet from rear lot line, on property located at 8316 Frosty Court, Tax Map Reference 99-4((5))147, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 9,432 square feet of land.
4. The way the house is built on the lot prohibits the applicant from constructing an addition without a variance.
5. The lot has an unusual topography and shape.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A building permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mr. Hammack not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this variance.

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Page ~~200~~ 200, May 23, 1989, (Tape 1), Scheduled case of:

10:00 A.M. WILLIAM F. & CELIA A. BENSTEN, VC 89-D-020, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 10 feet from a side lot line such that side yards total 28.9 feet (12 ft. min., 40 ft. total min. side yard required by Sect. 3-107), located at 6524 Heatherbrook Court on approximately 27,265 square feet of land, zoned R-1(C), Dranesville District, Tax Map 21-2((7))278.

Lori Greenleaf, Staff Coordinator, presented the staff report.

The applicant, William Bensten, 6524 Heatherbrook Court, McLean, Virginia, came forward and stated that the houses in his neighborhood are approximately 25 to 40 years old and



are situated on half acre lots. He added that his property abuts park land on one side, there are no objections from his neighbors, and there would be no detrimental impact on the neighbors.

In response to questions from Mr. DiGiulian and Mrs. Harris, Mr. Bensten explained that only one corner of the addition required a variance and that to move the addition back would not be aesthetically in line with the existing dwelling.

Mrs. Thonen asked the applicant the height of the deck from the ground and Mr. Bensten replied 10 feet.

As there were no speakers to address the request nor any staff closing comments, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant subject to the development conditions contained in the staff report dated May 18, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-020 by WILLIAM P. AND CELIA A. BENSTEN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10 feet from a side lot line such that side yards total 28.9 feet, on property located at 6524 Heatherbrook Court, Tax Map Reference 21-2((7))278, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1(C).
3. The area of the lot is 27,265 square feet of land.
4. The back yard drops off.
5. The house is situated on the lot at an odd angle.
6. On the side where the addition is requested is park land with no existing dwelling.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in

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Page 202, May 23, 1989, (Tape 1), (William P. and Celia A. Bensten, VC 89-D-020, continued from Page 201)

practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribbie seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mr. Hammack and Mr. Kelley not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 202, May 23, 1989, (Tape 1), Scheduled case of:

10:15 A.M. CHURCH OF THE NATIVITY, SPA 81-S-070-1, application under Sect. 3-103 of the zoning Ordinance to amend S-81-070 for a church and related facilities to permit addition of activity center building to existing facilities, located at 6400 Nativity Lane on approximately 10.19 acres of land, zoned R-1, Springfield District, Tax Map 88-1((1))10.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that it is staff's opinion there should be some supplementation with evergreen plantings along the lot lines to the rear of the property to assure screening during the winter months. As there are no outstanding issues associated with this application, staff recommended approval of the application with the implementation of the development conditions contained in the staff report.

Ms. Greenlief noted that staff had received two letters with respect to the request and in response to those letters the applicant had revised the plat and had moved the clearing line closer to the proposed addition.

Mrs. Harris questioned staff as to whether or not the applicant had agreed to the supplemental plantings suggested by staff and Ms. Greenlief replied that it was her understanding that the applicant was in agreement.

In response to questions from Mrs. Thonen regarding the transitional screening, Ms. Greenlief explained that staff was recommending Transitional Screening 1 along the rear and side lot lines with supplemental plantings. She added that in 1981 when the BZA approved S-81-S-070 there was a stipulation that the church provide landscaping along the front lot line.

There were no further questions of staff and Patrick Via, attorney with the law firm of Hazel, Thomas, Piske, Beckhorn and Hanes, P.O. Box 547, Fairfax, Virginia, came forward to represent the applicant.

Mr. Via began by entering a letter into the record from the Lee Chapel Woods Homeowners Association in support of the request. He responded to the question of transitional screening along the front lot lines by stating that to his knowledge the screening had been implemented to the satisfaction of DEM.

In addressing the proposed activity center, Mr. Via explained that the center would be used for the activities which currently are conducted in the existing church and that there would not be any additional parking. He added that the church had committed to 305 parking spaces although the Zoning Ordinance only requires 230-240 parking spaces. Following discussions and meetings with nine different homeowners associations, the applicant had agreed that the clearing line would be moved closer to the proposed addition, that there would no functions in the activity center during regular church services, that there would be no construction access on the westernmost portion of the site, and that the screening along the western lot line would be increased.

Mr. Via stated that the applicant disagreed with development condition number 6 regarding transitional screening and displayed pictures to the Board showing the

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existing wooded area. He addressed development conditions 8 through 12 and requested a clarification of "ancillary easement" in condition 10. In 1974 and 1981, the applicant agreed to dedicate land along Old Keene Mill Road in addition to another 12 feet with this application and therefore should not be required to provide further road improvements as suggested by condition 8. Also, he argued that the applicant should not be required to provide interparcel access to Lot 11 as it would not benefit either party as both lots were fully developed, each having its own access. Mr. Via asked that the dates noted in the development conditions be corrected to reflect the date on the submitted plat as "May 16, 1989".

Mrs. Thonen asked staff if they could determine the amount of ancillary easement that would be needed. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she would call the Office of Transportation to arrive at a number.

In response to questions from Mrs. Harris regarding the size of the proposed activity center, Mr. Via explained that this size addition was needed because of the many groups which presently meet in the church.

Mr. Ribble asked what the regular church hours were. Mr. Via stated that there were six regular church services, two on Saturday and three on Sunday.

Mrs. Harris stated that it seemed to her that the activity center would be used constantly and that there was a need for the right-turn deceleration lane. Mr. Via explained that there would be the same number of activities as there are now. Mrs. Harris pointed out that the church was getting a tremendous amount of use for the land and that this should be considered for the safety of the people attending the church as well as the people in the neighborhood. Mrs. Thonen agreed with Mrs. Harris.

Pasquale Esposito, 7742 Clifton Road, Fairfax Station, Virginia, came forward and stated that he had attended the church for 20 years and since that time the church had grown rapidly. He added that each time the religious classes are conducted chairs, tables, and partitions must be set up which is time consuming and does not make for a good atmosphere in which to teach the children.

Frank Korpasik, 6314 Glenbard Road, Burke, Virginia, agreed with the previous speakers' comments and added that the new building might provide the flexibility of the church to schedule some activities at a time other than peak rush hours.

Duane Rogers, 9119 Andromeda Drive, Burke, Virginia, emphasized that the proposed addition would not increase the traffic flow into and out of the site, the activities would simply move from the church into the activity center.

As there were no additional speakers in support of the request, Chairman Smith called for speakers in opposition to the request.

Robert Cohen, 6411 Four Oaks Lane, Burke, Virginia, represented the Four Oaks Estates Homeowners Association, and stated the citizens were supportive and sensitive to the church's needs but asked that the church reciprocate this sensitivity. Mr. Cohen briefly outlined the citizens concerns by stating 1) that the request will attract families who did not presently participate in all church activities, 2) that there was insufficient parking now, 3) that there are three loudspeakers located on the roof top of the existing church which direct loud music into the second stories of the neighboring houses, and 4) that the burglar alarm system on the church frequently goes off for a period of at least 20 minutes before being turned off. Mr. Cohen asked that the burglar alarm be converted to a silent system and that the loudspeakers be removed from the roof of the church. He asked that his prepared statement be made a part of the record.

Chairman Smith asked what the loudspeakers were used for and Mr. Cohen explained that the church played music prior to and following the services.

In response to further questions from the Board regarding onsite noise, Mr. Cohen replied that he would like to see a noise barrier constructed around the air conditioning unit.

Chairman Smith questioned Mr. Cohen as to whether or not the Zoning Enforcement Division had been contacted about the noise from the loudspeakers. Mr. Cohen stated that an Inspector had visited the site but had indicated the noise level was in line with the Zoning Ordinance requirements.

Aaron Roemer, 10808 Brunswick Avenue, Silver Spring, Maryland, came forward and expressed concern over the activities of the church being held late at night and the impact that the continual growth of the church would have on the community.

Catherine Hughes, 6413 Four Oaks Lane, Burke, Virginia, stated that she had grown up in the Catholic Church and was well aware of the range of activities that would be held in the activity center. She stated that she believed that just as the church had expanded over the years, the uses would also expand and that the center would be greatly used.

Over the past four years, the church had given a clear indication that when a problem arises there would be no compromise just as there had been no compromise regarding the onsite noise generated from the burglar system, loudspeakers, and bullhorns, incidents which are clearly documented in the records of the police department and other County offices. She continued by stating that the neighbors had met with the pastor and requested that the volume on the loudspeakers be reduced and that the music not be played fifteen minutes prior to the 8 o'clock mass on Sunday, both requests were refused although the diocese intervened. In closing, Ms. Hughes asked the Board to place conditions on the church that can be enforced due to the blatant insensitivity of the church to its neighbors.

During rebuttal, Mr. Via noted that the bells and loudspeakers have been tested twice by the County and found to be in line with the Zoning Ordinance requirements. He stated that the church believed the loudspeakers to be an integral part of their church services.

Mrs. Thonen pointed out that things that bring joy to some may bring total chaos to others and stated that she saw no reason for the church to be imposing their joy on the neighborhood. She asked why the church could not cut the volume down and have the joy inside the church.

Mr. Via stated that this had been found to be in the spirit of the law. Mrs. Thonen said that she was not asking if this was in the spirit of the law, but was asking why the church could not cooperate and work with the neighbors. Chairman Smith pointed out that most of the churches in the County are not allowed to have bells of any kind.

Mr. Hammack called Mr. Via's attention to General Standard Number 3 which stated that "the proposed use shall be such that it will be harmonious with and not adversely affect the use or development of neighboring properties." He asked how the applicant could substantiate the use of the loudspeakers on site. Mr. Via argued that if it's in the spirit of the law then it is harmonious with the neighborhood. Mr. Hammack asked Mr. Via if he believed that a neighbor would have the right to set up a loudspeaker and project "rock music" onto the church site. Mr. Via replied that unless an agreement could be reached between the property owners there would be no remedy to the complaining neighbors if it was within the spirit of the law.

Father Salvatore Cuiillo, 9525 Lyra Court, Burke, Virginia, explained that he had met with the neighbors about the bells and that the church had cooperated to the best of their ability. Mr. Hammack asked what the church had done to appease the citizens. Father Cuiillo replied that the church bells are not ringing until approximately three minutes prior to the 9:30 a.m. service on Sunday. Father Cuiillo reiterated that the County had taken a reading twice and both times the bells were within the allowable range. Chairman Smith pointed out that the noise from the bells was invading the neighbors' privacy and because the church was under Special Permit it was up to the Board to ensure that this did not continue. Mr. Hammack asked when the church stopped ringing the bells at 7:00 a.m. in the morning and Father Cuiillo replied that the bells had never rung that early.

Chairman Smith informed Mr. Via that his rebuttal time had expired but would grant him a few additional minutes. Mr. Via again pointed out that the applicant would be providing additional screening which would act as a buffer between the church and the neighbors.

In response to the Board's concern regarding the burglar alarm system, Mr. Via explained that a silent alarm would not warn anyone away who was trying to break into the church and assured the Board that the church would take more precautions.

Father Cuiillo came back to the podium and stated that Mr. Cohen had been invited to a meeting at the church to discuss the bells but Mr. Cohen had not attended.

During closing staff comments, Ms. Greenleaf made comments on the following development conditions:

Condition 6 calls for Transitional Screening 1 along the western and southern lot lines to the satisfaction of the County Arborist.

Condition 8 calls for a right-turn lane and staff believed that determination should be made by Virginia Department of Transportation (VDOT) at time of site plan review.

Condition 10, transportation believed that a 15 foot easement for temporary road construction would be sufficient.

Condition 11 addresses interparcel access and transportation believed that would be needed at such time as Old Keene Mill was improved to assure that both parcels have left-turn access at a median break.

Conditions 13, 14, and 15 should be revised to reflect "May 16, 1989".

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Mr. Hammack asked where the construction access would be onto the site. Mr. Via came back to the podium and stated that no particular access had yet been chosen but that the applicant had agreed that no construction access would be along the westernmost portion of the site.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SPA 81-S-070-1 with the modifications as suggested by staff and with the addition of four new development conditions.

16. The applicant shall remove all loudspeakers from roof of the sanctuary and from the site. No loudspeakers shall be allowed on the new addition.
17. The applicant shall adopt an instruction program for the use of the burglar alarm system and report the measures that are taken to the Board of Zoning Appeals staff in a written report.
18. The applicant shall take whatever noise attenuation measures that are necessary to prevent off site noise as a result of the air conditioning units or mechanical units on the site.
19. No bullhorns shall be used on the site by the applicant before 9:00 a.m. or after 6:00 p.m.
20. There shall be no construction access along the western side of the site.

A discussion took place among the Board members regarding whether or not the use of bullhorns should be eliminated and it was the consensus of the Board that Condition 19 adequately addressed the issue.

Chairman Smith stated that he hoped the church would be more sensitive to the fact that neighbors might be sleeping when they were using the bullhorns.

Ms. Greenleaf asked for a clarification on condition 16 with respect to the loudspeakers. Mr. Hammack stated that the three on the roof top of the existing sanctuary were to be removed and not placed on the new addition.

With regard to the issue of the loudspeakers, Mr. Hammack pointed out that the Noise Ordinance was one thing, but based on General Standard 3 the loudspeakers did adversely impact upon the surrounding neighborhoods.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-S-070-1 by CHURCH OF THE NATIVITY, under Section 3-303 of the Zoning Ordinance to amend S-81-S-070 for a church and related facilities to permit addition of activity center building to existing facilities, on property located at 6400 Nativity Lane, Tax Map Reference 88-1(1)10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1989; and

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

1. That the applicant is the owner of the land
2. The present zoning is R-1.
3. The area of the lot is 10.19 acres of 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. 2-806 and the additional standards for this use as contained in Section 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is in accordance with the plat submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.
5. The maximum seating capacity shall be limited to a total of 800 seats with a corresponding minimum of 200 parking spaces. There shall be a maximum of 305 parking spaces as shown on the plat. All parking for this use shall be on site.
6. Transitional Screening 1 shall be provided along the northern and western lot lines. Existing vegetation may be used to satisfy this requirement with supplementation of evergreen trees where determined necessary by the County Arborist to obtain the equivalent effectiveness of Transitional Screening 1. The size, type and location of the supplemental plantings shall be approved by the County Arborist. The existing vegetation along the eastern and southern lot lines shall be deemed to satisfy the Transitional Screening requirement. The barrier requirement shall be waived.
7. The applicant shall demonstrate to the satisfaction of the Department of Environmental Management that the proposed modifications to the stormwater management pond is adequate to control increased runoff volume from added impervious areas and will meet the stormwater management regulations set forth in the Fairfax County Public Facilities Manual. If it is determined that the modifications are inadequate, the applicant shall alter the pond to provide the additional storage space needed to accommodate the increased runoff volume as determined by the Department of Environmental Management.
8. A right-turn deceleration lane shall be provided into the site's entrance if deemed necessary by VDOT at the time of site plan review.
9. Additional right-of-way of twelve feet in width extending from Nativity Lane easterly to the eastern lot line shall be dedicated to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first.
10. All ancillary easements within fifteen (15) feet of existing right-of-way line necessary for the future improvement to Old Keene Mill Road shall be provided.
11. At such time as Old Keene Mill Road is improved to a divided facility, the applicant shall provide interparcel access to Lot 11 to the immediate east.
12. Notification shall be made to the Fairfax County Fire and Rescue Department and the State Water Control Board regarding the presence of the underground storage tank on the property. The applicant shall abide by all federal, state and local regulations concerning the underground storage tanks and shall ensure that all petroleum products stored at this location are transported by vehicles which meet all applicable federal, state and local regulations.
13. The maximum height of the activity center shall be twenty-four (24) feet as shown on the special permit plat dated May 16, 1989.
14. The tree clearing line shall be as shown on the special permit plat dated May 16, 1989.
15. The maximum floor area ratio for the development shall not exceed 0.12 as shown on the special permit plat dated May 16, 1989.
16. The applicant shall remove all loudspeakers from roof of the sanctuary and from the site. No loudspeakers shall be allowed on the new addition.
17. The applicant shall adopt an instruction program for the use of the burglar alarm system and report the measures that are taken to the Board of Zoning Appeals staff in a written report.

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18. The applicant shall take whatever noise attenuation measures that are necessary to prevent off site noise as a result of the air conditioning units or mechanical units on the site.
19. No bullhorns shall be used on the site by the applicant before 9:00 a.m. or after 6:00 p.m.
20. There shall be no construction access along the western side of the site.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 207, May 23, 1989, (Tapes 1 and 2), Scheduled case of:

10:30 A.M. IMMANUEL BIBLE CHURCH, (formerly Immanuel Baptist Church), SPA 80-A-058-1, application under Sect. 3-203 of the zoning Ordinance to amend S-80-A-058 for church and related facilities to permit additions to church building and parking additions, located at 5211 Backlick Road, on approximately 12.9 acres of land, zoned R-2, Lee District, Tax Map 71-4((1))35, 36A and 71-4((2))1, 2, 3. (DEF. FROM 3/21/89 TO ALLOW TIME FOR THE VACATION OF MATTHEW PLACE)

Chairman Smith stated that this case had been deferred from March 21, 1989 in order to allow time for the vacation of Matthew Place.

Lori Greenleaf, Staff Coordinator, stated that the public hearing had been held on March 21, 1989 to allow time for the Planning Commission and the Board of Supervisors (BOS) to hear the pending special exception application and to allow time for a decision to be rendered on the vacation of Matthew Place. On April 17, 1989, the BOS approved the Special Exception which allowed an increase in the maximum daily enrollment to 370, expand the hours, and increase land area which are also shown on the special permit plat. On May 22, 1989, the BOS approved the vacation of Matthew Place as shown on the special permit plat. The applicant has now shifted the location of the building and provided additional landscaping, thus staff recommended approval of the application.

Chairman Smith asked if there was any additional information not reflected in the addendum that had been distributed to the Board and Mrs. Greenleaf replied that there were corrections to the development conditions.

As there seemed to be some confusion on the part of the Board as to the status of the case, Ms. Greenleaf again explained that the public hearing had been held on March 21, 1989 and that the Board had deferred this case until such time as the vacation of Matthew Place was approved. She stated that staff now recommended approval of the application as the applicant had moved the building back and provided additional landscaping.

Mrs. Thonen questioned staff as to whether or not the landscaping would run along the front of the property and Ms. Greenleaf explained that the landscaping would be located in front of the building and also along the property line.

Mr. Hammack asked staff to outline the changes in the development conditions and Ms. Greenleaf proceeded as requested noting the following changes:

Conditions 2 and 6, the date should be changed to "April 24, 1989".

Condition 8 should be revised to reflect "Condition 7 above" rather than Condition 8 above.

Condition 10, the date should be changed to "April 24, 1989" and any notations to Special Exception should be changed to "Special Permit."

Condition 11 the date should be changed to April 24, 1989 and any notations to Special Exception should be changed to "Special Permit."

Mr. Hammack asked if the applicant was in agreement with these changes and Mrs. Greenlief stated that the applicant had brought these changes to her attention.

As there was no further discussion, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to SPA 80-A-058-1 subject to the development conditions contained in the addendum dated April 6, 1989 with the revisions suggested by staff.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-A-058-1 by IMMANUEL BIBLE CHURCH, under Section 3-203 of the Zoning Ordinance to amend S-80-A-058 for church and related facilities to permit additions to church building and parking additions, on property located at 5211 Backlick Road, Tax Map Reference 71-4((1))35, 36A and 71-4((2))1, 2, 3, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is S-203.
3. The area of the lot is 12.9 acres of 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 Section 8-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted only for the additions shown on the special permit plat dated April 24, 1989. Any changes in this special permit use other than minor engineering details, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform with the approved Special Permit plat and these conditions.
5. If the vacation request for Matthew Place is not approved, Matthew Place shall be improved to public street standards as determined by the Virginia Department of Transportation and the special permit plat shall be revised to delete the parking currently around Matthew Place. If the vacation is approved as shown on the special permit plat, the applicant shall improve that portion of Matthew Place not vacated to public street standards and provide a turn-around as determined by the Virginia Department of Transportation.



6. At such time as Matthew Place is either vacated or improved, or enrollment at the private school of general education reaches 281, the existing entrance on Becklick Road shall be closed as shown on the special permit plat dated April 24, 1989.
7. Between January 1, 1991 and March 21, 1991, the applicant shall submit a transportation study to the Fairfax County Office of Transportation and the Zoning Evaluation Division which assesses the safety operation of the existing entrance on Braddock Road to determine if the entrance should be shifted to align with a median break. This study shall include current traffic counts for Braddock Road, accident information and existing trip generation rates for the church/school use. Fairfax County may require additional information as needed. The study shall be subject to approval by the Office of Transportation. Should the Office of Transportation determine that the entrance should be shifted to align with a median break, the entrance shall be relocated.
8. A public access easement along the frontage of the site shall be recorded at the time of site plan review. The purpose of this public access easement shall be to facilitate the provision of interparcel access to Lot 34 should that be deemed necessary in the future in accordance with Condition 7 above.
9. Any attached sign or other method of identification shall conform with Article 12 of the zoning Ordinance.
10. Transitional Screening 1 shall be provided in the following areas:
  - o Along the portion of the eastern lot line adjacent to Lot 34.
  - o Along the southern lot line
  - o Along the side and rear lot lines of Lot 1

Existing vegetation shall be retained with additional plantings added to the southern and eastern lot lines to satisfy the intent of Transitional Screening 1 as determined by the County Arborist.

The type, quantity, size, and location of these plantings shall be reviewed and approved by the County Arborist. Plantings along the western lot line shall be implemented as shown on the approved special permit plat dated April 24, 1989. The purpose of the plantings adjacent to the western lot line shall be primarily to screen the parking lot and also provide visual relief to the building addition. A fifteen foot wide strip of plantings shall be provided along the western side of the L-shaped addition as shown on the same special permit plat. The purpose of these plantings shall be to screen the building addition. The County Arborist shall determine the type, quantity, size and location for the plantings in these areas.

11. A six foot high solid wood fence shall be provided along the southern lot line as shown on the special permit plat dated April 24, 1989. A split rail fence shall be provided around Lot 1 as shown on the special permit plat. The barrier requirement shall be waived along all other lot lines.
12. Interior parking lot landscaping shall be provided in accordance with Article 13 of the zoning Ordinance.
13. There shall be a maximum of 1,000 seats in the main area of worship and a corresponding minimum of 250 parking spaces. The maximum number of parking spaces shall be 430. All parking for this use shall be on site. The nineteen spaces shown directly off of the turn-around for Matthew Place shall be deleted from the special permit plat.
14. Foundation plantings shall be provided around the proposed additions which soften and screen the visual impact of all the additions. The type, size, and placement of these plantings shall be reviewed and approved by the County Arborist.
15. A geotechnical review shall be provided for approval by the Department of Environmental Management (DEM), if determined necessary by the Director, DEM and recommendations made by DEM shall be implemented.
16. A trail shall be provided along the site's frontage on Braddock Road and Becklick Road in accordance with the Countywide Trails Plan. The exact location and type of trail and a determination as to whether the existing sidewalk satisfies this trail requirement shall be made at the time of site plan review.

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17. The temporary use of three (3) trailers for Sunday School classrooms is approved for a period of two (2) years from October 19, 1988 unless the building addition proposed in Phase II is approved. If so, the trailers shall be removed at such time as the Non-Residential Use Permit is issued for the new building. The Zoning Administrator may renew the use of the trailers for two terms of one (1) year each. A request for renewal shall be submitted by the applicant 30 days prior to the expiration of the trailer use.
18. There shall be no clearing of this site for the trailers without approval of the County Arborist.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Exception unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 210, May 23, 1989, (Tape 2), Scheduled case of:

10:45 A.M. GERALD P. & DIANE M. LARAIE, VC 89-P-012, application under Sect. 18-401 of the Zoning Ordinance to allow construction of sunroom addition to dwelling to 21.2 feet from rear lot line (25 ft. min. rear yard req. by Sect. 3-207), located at 2606 Oakledge Court on approximately 13,651 square feet of land, zoned R-2(C), Providence District, Tax Map 37-4((16))44.

Denise James, Staff Coordinator, presented the staff report.

The applicant, George LaHaie, 2606 Oakledge Court, Vienna, Virginia, came forward and stated that the lot was exceptionally shallow with a severe slope in the rear, that the lot was heavily wooded therefore there would be no visual impact, and that there are no objections from the neighbors.

Mr. Ribble asked the applicant for a copy of the plan for the sunroom and deck addition and Mr. LaHaie stated that he had not brought the plan with him. At the request of Mrs. Harris, Mr. LaHaie used the viewgraph to indicate the exact location of the sunroom. In response to a question from Mr. Hammack, Mr. LaHaie explained that he planned to join the existing deck with the proposed sunroom. Chairman Smith questioned the applicant as to whether or not he could reduce the size of the addition and Mr. LaHaie stated that to cut down the size of the room would only allow him to construct a long, narrow room which would be virtually useless.

There were no speakers to address this request nor any closing comments from staff and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to deny the request as he did not believe that the applicants had satisfied the standards.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-012 by GERALD P. AND DIANE M. LARAIE, under Section 18-401 of the Zoning Ordinance to allow construction of sunroom addition to dwelling 21.2 feet from rear lot line, on property located at 2606 Oakledge Court, Tax Map Reference 37-4((16))44, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2(C).
3. The area of the lot is 13,651 square feet of land.

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

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

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

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

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

Mr. Kelley seconded the motion. The motion carried by a vote of 5-0 with Mrs. Thonen and Mr. DiGiulian not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and will become final on June 7, 1989.

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Page 211, May 23, 1989, (Tape 2), Scheduled case of:

11:00 A.M. RIDGEMONT MONTESSORI SCHOOL, INC. APPEAL, A 89-D-005, to appeal Zoning Administrator's determination that a condition of appellant's Special Permit requires installation of a hedge along the front lot line, located at 6519 Georgetown Pike, on approximately 1.4854 acres of land, zoned R-1, Dranesville District, Tax Map 22-3(1)4B.

Barbara Byson, Director, Zoning Evaluation Division, Office of Comprehensive Planning, stated that the issue before the Board was very simple. The appellant contends that the BEA intended to delete the hedge in condition number 9, but inadvertently neglected to

do so. She called the Board's attention to Attachment 9 of the staff report, a portion of Mrs. Thonen's testimony which showed that the wording of the condition was very clear and specific, leaving no room for administrative interpretation.

The appellant's agent, Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn, and Hanes, P.O. Box 547, Fairfax, Virginia, came forward and submitted a verbatim transcript of the discussion with respect to the transitional screening which showed the ambiguity of the condition. Mr. Via stated that he believed that it had been the board's intent to have the applicant replace all existing dead trees, which had been done.

Mrs. Thonen asked if there was a viewgraph showing the entire site and Ms. Byron handed Mrs. Thonen a plat to review. Following a review of the plat, Mrs. Thonen stated that it was not her intent to screen the church from the road but did believe the hedge was appropriate. Mr. Via argued that the hedge had been removed, but if the hedge was required who determined what type and what size as the condition was unclear. Mrs. Harris noted that had she been on the Board when this case was heard she would not have supported the motion as she believed there should be a hedge. However, she agreed that the condition was ambiguous but also agreed that Ms. Byron was correct in her determination that the only remedy available to the appellant was the filing of a new application.

Following a discussion among the Board members regarding the development conditions with respect to the hedge, Mrs. Thonen asked staff what would happen if the conditions were left as approved. Ms. Byron explained that if the BZA upheld her determination then the appellant would have to file a special permit amendment to get clarification or deletion of the condition, or file a site plan showing a hedge along the front lot line, or the BZA could uphold the appellant and determine that a hedge was not necessary and the conditions could be deleted without another public hearing. Mrs. Thonen stated that she did not believe the conditions should be changed without notifying the abutting neighbors.

In response to a question from Mr. Kelley as to who was responsible for assuring that the development conditions are correct, Ms. Byron replied that the ideal solution was for the staff and the Board to work together at the time of the public hearing as staff cannot automatically change a condition approved by the Board.

Mr. DiGiulian stated that he had seconded the motion and it had been his understanding that there would be a hedge. He added that without another public hearing he would not want to overrule the interpretation by Ms. Byron and made a motion to uphold her decision. Mr. Hammack seconded the motion.

Following comments from the Board, Ms. Byron stated that she hoped that if the appellant chose not to file a special permit amendment that an acceptable agreement could be reached between staff and the appellant.

The motion failed by a vote of 3-4 with Chairman Smith, Mrs. Thonen, and Mr. DiGiulian voting aye; Mrs. Harris, Mr. Hammack, Mr. Kelley, and Mr. Ribble voting nay.

Mr. Hammack stated that he could not support the motion as it had been his understanding that only the play area and the parking area were to be screened.

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11:30 A.M. BLUE RIDGE ARSENAL, INC., a Virginia corporation, SP 89-S-007, application under sect. 5-503 of the Zoning Ordinance to allow an indoor firing range, located at 14725K Flint Lee Road on approximately 11.80 acres of land, zoned I-5, WSPCD, Springfield District, Tax Map 34-3((1))39.

Denise James, Staff Coordinator, presented the staff report and stated that staff's only concern was that the plat submitted with the application did not clearly indicate the designated parking spaces for this use. She added that the applicant had submitted revised plats and based on those staff recommended approval of SP 89-S-007 subject to the development conditions in the staff report.

Andrew Keeney, attorney with the law firm of Baker and Hostetler, 437 North Lee Street, Alexandria, Virginia, came forward. He introduced Jack Miller, co-owner, officer, and member of the Board of Directors of the company, and Randy Atkins, officer of RGM Development Company, landlord and developer. Mr. Keeney agreed with the staff report but asked that the Sunday hours be changed to "10:00 a.m. to 6:00 p.m." in the development conditions.

Jane Kelsey, Chief, Special Permit and Variance Branch, indicated agreement.

Mr. Kenney pointed out that a new plat had been submitted showing the location of parking for the proposed use and added that the employees would be encouraged to park away from the entrance. He asked the Board to waive the eight day time limitation in order that construction could commence immediately.

There were no speakers to address the request nor any staff closing comments and Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated May 18, 1989 with a change in condition number 6 to reflect the Sunday hours to be "10:00 a.m. to 6:00 p.m."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-007 by BLUE RIDGE ARSENAL, INC., under Section 5-503 of the Zoning Ordinance to allow an indoor firing range, on property located at 14725K Flint Lee Road, Tax Map Reference 34-3((1))39, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1989; and

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

1. That the applicant is the lessee of the land.
2. The present zoning is I-3 and WSPCD.
3. The area of the lot is 11.80 acres of 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. 8-005 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. There shall be a minimum of 15 parking spaces associated with this use. All parking shall be on site.
6. The hours of operation shall be limited to 10:00 am to 9:00 p.m. Monday through Friday, 10:00 am to 7:00 p.m. on Saturday and 10:00 am to 6:00 p.m. on Sunday.
7. There shall be a maximum of 5 employees associated with this use on site at any one time.
8. There shall be a maximum of 20 patrons on site at any one time.
9. Any signs erected shall be in conformance with Article 12 of the Zoning Ordinance.

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10. Soundproofing shall be provided which is designed to reduce the noise generated on site to 55 dBA or less in units adjacent to the firing range.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

The Board granted the applicant a waiver of the eight day time limitation.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 1989. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 12:50 p.m. for lunch and reconvened at 1:55 p.m.

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Page 214, May 23, 1989, (Tape 2), Scheduled case of:

11:45 A.M. NATIONAL MEMORIAL PARK, INC., SPA 88-P-050-1, application under Sect. 3-103 of the Zoning Ordinance to amend SP 88-P-050 for a cemetery to modify the approved transitional screening requirements, located at Hollywood Road on approximately 76.34 acres of land, zoned R-1, Providence District, Tax Map 50-1((1))36.

Jane Kelsey, Chief, Special Permit and Variance Branch, outlined the history of the case by stating that on July 28, 1988 the Board of Zoning Appeals (BZA) approved the deletion of 29 acres from cemetery use with development conditions. The applicant was now requesting a modification to development condition 5 which was set forth on page 3 of the staff report. She noted that there was a court case pending in the Circuit Court which challenged the BZA's decision to uphold the Zoning Administrator in her determination that a Special Permit application had to be filed prior to the deletion of the land area. The applicant agreed to dismiss the lawsuit with prejudice should the BZA approve the current application. In closing, Ms. Kelsey stated that staff recommended approval of this application.

Mr. Hammack questioned staff as to whether or not the development conditions contained in the staff report were the same as those conditioned by the BZA at the July 28th public hearing. Ms. Kelsey noted that condition number 13 had been added which reads, "The applicant shall dismiss with prejudice the pending lawsuit, National Memorial Park v. Board of Zoning Appeals, At Law No. 85086, forthwith" and the language "except for the aforementioned brick wall" had been added to the first bullet, condition number 5.

Ms. Kelsey added that Patrick Taves, Assistant County Attorney, was present to respond to questions. Mr. Hammack asked why the Board was being requested to modify a development condition and Mr. Taves stated that this would settle the lawsuit out of court. Mr. Taves further explained that the lawsuit challenged the Zoning Administrator's decision that a special permit amendment was required in order to delete land area and that case was scheduled for trial on June 13th. If the applicant were to prevail in that suit then the whole special permit amendment process, the subject of this application would be moot, because it would not be required. Mr. Taves added that he did not believe it was a particularly strong lawsuit from the plaintiff's perspective but did believe this was a fair and adequate resolution to the issue.

Mrs. Harris quoted from the Minutes of the July 28, 1988 public hearing wherein the applicant's attorney agreed that "if the modification request should not meet the Board's satisfaction, the applicant would fall back and rely upon the transitional screening as proposed by staff, thereby making any disagreement that might be perceived between the applicant and staff moot". Mr. Taves clarified that the lawsuit had nothing to do with the conditions nor anything to do with the BZA's approval of the special permit amendment, except to the extent that it dealt with whether or not that amendment was necessary.

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Ms. Kelsey interjected that staff believed this proposal would be better because it provided 36 feet of planted area as opposed to 25 feet.

Barbara Beach, attorney with the law firm of Ross, Marsh, Foster, Myers and Quiggle, 324 North Fairfax Street, Alexandria, Virginia, came forward to represent the applicant and stated that she had been the co-attorney at the last public hearing and perhaps could address any questions that the Board might have. She stated that she believed there was an inconsistency in development conditions 5 and 9 as they do not coincide with the plat that had been submitted with the application which had been part of the settlement criteria which the County had requested. She stated that it had been her understanding that in the second strip, after the first 25 feet which would now be 11 feet, there was suppose to be one tree on centerline every 10 feet but instead there are plantings in the first 25 feet and a hedge in the second 11 feet, wherever there was open space. Ms. Beach stated that meetings have been held with the surrounding neighbors to discuss this proposal and Van Metre, one abutting property owner, had their landscape architect review the proposal and was prepared to offer an alternative plan.

Chairman Smith asked what interest Van Metre had with respect to this request. Ms. Beach explained that Van Metre was concerned that the proposed screening would not do what staff intended and would only succeed in destroying a significant number of the existing trees.

The Board questioned why Van Metre, as the contract purchaser of the land deleted, had not raised these concerns at the previous public hearing. Ms. Beach did not respond.

Mrs. Harris asked Ms. Beach to indicate on the viewgraph the location of the Lewis and Smith tracts and asked who would be charged with the maintenance of these lands. Ms. Beach pointed out the land that had been deleted at the previous public hearing and indicated that both tracts are still a part of the cemetery.

Ms. Beach continued by stating that the applicant was willing to comply with staff recommendations but added that she believed that there was an inconsistency with conditions 5 and 9 and asked the Board to hear Van Metre's representative's comments.

Ms. Kelsey noted that the applicant had submitted a landscape plan and the County Arborist reviewed the plan and believed that this would adequately serve the intent of the transitional screening requirement. She noted that the hedge was to go in the open space, if any, within the transitional screening or the planted area and come up to the point where the brick wall would begin.

Chairman Smith stated that this was consistent with what was presently on the cemetery property.

Mrs. Harris called the Board's attention to the 200 setback requirements from residential property in the previous approval. Ms. Kelsey explained that the Lewis and Smith tracts are not a part of the application, therefore the conditions stipulated on S-833-68 and S-079-69 were not incorporated into this application but do remain in force.

Jeff S. Lee, architect with Lee and Lui Associates, Inc., 1317 Connecticut Avenue, NW, Washington, DC, came forward. He stated that he had visited the site after reviewing the plan and did not believe that staff's recommendations would accomplish what was intended as most of the site was heavily treed and to plant additional trees would be more disruptive. Mr. Lee addressed the merits of constructing a brick wall as this too would also destroy the existing trees.

Mr. Hammack asked what Van Metre planned to do with the property and why they had not brought forth these concerns at the previous public hearing. Mr. Lee replied that they planned to develop the site into single-family residential dwellings and that they had not reviewed the proposed plan until March 8th.

In response to a question from Mrs. Harris with respect to the existing buffering, Mr. Lee added that perhaps it would be beneficial to augment the existing vegetation with evergreens to provide additional screening during the winter months.

Chairman Smith asked staff if the Board could deviate from the landscape plan that was submitted with the application. Ms. Kelsey explained that the application was for an amendment to modify the transitional screening requirement. Mr. Hammack questioned if this would need to be readvertised. Ms. Kelsey checked the ad and replied that it would not be necessary to readvertise.

Mr. Taves noted that if the Board approved the plan as submitted then the lawsuit would be dismissed with prejudice. The whole purpose of this application was to have the Board decide whether or not they wanted the lawsuit to be resolved in this way. This was discussed with the BEA in Executive Session last November and the BEA had agreed with this in concept. Mr. Hammack raised the question of Van Metre's concerns and Mr. Taves pointed out that all transitional screening requested by staff was on the applicant's property. Mr. Taves stated Van Metre could supplement the existing vegetation on their property at the time their property was developed.

Mr. DiGiulian stated there had been testimony indicating that the proposed screening would destroy the existing trees and still not do what staff intended. He added that he would like to see a workable landscape plan.

Mr. Hammack noted that had he known that the 50 foot screening requirement would cause the destruction of the existing vegetation he would have viewed the development condition differently. With regard to Van Metre, Mr. Hammack stated that he believed that Van Metre should have brought out their concerns at the previous public hearing because they had been a co-applicant.

Chairman Smith stated that he had heard Van Metre's concerns simply as a courtesy. Mr. DiGiulian stated that was not concerned with Van Metre at all but was concerned that a landscape architect had testified that the proposed plan was not a workable one. Ms. Kelsey stated that she could not comment on the photographs submitted by the architect but that the applicant had proposed the landscape plan that was before the Board.

Mr. Taves noted that the brick wall was not a part of this application. Mr. Hammack stated that the 50 foot buffer where the brick wall would be constructed was where all the planting would be installed. Mr. Taves and Ms. Kelsey explained that was incorrect.

Chairman Smith called Ms. Beach back to the podium.

Ms. Beach called the Board's attention to the landscape plan which reflected the changes that the applicant was requesting, such as doing away with the hedge and planting the trees every 10 feet on center. She stated that the applicant was requesting the deletion of condition number 5.

Mr. Taves interjected that if grave sites were going to be placed in the 14 feet that was going to be removed then all the woods were going to be destroyed unless the applicant had an unique procedure that they are using. Ms. Beach stated that there would be no grave sites within the buffer zone.

Following further discussion, it was the consensus that the Board defer this application until such time as the applicant could submit a revised landscape plan. Mr. DiGiulian made a motion to defer with a second by Mr. Ribble.

Chairman Smith asked staff for a date and time. Mr. Taves pointed out that the return date to the court on the lawsuit was May 29th but the applicant had agreed to dismiss the lawsuit if the Board granted the request today. If the Board deferred the application, the case should be heard before June 13th due to the lawsuit. Mr. Taves suggested that the Board request that Ms. Beach agree with a continuation.

Chairman Smith questioned Ms. Beach about a continuation and Ms. Beach replied that the applicant would be happy to join with the County Attorney in a petition for a continuation although two had already been granted. She asked that the Board defer action on this application for two weeks in order for a new landscape plan to be prepared and submitted, which was before the scheduled trial date. Mr. Taves, as Counsel for the Board, advised the Board to deny the application before them and proceed with the scheduled trial date, if the applicant was not willing to agree with a continuation. Chairman Smith agreed with Mr. Taves.

Mr. Taves pointed out that it took much prodding from the County Attorney's Office before the applicant filed this application and the lapse in time was not on the part of the County.

Ms. Beach again suggested that the Board defer this application for two weeks. Chairman Smith asked if she would agree with a continuation of the return date as this was a very timely and expensive process.

A discussion took place between the Board and staff regarding a deferral date. Ms. Kelsey suggested June 6, 1989. Ms. Beach stated the applicant would agree with a return date of June 8th and hopefully at that time the case would be moot.

Chairman Smith asked staff for a time for the deferral on June 6th. Ms. Kelsey replied 9:00 p.m. Hearing no objection, the Chair so ordered.

Ms. Kelsey noted that the landscape plan should be submitted to Lori Greenlief, who would be the Acting Branch Chief, as Ms. Kelsey would be out of town.

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Page 216, May 23, 1989, (Tape 3), Scheduled case of:

12:00 P.M. ROBERT L. & SUSAN C. PANER, VC 89-A-018, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 8 feet from side lot line such that side yards total 17.2 feet (8 ft. min., 20 ft. total min. side yard req. by Sect. 3-307), located at 5612 Meridian Hill Place on approximately 9,003 square feet of land, zoned R-3(C), Annandale District, Tax Map 78-2((14))88.



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Denise James, Staff Coordinator, presented the staff report.

The co-applicant, Robert L. Panek, 5612 Meridian Hill Place, Burke, Virginia, came forward and referenced his statement of justification submitted with the application.

There were no speakers to address the request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant the request subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-018 by ROBERT L. AND SUSAN C. PANEK, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 8 feet from side lot line such that side yards total 17.2 feet, on property located at 5612 Meridian Hill Place, Tax Map Reference 78-2((14))88, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3(C).
3. The area of the lot is 9,003 square feet of land.

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

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

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

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

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

Page 218, May 23, 1989, (Tape 3), (Robert L. & Susan C. Panek, VC 89-A-018, continued from Page 217)

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1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Kelley not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 218, May 23, 1989, (Tape 3), Scheduled case of:

12:15 P.M. HAROLD F. & VELMA L. MULL, VC 89-A-019, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 8.9 feet from side lot line (12 ft. min. side yard req. by Sect. 3-307), located at 4816 Red Fox Drive on approximately 11,200 square feet of land, zoned R-3, Annandale District, Tax Map 69-4((6))74.

Denise James, Staff Coordinator, presented the staff report.

The co-applicant, Harold F. Mull, 4816 Red Fox Drive, Annandale, Virginia, came forward and presented his justification by stating that the house was placed in such a position on the lot that the garage could not be constructed without a variance.

Mrs. Harris pointed out that the property had no unusual characteristics and asked if the applicant would be agreeable to the addition being located 9.9 feet from the side lot line. Mr. Mull indicated that 9.9 feet would be acceptable.

As there were no speakers to address the request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant-in-part subject to the development conditions contained in the staff report dated May 16, 1989.

Chairman Smith explained to the applicant that he would need to submit new plats showing the 9.9 feet rather than 8.9 feet.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-019 by HAROLD F. AND VELMA L. MULL, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 8.9 (THE BOARD GRANTED 9.9 FEET) feet from side lot line, on property located at 4816 Red Fox Drive, Tax Map Reference 69-4((6))74, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,200 square feet of land.
4. The lot is narrow due to the placement of the house.
5. The applicant could not build without a variance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. Revised plats shall be submitted to the Board of Zoning Appeals showing the building addition to 9.9 feet from the side lot line.

Mr. DiGiulian and Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack and Mr. Kelley not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 219, May 23, 1989, (Tape 3), Scheduled case of:

12:30 P.M. GEORGE KENNEY, VC 89-V-022, application under Sect. 18-401 of the zoning Ordinance to allow construction of a dwelling to 15.0 feet from a street line on a corner lot (35 ft. min. front yard req. by Sect. 3-207), located at 8611 Old Mt. Vernon Road on approximately 5,679 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 101-4((10))1.

Denise James, Staff Coordinator, called the Board's attention to a letter received from the neighbor who had been incorrectly notified.

The applicant, George Kenney, 8611 Old Mount Vernon Highway, Alexandria, Virginia, came forward and stated that the one property owner in question had been notified outside the

required time and had voiced no objection to the request. He asked the Board to make an exception in this instance as he had flown in from Hawaii in order to be present for the public hearing.

Chairman Smith ruled that the applicant had not met the notice requirement as set forth in the Zoning Ordinance.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked Mr. Kenney what would be convenient for him in July. Mr. Kenney explained that he and his family would be relocating to the area in June and any time after the 15th would be fine. Ms. Kelsey suggested July 6, 1989 at 9:30 a.m.

Hearing no objection, the Chair so ordered.

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Page 220, May 23, 1989, (Tape 3), Scheduled case of:

12:45 P.M. JEFF TURNER, SP 89-D-008, application under Sect. 8-901 of the Zoning Ordinance for reduction to minimum yard requirements based on error in building location to allow 15.1 foot high shed to remain 2.1 feet from side lot line (10 ft. min. side yard req. by Sects. 3-407 and 10-104), located at 2139 Pimmit Drive on approximately 13,121 square feet of land, zoned R-4, Dranesville District, Tax Map 40-1((6))(A)8.

Denise James, Staff Coordinator, presented the staff report.

The applicant, Jeff Turner, 2139 Pimmit Drive, Falls Church, Virginia, stated that he had merely replaced a deteriorating shed when he purchased the property. Mr. Turner submitted letters from his neighbors in support of the request and added that the neighbor who objected to the location of the shed had recently moved into the neighborhood.

Chairman Smith called for speakers in support of the request and Abolhassan Taghavana, 2142 Pimmit Drive, Falls Church, Virginia, came forward. Mr. Taghavana stated that he believed the new shed was a vast improvement over the previous shed.

There were no speakers in opposition to the request nor any closing comments by staff and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request under the mistake section and subject to the development conditions contained in the staff report dated May 18, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-D-008 by JEFF TURNER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow 15.1 foot high shed to remain 2.1 feet from side lot line, on property located at 2139 Pimmit Drive, Tax Map Reference 40-1((6))(A)8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

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- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
  3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
  4. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

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

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

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

1. This approval is granted for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. A Building permit shall be obtained within forty-five (45) days for the shed.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date of the Special permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack and Mr. Kelley not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 222, May 23, 1989, (Tape 3), Scheduled case of:

1:00 P.M. MOBIL OIL CORPORATION, SPA 71-P-224-1, application under Sect. 8-014 of the Zoning Ordinance to amend S-224-71 for a car wash to permit change of permittee, located at 2523 Chain Bridge Road on approximately 53,743 square feet of land, zoned C-5, Providence District, Tax Map 38-3(1)44-D; 38-3(2)115.

Denise James, Staff Coordinator, presented the staff report and stated that there was no other change except for the permittee and that staff recommended approval. She noted that all development conditions were carried forward without any modifications.

Philip Leber, attorney with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, represented the applicant. Mr. Leber agreed with staff's comments and asked the Board to waive the eight day time limitation as this was an ongoing Business.

Chairman Smith closed the public hearing as there were no speakers nor any staff closing comments.

Mr. DiGiulian made a motion to grant subject to the development conditions contained in the staff report dated May 18, 1989.

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack and Mr. Kelley not present for the vote.

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The Board also granted the applicant a waiver of the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

The Board of Zoning Appeals (BZA) does hereby on this the 23rd day of May 1989, allow a change in name of the applicant for SP 71-P-224, from B. P. Oil, Incorporated to Mobil Oil Corporation.

All conditions of this special permit shall remain in effect. The Non-Residential Use Permit shall be amended to reflect this change.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated in the application and is not transferable to other land.
2. This permit shall expire one year from this date unless construction has started or unless renewed by action of the Board prior to the date of expiration.
3. This approval is granted for the buildings and uses indicated on plats submitted with this application. Any additional structures of any kind, changes in use or additional uses, whether or not these additional uses require a use permit, shall be cause for this use permit to be re-evaluated by this Board. These changes include, but are not limited to, changes of ownership, changes of operator, changes in signs, and changes in screening or fencing.
4. This granting does not constitute exemption from the various requirements of this county. The applicant shall be himself responsible for fulfilling his obligation to obtain certificates of occupancy and the like through the established procedures and this special use permit shall not be valid until this has been complied with.
5. The resolution pertaining to the granting of the Special Use Permit shall be posted in a conspicuous place along with the Certificate of Occupancy on the property of the use and be made available to all Department so the County of Fairfax during the hours of operation of the permitted use.
6. There shall be a minimum of 16 parking spaces.
7. There shall not be any display, selling, storing, rental or leasing of automobiles, trucks, trailers, or recreational vehicles on the property.
8. Construction of a service drive along the frontage of Route 123 will be required.
9. Landscaping, screening and planting shall be as approved by the Director of County Development.

This motion only applies to the land that is in Fairfax County.

Building to be 1,800 square feet.

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.

Under Sect. 9-015 of the Zoning Ordinance, this special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 1989. This date shall be deemed to be the final approval date of this name change.

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Mr. DiGiulian seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack and Mr. Kelley not present for the vote.

The Board also granted the applicant a waiver of the eight day time limitation.

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Approval of May 23, 1989 Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the Board would not be meeting on May 30, 1989, thus the Resolutions would automatically be approved at the end of the eight day waiting period or the Board could extend the waiting period.

Mr. Ribble made a motion to extend the eight days to July 6, 1989 in order for the Resolutions to come back to the Board for its review. Mr. DiGiulian seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Kelley not present for the vote.

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Approval of Minutes for April 20, 1989

Mr. Ribble made a motion to approve the Minutes for April 20, 1989 as submitted. Mr. DiGiulian seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Kelley not present for the vote.

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Approval of May 18, 1989 Resolutions

Mr. DiGiulian made a motion to approve the Resolutions for May 18, 1989 as submitted. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Kelley not present for the vote.

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Discussion of Karloid Appeal with County Attorney

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that perhaps the Board would like to defer this discussion until such time as all Board members were present as staff had not yet received a Court order to prepare a Return of Record.

The Board asked Ms. Kelsey to telephone the County Attorney's Office to discuss a deferral with J. Patrick Taves, Assistant County Attorney. After calling the County Attorney's Office, Ms. Kelsey stated that Mr. Taves had suggested that the Board defer this discussion until after the Board had acted on the Hazelton Appeal.

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As there was no other business to come before the Board, the meeting was adjourned at 3:55 p.m.

  
Betty S. Hartt, Clerk  
Board of Zoning Appeals

  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 8/28/89

APPROVED: 9/7/89

5/22 K





The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, June 6, 1989. The following Board Members were present: Chairman Daniel Smith; Vice-Chairman John DiGiulian; Paul Hammack; Martha Harris; and Mary Thonen. Robert Kelley and John Ribble were absent from the meeting.

Chairman Smith called the meeting to order at 8:20 p.m. and asked everyone to join with him in the invocation.

Chairman Smith asked if there any Board Matters to discuss before the meeting began. As there were none, Chairman Smith called for the first scheduled case.

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Page 225, June 6, 1989, (Tape 1), Scheduled case of:

8:00 P.M. J. RONALD MASURIK, VC 89-A-025, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to an existing attached garage to 3.1 feet from side lot line (12 ft. min. side yard required under Sect. 3-307), located at 8250 Toll House Road on approximately 12,325 square feet of land, zoned R-3, Annandale District, Tax Map 70-2((7))25.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, J. Ronald Masurik, 8250 Toll House Road, Annandale, Virginia, presented the statement of justification, stating that the primary reason for his request was due to the narrowness of the property.

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

Mr. Hammack made a motion to deny VC 89-A-025.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-025 by J. RONALD MASURIK, under Section 18-401 of the Zoning Ordinance to allow construction of addition to an existing attached garage to 3.1 feet from side lot line, on property located at 8250 Toll House Road, Tax Map Reference 70-2((7))25, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,325 square feet of land.
4. That, even with the addition of a 42" ramp, the garage provides adequate space for a van to pull in and unload a wheelchair in the existing space, without encroaching an extra 3.1 feet toward the neighbor's property.
5. That there is an generous amount of space to the rear of the proposed addition which can be used for storage.
6. That the medical condition of the applicant is not a consideration under the Required Standards for a variance.

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

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

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

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

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

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0. Mr. Kelley and Mr. Kibble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 1989.

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8:15 P.M. BALLANTRAE DEVELOPMENT, INC., VC 89-D-027, application under Sect. 18-401 of the zoning Ordinance to allow subdivision into seven (7) lots, proposed lot 5 having width of 20.01 feet (150 ft. min. lot width required by Sect. 3-106), located at 1155 Chain Bridge Road and 1176 Ballantrae Lane, on approximately 7.3103 acres of land, zoned R-1, Dranesville District, Tax Map 31-1((2))38B1 and 38B3.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Marianne G. Bunden, Esquire, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, suite 900, McLean, Virginia, represented the applicant and distributed a letter to the Board Members stating the applicant's position. Ms. Bunden pointed out that this application had been previously approved in January of 1987 and that the conditions on the site are the same, except for certain improvements which had been made in conformance with the development conditions set forth in that approval. Ms. Bunden stated that the subdivision plan had not been timely filed, therefore the permit expired which precipitated this refileing.

Ms. Bettard took this opportunity to correct development condition 2 by changing the word construction to "subdivision."

Mr. Hammack questioned staff as to whether or not they had supported the previous application. Jane Kelsey, Chief, Special permit and variance Branch, stated it was not staff's policy to make recommendations on any variance, but did note in the staff report that the application must meet the standards for a variance as set forth in the zoning Ordinance, and perhaps how the application meets or does not meet those standards.

With respect to the subject property, Mr. DiGiulian asked if this property or the adjacent property had changed in any way since the previous application, and Ms. Bettard replied that to staff's knowledge it had not.

In response to a question from Mr. Hammack, Ms. Kelsey explained that because of the heavy caseload and the shortage of staff, variances had not been given as thorough review in 1986 as they are now being given, with respect to the standards.

Max Kennedy, 1140 Chain Bridge Road, McLean, Virginia, came forward and asked for a clarification as to what the applicant proposed.

Chairman Smith explained that the present zoning was R-1 and since the subject property contained 7 acres of land, it met the lot requirements. Mr. Hammack added that the previous application had expired prior to the subdivision plat being recorded, thus the applicant had to file a new application. Chairman Smith noted that the application met the standards and that the previous application had been approved.

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

Mr. DiGiulian made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-027 by BALLANTRAE DEVELOPMENT, INC., under Section 18-401 of the Zoning Ordinance to allow subdivision into seven (7) lots, proposed lot 5 having width of 20.01 feet, on property located at 1155 Chain Bridge Road and 1176 Ballantrae Lane, Tax Map Reference 31-1((2))38B1 and 38B3, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 7.3103 acres of land.
4. The application meets the nine Required Standards under the zoning Ordinance, specifically 2(D) and 2(E).
5. No circumstances have changed since this variance request was previously approved.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless the subdivision is recorded and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The applicant shall provide a trail and corresponding easement along Dolley Madison Boulevard as determined at the time of Site Plan Review.
5. The geotechnical study shall be prepared by or under the direction of a geotechnical engineer experienced in soil and Foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan as determined by DEM.
6. A tree preservation plan which preserves the qualified number of trees as determined by the County Arborist shall be submitted to the County Arborist for review and approval prior to any clearing or grading of the site. It shall indicate existing vegetation, trees to be saved and detailed limits of clearing and grading.
7. The applicant shall provide the noise attenuation measures for the acoustical treatment of highway noise impacts for residential and other noise sensitive uses in accordance with the following guidelines:
8. In order to achieve a maximum interior noise level of 45 dBA Ldn all units located between the 65-70 dBA Ldn highway noise impact contours shall have the following acoustical attributes:
  1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
  2. Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory STC rating as walls.
  3. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

In order to achieve a maximum exterior noise level of 65 dBA Ldn noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof, shall be provided for these outdoor recreation areas including rear yards, that are unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from source of the noise.

Mrs. Thones seconded the motion. The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 228, June 6, 1989, (Tape 1), Scheduled case of:

8:30 P.M. LAKE FOREST SWIM AND RACQUET CLUB, SP 88-S-102, application under Sect. 3-303 of the Zoning Ordinance to allow community swimming and tennis club, located on Dorothy Lane, on approximately 7.14 acres of land, zoned R-3(C), Springfield District, Tax Map 88-4(9)E2.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the plat before the Board was not correct with respect to the dimensions of the swimming pool. Ms. Bettard noted that staff recommended denial of this application based on the failure of Dorothy Lane to conform to Public Facilities Manual Standards which requires a 36 foot width from curb to curb. She added that if the applicant would comply with condition number 10 that staff could support the application.

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David Schibetta, 7600 Paloma Court, Springfield, Virginia, agent for the applicant, came forward and stated that the applicant had requested a slight change in the dimensions of the pool and used the viewgraph to indicate where the pool would be widened to 14 feet.

Chairman Smith asked if the proposed pool would be larger than the one shown on the plat submitted with the application and Mr. Schibetta replied that it would. He noted that he would also like to address the memorandum from the Park Authority and stated that the applicant would agree to meet all conditions including putting a minimum distance of 15 feet between the park and the deck of the pool. Chairman Smith asked if the distance could be 20 feet and Mr. Schibetta replied that could be a consideration.

Mrs. Harris commended the applicant for the quick response to the Park Authority but expressed concern as to how the traffic problem on Dorothy Lane would be addressed.

Mr. Schibetta assured Mrs. Harris that he would address that issue but asked the Board's indulgence while he clarified some pertinent points. He stated that approximately a year and a half ago they became aware of the need for community pools which need has been increased by the ongoing development. He stated that the proposed pool and tennis courts would be located the furthest distance from any of the houses as possible so as not to put an undue burden on the surrounding neighbors. Mr. Schibetta added that the parking lot had been designed to maximize tree preservation and to improve aesthetics in the area. He stated that meetings had been held with the Lake Forest Community Association in order to obtain their input on the application but to date had not received any comments. To address the traffic issue, the applicant intentionally designed the parking to provide 99 parking spaces which was well over the required 59 spaces. He added that a membership drive was underway and to date there were approximately 100 families signed up.

Mr. Hammack asked if Huntsman Park was a public park and Mr. Schibetta stated that it was and it was his understanding that the Park Authority was in the midst of a proposal for the construction of an open play area, a multipurpose court, and a tot lot which would be available to the public. Mr. Hammack questioned if the citizens using the public park would access via Dorothy Lane and Mr. Schibetta replied that was correct.

In response to a question from Mrs. Thonen regarding access to the pool, Mr. Schibetta explained that he believed that many citizens coming to the pool would use one of the five trails that run through the community. Mrs. Thonen asked why the pool was so large and Mr. Schibetta explained that it was because the pool would not be restricted to a certain area, therefore a larger pool was needed, however there would be a maximum number of memberships.

Chairman Smith asked the applicant how long it would take for him to submit revised plats. Mr. Schibetta stated that the plats had already been prepared and could be submitted to staff within 48 hours.

Chairman Smith called for speakers in support of the request and Joseph K. Lauer, 7510 Maritime Lane, Springfield, Virginia, came forward. He stated that when he purchased his property he had been told that the subject property would be developed as recreational facilities. Mr. Lauer added that the community had made a tremendous effort to develop a collector system of trails that could be used to get to the pool.

As there were no further speakers in support of the application, Chairman Smith called for speakers in opposition to the request and the following came forward: Carol G. Herman, 7402 Carath Court, Springfield, Virginia, President, Huntsman Estates Civic Association; Faustino Pino, Jr., 9201 Dorothy Lane, Springfield, Virginia; Vicki Wilmot, 9219 Dorothy Lane, Springfield, Virginia; Larry Spivack, 9200 Dorothy Lane, Springfield, Virginia; Stephen E. King, 7414 Carath Court, Springfield, Virginia; Steven M. Sperry, 7413 Dorothy Court, Springfield, Virginia; Frederick E. McCoid, 9218 Dorothy Lane, Springfield, Virginia; Barbara D. Lind, 7417 Dorothy Court, Springfield, Virginia; and Bart DeKal, 9202 Dorothy Lane, Springfield, Virginia.

The citizens stated that Dorothy Lane was already heavily traveled with commuters parking along the Lane, and to grant the request would further exacerbate the problem.

During rebuttal, Mr. Schibetta commented that he understood the citizens' concerns with respect to the traffic but it was not the applicant's intent to create a problem but merely to satisfy the community's need for recreation.

In response to questions from the Board regarding an alternative access to the site, Mr. Schibetta stated that access from the Lake Forest Subdivision would not be economically feasible because of the work that would be involved and the cost.

There was no further discussion and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny the request as she believed that the use did not meet the standards.

Mrs. Thoner stated that she would support the motion because the staff report had indicated that it could create a safety hazard unless parking was eliminated from Dorothy Lane, which was not under the control of the applicant.

Mr. Hammack supported the motion although he believed that the proposal was excellent and a very good use of the property, but that it would impact the surrounding neighborhood and that he would like to see a better ingress/egress.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-S-102 by LAKE FOREST SWIM AND RACQUET CLUB, under Section 3-303 of the Zoning Ordinance to allow community swimming and tennis club, located on Dorothy Lane, Tax Map Reference 88-4((9))H2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3(C).
3. The area of the lot is 7.14 acres of land.
4. The application does meet the General Standards of 1 and 2 because this seems to be good land use, the fact that the property was planned for this use. This proposed use at this location is in harmony with the adopted Comprehensive Plan and it is in harmony with the general purpose and intent of the applicable zoning district regulations.
5. The application does not meet General Standard 3, because the proposed use must be in harmony with and should not adversely affect the use or development of neighboring properties in accordance with the applicable Zoning Ordinance. The people on Dorothy Lane have made it clear that the use of this property will affect them and will not be harmonious with their development.
6. The application does not meet General Standard 4, which states that the proposed use shall be such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with the existing or anticipated traffic in the neighborhood. Because 600 families will be allowed membership in this swim and racquet club, the people will be forced to come out of their subdivision, down Pohick Road, around and through Dorothy Lane, which would increase vehicular traffic.

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 and the additional standards for this use as contained in Sections 8-306 and 8-403 of the Zoning Ordinance.

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

Mr. Digullian seconded the motion. The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

The Board granted a waiver of the 12-month limitation for reapplication, with the condition that the applicant submit plans which do not use Dorothy Lane as access to the proposed community facility.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 1989.

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Page 230, June 6, 1989, (Tapes 2 and 3), Scheduled case of:

8:45 P.M. RAJDEHAMI MANDIR BY PURAN C. MITTAL, SP 88-S-981, application under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities, located at 11425 Popes Head Road, on approximately 6.6681 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-4((1))7. (DEF. FROM 11/29/88 AT APPLICANT'S REQUEST. (DEFERRED FROM 5/2/89 AT PLANNING COMMISSION'S REQUEST)

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Lori Greenleaf, Staff Coordinator, presented the staff report. She stated that the application had been deferred from February 7, 1989, at the applicant's request, in order that the plat could be revised. A revised plat was submitted on March 16, 1989 with the changes noted on page 1 of the addendum to the staff report. Ms. Greenleaf stated that staff still recommended denial of the application as they did not believe that the applicant had met the standards for a special permit for reasons set forth in the staff report and addendum.

Mrs. Thones asked what the FAR was for the building development on the property and Ms. Greenleaf replied that it is proposed to be 0.058.

Chairman Smith noted that all correspondence received from citizens and the applicant would be made a part of the record of this hearing.

William Hansbarger, attorney with the law firm of Baskin, Baskin, Jackson & Hansbarger, 301 Park Avenue, Falls Church, Virginia, represented the applicant. He introduced Sitendra Shrivastava, Chairman of the Board of Trustees, Rajhandi Mandir, who addressed the Board.

Mr. Shrivastava, 12712 Kentstone Way, Fairfax, Virginia, stated that he had lived in Fairfax County for 15 years and that the church was desperately needed to provide a place of worship for the followers of the Hindu religion. There would be one small building on the property which would be built in two phases over a five year period. He stated that the church would follow all the building restrictions and standards in order to minimize any inconvenience to the surrounding neighbors. The church would be similar to any other church with one service held on Sunday from 11:00 a.m. to 2:00 p.m. with a religious function in the evening approximately four times a year; however, the church would be open during reasonable hours for anyone who wished to come to worship, meditate, or meet with the priest. At present, the church members are renting a community center where they worship once a month. Mr. Shrivastava stated that the church was aware of the neighbor's objections and in response to those concerns the church had reduced the building space, had reduced the parking spaces, and had reduced the height of the temple. He added that meetings had been held with the neighbors to allay their fears and to try assure them that the church would be a good neighbor. In closing, Mr. Shrivastava asked the Board to grant the request because the zoning in the area permits a church, there are other churches and commercial uses in the area, and the church would be a positive impact on the neighborhood.

Mr. Hansbarger came back to the podium and stated that the main part of the building would be 18 feet in height and the highest dome would be 35 feet. He stated that he disagreed with staff that the applicant had not met standards 1, 2, 3, and 4.

Chairman Smith noted that the applicant had already made the statement in the allotted timeframe and added that perhaps it would better if Mr. Hansbarger held his comments until rebuttal. Mr. Hansbarger agreed.

Ms. Greenleaf asked that the Board request each speaker to sign in with staff after speaking and Chairman Smith did so.

Donald Carpenter, 6192 Edsall Road, Alexandria, Virginia; Lia Hassau, 13827 Springstone Drive, Clifton, Virginia; Dev Chaudhar, 2100 N. Rockingham Street, McLean, Virginia; Dr. Amar Natharaja, 1401 Ingerborg Court, McLean, Virginia; Dr. Krishna Marthy, 7715 Lear Road, McLean, Virginia; Master Rajat Gary, 5933 Veranda Drive, Springfield, Virginia; Mrs. Sukeesh Chopra, 6083 Windward Drive, Burke, Virginia; Miss Monu Sharma, 8694 Bent Arrow Court, Springfield, Virginia; Shobhana Sharma, 5844 Wood Poppy Court, Burke, Virginia; Subhash Chandra, 5601 Dogue Run Drive, Fairfax Station, Virginia; Mridul Batra, 5619 Dogue Run Drive, Fairfax Station, Virginia; Dr. Keshav Dev Sharma, 7538 Axton street, Springfield, Virginia; Elizabeth Khosia, 6710 Crockett Place, Springfield, Virginia; Ashok Bhandari, 9206 Hambletonian Place, Vienna, Virginia; Chaman Pari, 1357 Snow Meadow Lane, McLean, Virginia; and Shyam Kapur, 7095 Spring Garden Road, Apt. 102., Springfield, Virginia.

The citizens stated that the church would not adversely impact the neighborhood, that the church would be a good neighborhood, and asked the Board to grant the request.

Chairman Smith then called for speakers in opposition to the request and the following came forward: William Wood, 5304 Hexagon Place, Fairfax, Virginia; John May 11421 Popes Head Road, Fairfax, Virginia; Anice Hendselman, 5410 Ladue Lane, Fairfax, Virginia; Hazel Rathbun, 11308 Popes Head Road, Fairfax, Virginia; Frank Rathbun, 11308 Popes Head Road, Fairfax, Virginia; Kathleen May, 11421 Popes Head Road, Fairfax, Virginia; Gary V. Davis, 5506 West Ridge View Drive, Fairfax, Virginia; Pete Wathen, 11415 Heath Drive, Fairfax, Virginia; Phyllis Kerns, 11200 Popes Head Road, Fairfax, Virginia; and Gerald Zimmerman, 11413 Heath Drive, Fairfax, Virginia.

The citizens stated that they were strongly opposed to the request because there was inadequate sight distance, that the proposed building was too large for the site, that

there would be a tremendous safety factor as Popes Head Road was already a heavily traveled substandard roadway, and that the proposed construction would cause more water runoff than there was at present.

During rebuttal, Mr. Hansbarger stated that all the concerns expressed by the citizens had been addressed in the development conditions, there would be no further expansion of the site except what was proposed under this application, the church would meet only on Sundays with four special services sometime during the year, the FAR falls within the allowable range, the parking spaces had been reduced, the building height had been reduced, the screening would be more than what was required, and there would be little traffic impact from the church as the facility would only be used on Sundays.

Mrs. Harris asked how the runoff would be corrected and Mr. Hansbarger stated that development condition number 8 addressed that problem.

Mr. Hammack asked staff if the development conditions were implemented could staff support the application. Ms. Greenleaf replied that staff still could not support the request with respect to the safety factors involved with Popes Head Road, the intensity of the proposal, and the environmental impacts generated by the construction.

Mrs. Thonen made a motion to deny the request.

Mr. Hammack stated that he understood the need for the church but would support the motion and agreed with Mrs. Thonen's comments.

Mrs. Harris stated that she would have to support the motion as she believed that the sight distance was inadequate and that there would be an adverse impact from the runoff.

Chairman Smith stated that he had put much thought into this application but would reluctantly support the motion as he did believe there was inadequate sight distance and that the request would adversely impact the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-8-081 by RAJDHANI MANDIR BY PURAN C. MITTAL under Section 3-403 of the Zoning Ordinance to allow place of worship and related facilities, on property located at 11425 Popes Head Road, Tax Map Reference 67-4((1))7, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 6.6681 acres of land.
4. That the Board is not opposing this application for religious reasons.
5. That the applicant has not satisfied the Nine Standard Requirements for a Special Permit:
  - the proposed use of this property is not in harmony with the adopted Comprehensive Plan;
  - the intensity of this development does not fit into the low density R-C district;
  - the proposed use is not such that it will be harmonious with and not adversely affect the use of the neighboring properties, in that the removal of the trees will increase the runoff from this site and that will affect the Occoquan Watershed, and we are trying to protect our water here, too;
  - the traffic on this road has been personally experienced by this Board Member who is no longer brave enough to very often walk here and has often found herself trying to get off the property and not being able to because of the traffic;
  - the width is very narrow with inadequate shoulders and the curves are sharp, with very poor sight distance and very unsafe;
  - the traffic study which was done in 1985 and redone in 1989 showed that the traffic had increased 85%, which is very scary on that small road;
  - with the Springfield Bypass going in down there, the traffic will triple.

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



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THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses and the additional standards for this use as contained in Sections 8-006 and 8-303 of the Zoning Ordinance.

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

Mr. Hammack seconded the motion. The motion carried by a vote of 5-0; Mr. Kelley and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 1989.

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Mrs. Harris moved that the Board go into Executive Session in order to discuss legal matters with respect to National Memorial Park. The motion passed and the Board went into Executive Session at 12:05 a.m. and reconvened at 1:20 a.m.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

Reconsideration for Gerald P. Lahaie, VC 89-P-012

Mrs. Thonen made a motion to deny the reconsideration. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

Trinity Christian School of Fairfax, SP 89-A-027  
Out of Turn Hearing

Mr. DiGiulian made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

Edlin School & Fair Oaks Community Church, SP 89-C-026  
Out of Turn Hearing

Mr. DiGiulian made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

SRS Properties Limited Partnership Appeal

Mr. DiGiulian made a motion to accept the appeal as it was complete and timely filed and scheduled the public hearing for July 20, 1989 at 11:00 a.m. as suggested by staff. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

Approval of February 21, 1989 Minutes

Mrs. Thonen made a motion to approve the Minutes as submitted by staff. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Page 233, June 6, 1989, (Tape 3), After Agenda Item:

Approval of May 2, 1989 Minutes

Mr. DiGiulian made a motion to approve the Minutes as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Fall Schedule of the BZA

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the proposed fall schedule was in the Board's package for their review. She did ask that the Board make a decision with respect to a date for the first week in September as the person in charge of scheduling the Board Room needed to be informed. Ms. Kelsey suggested that the night meeting for September be scheduled for September 12, 1989 and the first day meeting be Thursday, September 7, 1989 due to the heavy caseload that would have to be carried over from August. It was the consensus of the Board to schedule meetings for September 7, 1989 and the night meeting for September 12, 1989 as suggested by staff.

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August 1, 1989 Meeting

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the possibility of having to schedule a few applications outside the 90 day time limitation by only a few days as staff could not possibly have them staffed in time for the board to hear them prior to the August recess. She gave the Board a list of those cases which would be affected.

Mrs. Thonen made a motion to schedule the applications on September 7, 1989. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Reconsideration of Jeff Turner, SP 89-D-008

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that a letter had been delivered to the Board Room at 9:20 p.m. She explained that the letter was from the adjacent neighbor who was not pleased with the outcome.

Mr. DiGiulian made a motion to deny the request for reconsideration as the letter did not provide any additional information. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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Approval of Resolutions

Mrs. Thonen made a motion to approve the Resolutions from the May 23, 1989 public hearing as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

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9:00 P.M. NATIONAL MEMORIAL PARK, INC., SPA 88-P-050-1, application under Sect. 3-103 of the Zoning Ordinance to amend SP 88-P-050 for a cemetery to modify the approved transitional screening requirements, located at Hollywood Road on approximately 76.34 acres of land, zoned R-1, Providence District, Tax Map 50-1(1)36. (DEFERRED FROM 5/23/89 FOR LANDSCAPE PLAN)

Chairman Smith noted that this case had been deferred from May 23, 1989 for additional information.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted for the record that there were revised development conditions before the Board following several meetings with the applicant.

Mr. Hammack stated that he would like to know if the applicant agreed with the revised development conditions.

Barbara Beach, attorney with the law firm of Ross, Marsh, Foster, Myers & Quiggle, 324 North Fairfax Street, Alexandria, Virginia, came forward and agreed with the revised development conditions. She noted that they were presently making revisions to a condition that they would like added with respect to the landscape planting.

In response to a question from Mrs. Thonen, Ms. Beach replied that the landscape architect had indicated that the planting season was October.

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J. Patrick Taves, Assistant County Attorney, stated that following conversations with the County Arborist's office he suggested that the Board delete the last part of paragraph 7. With respect to paragraph 9, he stated that this should be revised to note that the landscape plan should be submitted to the County Arborist on or before August 1, 1989. Mr. Taves stated that it was his understanding that the applicant agreed to all typed and handwritten changes to the development conditions.

Ms. Beach indicated agreement.

Mr. Hammack made a motion to grant subject to the revised development conditions.

Mrs. Thonen stated that she was not happy with the applicant coming in for so many changes and filing so many lawsuits and believed that the Board had worked hard to come up with the best approval possible when the applicant requested the removal of land area, therefore would not support the motion.

Mr. Hammack sympathized with Mrs. Thonen's comments but stated that he believed that this provided better transitional screening and noted that he did not particularly like applicants coming back requesting changes.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 88-P-050-1 by NATIONAL MEMORIAL PARK, INC., under Section 3-103 of the Zoning Ordinance to amend SP 88-P-050 for a cemetery to modify the approved transitional screening requirements, on property located at Hollywood Road, Tax Map Reference 50-1(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 June 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 76.34 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-201 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. A thirty-six-foot (36') buffer area shall be provided along the entire length of the western property line (approximately 1,583 feet) of the remaining

cemetery property. This buffer strip shall contain no structures, roads, except the existing Loop Road, or grave sites, except for existing grave sites. No burials shall take place within the 36-foot buffer area along the entire western property line from the southwestern corner of the property to the northern end of the brick wall. This buffer area shall contain the following:

- o A brick wall six feet (6') in height and two hundred and ninety-five feet (295') in length along the western property line to a point adjacent to the existing Loop Road. This reduced length (from 425 feet) shall be permitted provided the existing holly trees in the 36-foot buffer area are preserved and shade-tolerant and other evergreen trees are planted as stated below. The brick wall shall be constructed in such a way as to minimize disturbance to the existing holly trees.
  - o Transitional Screening 1 (25' wide) shall be provided along the entire length of the western property line from the southwestern corner of the property to the beginning of the brick wall referred to above.  

Existing vegetation within the Transitional Screening 1 area must be supplemented with additional plantings within this 25-foot-wide strip in order to satisfy the Transitional Screening 1 requirements.
  - o A total of 156 shade-tolerant and other evergreen trees shall be planted in an 11-foot-wide buffer strip directly adjacent to the aforesaid 25-foot-wide buffer strip. The specific location and the types of the trees required to be planted within the 11-foot wide buffer strip area shall be determined after consultation with and approval of the County Arborist or a qualified member of the Arborist's staff. The County Arborist or a qualified member of the Arborist's staff shall be entitled to make the final decision in the event of disagreements regarding the proposed location and the types of such trees. In the event the County Arborist or his representative determines that it is not feasible to plant all of the 156 trees referred to above within the 11-foot-wide buffer strip, then the County Arborist or his representative shall designate additional locations north of the brick wall (for approximately 668 feet) within 25 feet of the western property line.
  - o Any trees required by these conditions for screening purposes shall be replaced by the applicant if any such trees should die or become diseased.
5. The applicant may plant shrubs or additional trees on the subject property outside the 36-foot buffer area without the approval of this Board.
  7. All of the trees required within the 36-foot-wide buffer strip (25 feet of Transitional Screening 1 and the additional 11-foot-wide buffer area) shall be planted on or before December 15, 1989. The County Arborist or a qualified member of the Arborist's staff shall determine the specific location of the trees and the types of trees required to be planted within the Transitional Screening 1 area and the 11-foot-wide buffer strip within thirty days of the Arborist being notified in writing that the applicant's surveyor has staked out said areas.
  8. All trees required to be planted within the 11-foot-wide buffer strip shall have a planted height of 6 to 8 feet.
  9. A landscaping plan shall be submitted to the County Arborist on or before August 1, 1989, based on these conditions which shall clearly delineate the 11-foot-wide buffer strip, the Transitional screening 1 area, and the location of the brick wall. The landscape plan, which must be approved by the County Arborist, shall set forth the type(s) of trees which are proposed to be planted in both the 11-foot-wide buffer strip and the Transitional Screening 1 area, and the existing trees which are to be preserved. Approval or disapproval by the Arborist shall be made in writing within five (5) working days of its submission.
  10. No burials shall take place within 25 feet of the western property line north of the brick wall.
  11. The barrier requirement shall be waived except for the aforementioned brick wall.
  12. The special permit plat and the cemetery shall comply with Chapter 3 of Title 57 of the Virginia Code.
  13. The applicant shall dismiss with prejudice the pending lawsuit, National Memorial Park v. Board of Zoning Appeals, At Law No. 85086, forthwith.

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These conditions do not incorporate the conditions imposed under Special Permit S-833-68 or S-079-69 which remain valid and in force.

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.

Under section 8-015 of the zoning Ordinance, this Special Permit shall expire automatically, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized (deletion of land area and compliance with all conditions, plantings and wall) has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGullian seconded the motion. The motion carried by a vote of 4-1; Mrs. Thonen voted nay. Mr. Ribble and Mr. Kelley were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1989, the Board having waived the eight-day limitation. This date shall be deemed to be the final approval date of this special permit.

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Page 237, June 6, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned.



Betty S. Hartt, Clerk, for  
Geri Sefko, Deputy Clerk  
Board of Zoning Appeals



Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 8/28/89

APPROVED: 9/7/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, June 13, 1989. The following Board Members were present: Chairman Daniel Smith, Robert Kelley, Martha Harris, and John Ribble. John DiGiulian, Paul Hammack, and Mary Thonen were absent from the meeting.

Chairman Smith called the meeting to order at 9:27 a.m. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board. There were none.

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Page 239, June 13, 1989, (Tape 1), Scheduled case of:

9:00 A.M. FIRST CHURCH OF CHRIST, SCIENTIST, SP 88-L-093, application under Sect. 3-203 of the Zoning Ordinance to allow parking lot additions, rearrangement and paving for existing church and related facilities, located at 5315 Backlick Road, on approximately 109,062 square feet of land, zoned R-2, Lee District, Tax Map 80-2((1))2, 3A. (DEP. FROM 1/17/89 AND 3/28/89 AT THE APPLICANT'S REQUEST)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which had been prepared by former Staff Coordinator, Kathy Reilly.

Ms. Kelsey mentioned there were two earlier deferrals; January 7, 1989 and March 28, 1989. She said the major issue has been the protection of quality trees. Since the time of the deferrals, the applicant has submitted a revised plat, and staff has prepared an addendum to the staff report with revised development conditions. Staff has discussed these development conditions with the applicant.

Ms. Kelsey said the applicant was in agreement with all of the Development Conditions as stated in the addendum to the staff report with the exception of numbers 10 and 11, suggesting interparcel access to facilitate entry at a median break.

Mrs. Harris asked how much of the first parking area would have to be removed.

Ms. Kelsey replied that the applicant has provided twice the number of parking spaces that the Zoning Ordinance requires but that the applicant has indicated that the required number does not allow for enough parking. The applicant could hold two services instead of its present one service and, thus, would not need as much parking.

Chairman Smith inquired about the current status of widening Braddock Road and whether or not this widening was in the Comprehensive Plan.

Ms. Kelsey stated that such plans are not presently in the Comprehensive Plan but that the number of trips warrant the widening. It is needed now.

Chairman Smith asked if Demaine Funeral Home and Springfield Academy in the same area of Braddock Road had been required to dedicate 15 feet.

Ms. Kelsey replied that she thought they were, but would investigate and furnish the Board with this information later in the hearing.

Richard T. Loomis, 2973 Borge Street, Oakton, Virginia, represented the applicant. Mr. Loomis stated that he was a member of the Christian Science Church, and that their church had a common goal with the other churches in the immediate area -- to have a safe, paved parking lot. He mentioned St. John's Church, Word of Life Lutheran and the Baptist Church all had paved parking lots. Mr. Loomis said the main issue was tree preservation and that they had met with the County Arborist who labeled every tree. Mr. Loomis said that following that meeting, they decided the center trees were more valuable and changed the parking lot plan in order not to have to remove the trees in the center of the lot. The new plan was to provide more parking in the rear of the lot and although it would involve the removal of 16 or so oak trees, they were not of top quality according to the County Arborist, Mr. Loomis stated. He also said they have earmarked to save one red oak tree and another bank of large trees.

Mr. Loomis then proceeded to address all of the development conditions in the addendum to the staff report dated June 6, 1989. He requested deletion of condition numbers 10 and 11 as they were not required initially. Mr. Loomis summed up by stating that he felt their plan was fair and requested approval.

Mr. Kelley asked Mr. Loomis if they were currently operating under any preservation plan. Mr. Loomis replied that they have no written document.

Mrs. Harris asked to return to development condition number 5.

Mrs. Harris asked about the internal parking lot landscaping and saving of the oak tree cluster.

Mr. Loomis replied this plan would be ineffective, costly, and would offer only marginal safety.

Mrs. Harris asked about the impervious surface as opposed to the paved parking lot.

Mr. Loomis stated that the current gravel surface was unsafe and the ladies and men do not want gravel as it ruins their shoes.

Mr. Kelley questioned the redundancy of development condition number 5.

Ms. Kelsey stated that condition was giving permission to rearrange the parking lot in order to save the quality trees.

Chairman Smith asked if there were any others present who wished to speak.

Carl L. Sell, Jr., 8420 Orinda Court, Alexandria, Virginia, Planning Commissioner for Lee District, came forward and mentioned speaking to Supervisor Alexander's office, Lee District, and indicated his agreement with the church's attempt to preserve the trees in the middle of the lot. Mr. Sell referred to the parcel at the corner zoned R-2 adjacent to Edsall Park and the church stating that there is currently nothing to indicate development is planned there. He said he believed the Office of Transportation should come forth with plans for widening Braddock Road to six lanes and have the plan included in the Comprehensive Plan.

There were no further speakers in support or opposition.

Ms. Kelsey stated that she had just been informed that Demaine Funeral Home and Springfield Academy did dedicate 45 feet from the centerline.

Mrs. Harris said that the conditions of the initial staff report also referred to a trail.

Ms. Kelsey stated that the sidewalk in front of the church satisfies that requirement.

Mrs. Harris moved to grant VC 88-C-003, based on the church needing the additional parking, the church is making the effort to accommodate the trees, and because they have specifically requested a paved parking area, and subject to the development conditions as stated in the staff report addendum with the following changes: Leave numbers 1 through 4 as is; number 5 - strike the last sentence; number 6 - strike par. 1, leave par. 2 as is; numbers 7 through 11 - leave as is. She said she felt a future median break would contribute to a safer flow of traffic.

Mr. Ribble seconded the motion. It did not pass, and Chairman Smith asked for discussion.

Mr. Kelley said he felt condition number 7 was not necessary, and that numbers 10 and 11 should be deleted. Mr. Kelley stated it was not the BZA's job to write an amendment to the Comprehensive Plan.

Mrs. Harris said if some applicants were required to dedicate right-of-way, then all applicants should have to dedicate. Then she asked about the interparcel access.

Chairman Smith stated there was no way to know where this access would take place at this stage of the game. He said the 15 foot dedication will take place, that further conditions would not be beneficial, and that condition number 11 should certainly be deleted.

Mr. Ribble stated that dedications are always a problem because it becomes a "fee simple" situation and that the applicant ends up landscaping someone else's property.

Mr. Loomis asked the Board if his engineer could get some final clarification of the requirements.

Brian Lundstrom, 2810 Rosemary Lane, Falls Church, Virginia came forward and asked if the transitional screening requirements were specifically waived by the Board.

Chairman Smith said the requirement should not be waived, but the area along the northern lot line should be reduced from 25 feet to 10 feet. He also requested that an amended plat be returned for approval.

Mr. Ribble moved to grant the with the revised amendment conditions. Mr. Kelley seconded the motion, which passed by a vote of 4-0. Mrs. Thonen, Messrs. DiGiulian and Hammack were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-L-093 by FIRST CHURCH OF CHRIST, SCIENTIST, under Section 3-303 of the Zoning Ordinance to permit parking lot additions, rearrangement and paving for existing church and related facilities, on property located at 5315 Backlick Road, Tax Map Reference 80-2((1))2, 3A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 109,062 square feet of land.
4. The need for additional parking has been established.
5. That the applicant has indicated that he will accommodate the trees.
6. That the applicant has specifically requested paving.
7. That due to the existence of a sidewalk along the front of the land, the applicant has fulfilled the trail requirements.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for main place of worship shall be limited to 160 seats with a corresponding minimum of 42 spaces and a maximum of 93 spaces. All parking shall be on site.
6. Transitional Screening shall be provided on-site with the following modifications:

Transitional Screening 1 (10') shall be provided along that portion of the northern lot line that is adjacent to residentially zoned property.

The applicant shall submit to the County Arborist a landscaping plan for the area along the western (front) property line. The landscaping plan along the front lot line shall screen the parking area from the street with plantings of a size, type and in the location to the satisfaction of, and approved by, the County Arborist.

Barrier B shall be provided along the entire length of the southern and eastern lot lines.

The barrier requirement shall be waived along the northern, and western lot lines.

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7. A tree preservation plan shall be submitted to the Department of Environmental Management (DEM) for review and approval prior to the commencement of any site clearance activity. The parking area shall be redesigned in accordance with the approved tree preservation plan and generally within the area shown for the proposed parking on the submitted plat dated May 12, 1989. The number of proposed parking spaces shall be reduced in order to accommodate the tree preservation plan.
8. The stormwater management facilities shall be in conformance with the public Facilities Manual and shall be coordinated with the Storm Drainage Branch of the Department of Public Works (DPW). Should a storm water detention facility be required on site which would necessitate the removal of trees, then the plat shall be returned to the Board of Zoning Appeals showing the location of this facility.
9. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen, and Messrs. DiGiulian and Hammack were absent from the meeting.

Chairman Smith requested the applicant to furnish copies of revised plats indicating a 10' transitional screening area.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 242, June 13, 1989, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD L. LABBE/DONALD AND VIRGINIA RANARD, VC 88-C-003, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into five (5) lots, Lots 2 through 4 having a lot width of 6.0 feet (150 ft. min. lot width required by Sect. 3-106), located at 1761 Brookside Lane, on 6.56 acres of land, zoned R-1, Centreville District, Tax Map 28-3((2))18 and 19.

Mr. Kelley mentioned to the Board members that with regard to granting any forthcoming variance applications, a unanimous vote of the Board would be required since only 4 of the 7 members were present today.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief stated that development conditions numbers 8 and 10 have already been satisfied with the applicant's revised plat.

Chairman Smith made reference to the plat before them and asked Ms. Greenlief if this was the revised plat to which she referred. He then asked Ms. Greenlief about a conventional subdivision.

Ms. Greenlief pointed out that the plat indicated the pavement area was 18 feet and the easement 36 feet.

Chairman Smith mentioned necessary access for fire equipment which he said might be difficult due to the narrowness and length of the pipestem. He asked if staff believed the variance plan offered better environmental preservation plan than the conventional subdivision plan.

Ms. Greenlief stated that staff believes the pipestem would be preferable over the required subdivision public street.

Chairman Smith called for the applicant to speak.

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Ken Sanders, Esq., 3905 Railroad Avenue, Fairfax, attorney for the applicant, came forward and stated that the applicant is seeking a lesser number of lots as he plans to live there himself. Mr. Sanders referred to a pipestem variance case and mentioned that the Fairfax County Comprehensive Plan calls for environmental protection in this area.

Mr. Sanders then made reference to the development conditions in the staff report. Regarding condition number 6, he said the Virginia Department of Transportation (VDOT) and the Department of Environmental Management (DEM) want a 30 foot right-of-way. Mr. Sanders said number 8 had been satisfied with the revised plat. Regarding number 9, he stated the circular driveway has been designed to avoid disturbing trees. As for number 10, he said they have shifted the dwelling on Lot 4 to avoid unnecessary cutting. Mr. Sanders said there was no problem with number 12 in removing the word "innovative". He said they planned to follow Best Management Practices and exceed the standards. He said they would change the wording of number 13 as the plat of June 12 indicates a 100 foot save area. In summing up, Mr. Sanders stated he believes they met the intent of the variance laws and the pipestem development would be better for the neighborhood.

Mr. Kelley stated they would remove the word "innovative" from development condition number 12, and asked why the word "preferably" was left in number 14?

Ms. Greenleaf explained that off-site stormwater detention is preferred.

Mr. Ribble went back to number 6 questioning right-of-way dedication.

Dr. Sanders said in a memo from John Herrington, Office of Transportation, they have shown 35 feet instead of the required 30 feet.

Ms. Greenleaf stated that 30 feet is adequate.

Mr. Ribble asked another question about number 14.

Chairman Smith stated he saw nothing wrong with it as it is written, and called for speakers.

Clifford Shoemaker, 9711 Meadowlark Lane, Vienna, president of Holly Hills subdivision, stated that he is looking forward to having Mr. Labbe as a neighbor. Mr. Shoemaker urged the Board to grant the variance request and he believed that the standard subdivision, with a wider driveway, was not a reasonable use of this property. He said he hoped it would set a precedent for the neighborhood to keep the aesthetic values as they are.

Chairman Smith asked if there were any further speakers. There being none, and staff having no further comments, he closed the public hearing.

Mr. Ribble moved to grant VC 88-C-003, in accordance with modifications to the development conditions as stated in staff report of June 6, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 88-C-003 by RICHARD L. LABBE/DONALD & VIRGINIA RANARD, under section 3-106 of the Zoning Ordinance to permit subdivision into six (6) lots, on property located at 1761 Brookside Lane, Tax Map Reference 28-3(2)18, 19, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 6.56 acres of land.
4. This is a very unusual case involving a variance where staff on the one hand says the Board should not approve and on the other hand that the Board should approve. Staff and the applicant have worked together on this, and I think the applicant does meet the nine (9) standards required for a variance. This is an environmentally sensitive issue, and the plan submitted by the applicant is good and staff agrees with that. It is a reasonable use as opposed to the standard which would require a public street and denude the property. I agree

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with the speaker who said that if a precedent is set it should be one of environmental sensitivity. There are exceptional environmental and topographical conditions here and an extraordinary condition, 2F.

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

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

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

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

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

1. This variance is approved for the subdivision of Lots 18 and 19 into five lots as shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. Only one (1) entrance to all five lots shall be allowed from Brookside Lane. The driveway easements shall be recorded with the deeds to the properties to ensure future access to these lots via a common driveway.
4. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
5. Adequate sight distance shall be provided at the site's entrance to the satisfaction of the Virginia Department of Transportation.
6. Right-of-way as shown on the plat approved with this application shall be dedicated to the Board of Supervisors in fee simple on demand or at the time of subdivision plan review whichever occurs first.
7. All ancillary easements necessary for future improvements to Brookside Lane shall be provided.
8. The circular driveway on Proposed Lot 3 shall be eliminated and the dwelling shall be shifted at least 20 feet back in a northeastern direction.

9. A tree preservation plan which maximizes the preservation of mature hardwoods and other quality vegetation on the site shall be submitted to the County Arborist for review and approval.
10. Erosion and sediment controls shall be implemented during the construction of each dwelling and during all clearing and grading on the site. Controls shall be in substantial accordance with those recommended in the 1980 Virginia Erosion and Sediment Control Handbook and shall be coordinated with DEM. These methods shall include, but shall not be limited to, redundant and/or oversized siltation control devices to achieve sediment trapping efficiencies of greater than the required 80%. The intent of these measures is to achieve greater erosion and sediment control than is required by the minimum design standards set forth in the Public Facilities Manual.
11. A strip of land 100 feet as shown on the plat of June 12, 1989 shall be preserved. No clearing or grading except for dead or dying trees or shrubs shall be conducted in this area except that which is necessary to permit the location of the pipestem driveway.
12. Preferably the applicant shall participate in the regional stormwater management pond D-26, off-site, in order to satisfy the required water quantity reductions set forth in the Public Facilities Manual. However, if on-site detention is required, the applicant shall incorporate water quality Best Management Practices into the design of the stormwater management structure.
13. Approval of this application is not a commitment on the part of Fairfax County to provide public sewer on the property.

Mr. Kelley seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiulian and Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 245, June 13, 1989, (Tape 1), Scheduled case of:

9:45 A.M. CURTIS S. & EDNA L. LEWIS, VC 89-L-024, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to a dwelling to 3.1 feet from side lot line (12 ft. min. side yard required under Sect. 3-307), located at 5936 Craft Road on approximately 15,466 square feet of land, zoned R-3, Lee District, Tax Map 82-3((17))(P)6.

Lori Greenleaf, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance of 8.9 feet from the minimum side yard requirement. Ms. Greenleaf stated she had received one letter in support of the application and two letters in opposition, copies of which were before the Board.

Curtis S. Lewis, 5936 Craft Road, Alexandria, Virginia, the applicant, stated that his lot is quite narrow. He said they had originally planned a 10 foot garage door with 3 feet on each side, but that it was possible for them to have a door 8 feet wide with 2 feet on each side. However, he felt that would make it quite narrow.

Mr. Kelley asked Mr. Lewis if an 8 foot door with 2 feet on either side would reduce the variance request by 5 feet. Mr. Kelley was told that was correct.

Chairman Smith asked if there were anyone present who wished to speak either in support or opposition.

Marcia Little, counsel for Betty Dawson, the Lewis' next door neighbor at 5934 Craft Road, Alexandria, Virginia, stated that Ms. Dawson would be most affected by the granting of this variance which she believes would block in her property. Ms. Little stated that her research shows only four other variances have been granted in this area and none has been to the size of the variance requested by Mr. Lewis.

Chairman Smith asked if there were any further speakers. There being none, Chairman Smith asked Mr. Lewis if he had anything further to say.

Mr. Lewis said his proposed garage would place the garage on the nearest property at an approximate distance of 29 feet. He mentioned that the dwelling on Lot 4 is only 27-28 feet apart from the dwelling on Lot 5 and that cannot be described as being boxed in.

Chairman Smith closed the public hearing.

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Page <sup>246</sup> June 13, 1989, (Tape 1), (Curtis S. & Edna L. Lewis, VC 89-L-024, continued from Page 245)

Mr. Kelley moved to grant-in-part VC 89-L-024 with a variance of 3.9 feet, a total of 5 feet less than the 8.1 foot variance requested.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-024 by CURTIS S. & EDNA L. LEWIS, under Section 18-401 of the zoning Ordinance to allow construction of a garage addition to a dwelling to 3.1 feet from side lot line (THE BOARD GRANTED 8.1 FEET FROM SIDE LOT LINE), on property located at 5936 Craft Road, Tax Map Reference 82-3((17))(F)6, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,466 square feet of land.
4. That the applicant has met all of the required standards for a variance.
5. That the lot has exceptional narrowness.

This application meets all of the following Required Standards for variances in section 18-404 of the zoning Ordinance:

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED-IN-PART to allow a twelve foot (12') garage to be 8.1 feet from the side lot line, with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

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2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The materials used in the construction of the proposed garage shall be architecturally compatible with the existing structure.
5. A revised plat will be furnished indicating the garage to be 8.1 feet from the side lot line.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiulian and Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 247, June 13, 1989, (Tape 2), Scheduled case of:

10:00 A.M. MICHAEL E. & KATHLEEN J. WICKS, VC 89-V-026, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 6.0 feet from a side lot line (12 ft. min. side yard required by Sect. 3-307), located at 9026 Greylock Street on approximately 12,021 square feet of land, zoned R-3, Mount Vernon District, Tax Map 111-1((3))(4)21.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief stated that research indicates no other variances have been granted in this area.

Michael E. Wicks, 9026 Greylock Road, Alexandria, Virginia, the applicant, stated that the addition would be up to 6.0 feet from the side lot line only at the right rear corner of the structure and the amount of variance would decrease from that point. Mr. Wicks also stated he had letters of approval from his neighbors.

Mrs. Harris asked if the shaded area indicated on the plat before them indicates where the existing carport ends.

Mr. Wicks explained the position of his carport on the plat for the benefit of the Board members.

Mrs. Harris said the photographs do not show what is next to the Wicks' house.

Mr. Wicks stated that the adjacent house angles away from his due to the curvature of the street. He said his neighbors are approximately 14 feet from the property line to the edge of his open two-car carport.

There being no other speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mrs. Harris moved to grant VC 89-V-026.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-026 by MICHAEL E. AND KATHLEEN J. WICKS, under Section 3-307 of the Zoning Ordinance to allow construction of addition to dwelling to 6.0 feet from side lot line, on property located at 9026 Greylock Street, Tax Map Reference 111-1((3))(4)21, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,021 square feet of land.
4. That the land has exceptional shape.
5. That the applicant is very sensitive to the location of his house on the property.
6. That the applicant is unable to construct the addition without the variance.
7. Not granting the variance would create undue hardship for the applicant.
8. That the street is curved.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiulian and Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. GREAT FALLS SWIM & TENNIS CLUB, INC., SPA 82-D-019-6, application under Sect. 3-103 of the Zoning Ordinance to amend SP 82-D-019 for community recreation facilities to permit renewal of waiver of the dustless surface requirement, located at 761 Walker Road on approximately 5.5244 acres of land, zoned R-1, Dranesville District, Tax Map 13-1((1))27.

Lori Greenleaf, Staff Coordinator, presented the staff report.

Theodore Rademaker, 421 Riverbend Road, Great Falls, Virginia, President of the Great Falls Swim & Tennis Club, Inc., represented the applicant.

Chairman Smith asked Mr. Rademaker if he was in agreement with the development conditions as stated in the staff report dated June 6, 1989.

Mr. Rademaker replied he had no problem with the development conditions.

Chairman Smith asked if there was anyone else present who wished to speak.

Vivian Lyons, 10808 Nichols Ridge Road, Great Falls, Virginia, came forward to speak in support of the request.

Since there were no further speakers, and staff had no further comment, Chairman Smith closed the public hearing.

The Board members were in agreement that the applicant has continued to comply with all of the development conditions as stated under SP 82-D-019 and with general standards for this Special Permit Amendment.

Mr. Ribble moved to grant SPA 82-D-019-6.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-D-019-6 by GREAT FALLS SWIM AND TENNIS CLUB, under Section 3-103 of the Zoning Ordinance to amend SP 82-D-019 for community recreational facilities to permit renewal of waiver of the dustless surface requirement, on property located at 761 Walker Road, Tax Map Reference 13-1((1))27, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.5244 acres of land.
4. The applicant has continued to comply with all of the Development Conditions as stated under SP 82-D-019.
5. The applicant is in compliance with general standards for this Special Permit Amendment.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-906 and 8-915 of the zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The existing vegetation shall be deemed to satisfy the Transitional Screening 1 requirements and shall be maintained along all lot lines. The existing chain link fence which encircles the pool and tennis courts shall remain to satisfy the barrier requirement.
6. The hours of operation for the facility shall be limited to the following:
  - o Tennis Courts & Platform  
Tennis Courts: 7:00 a.m. to 10:00 p.m.
  - o Swimming Pool Regular  
Hours: 9:00 a.m. to 9:00 p.m.
  - o Adult Swim (18+ yrs.) 6:00 a.m. to 8:00 a.m.  
(Monday through Sat.)
  - o Swim Team Practice  
and Meets: 8:00 a.m. to 9:00 a.m.  
(Monday through Sat.)
7. After-hour parties for the swimming pool shall be governed by the following:
  - o Limited to six (6) per year
  - o Limited to Friday, Saturday, and pre-holiday evenings
  - o Shall not exceed beyond 12:00 midnight
  - o A written request shall be submitted at least ten (10) days in advance to the zoning Administrator for each individual party or activity
  - o Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.
8. No bullhorns, loudspeakers, radios, or setting up of facilities shall be permitted before 9:00 a.m. These devices may be used at or after 8:00 a.m. on the two to four occasions of a swim meet at the facility.
9. All loudspeakers, bullhorns, and lighting shall be directed on site.
10. There shall be no more than four (4) "A" level swim meets per year at this facility.
11. There shall be a minimum of sixty-seven (67) parking spaces and a maximum of one hundred and eighteen (118) parking spaces provided on site.
12. All activities shall comply with the provisions of Chapter 108 of the County Code, Noise Ordinance, and the glare performance standards in the zoning Ordinance.
13. The maximum number of family memberships shall be four hundred (400).
14. Bicycle racks shall be provided to accommodate a minimum of twenty-five (25) bicycles.
15. A waiver of the dustless surface requirement shall be granted for a period of five (5) years from the approval date of this special permit.
16. The gravel areas shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:
  - o Travel speeds in the parking areas shall be limited to 18 mph.
  - o During dry periods, application of water shall be made in order to control dust.
  - o Routine maintenance shall be performed to prevent surface unevenness, wear-through or subsoil exposure. Resurfacing shall be conducted when stone becomes thin.
  - o Runoff shall be channeled away from and around the parking areas.
  - o The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction, and migration of stone.

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17. All required handicapped parking spaces shall be maintained with a dustless surface and shall be signed in accordance with the provisions of the Zoning Ordinance.

These conditions incorporate all applicable conditions of previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiulian and Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 25, June 13, 1989, (Tape 2), Scheduled case of:

10:30 A.M. DOWN S. AND BARBARA S. SMITH, VC 89-C-028, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a sunroom addition to dwelling to 18.3 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-107), located at 3209 Latigo Court on approximately 20,842 square feet of land, zoned R-1(C), Centreville District, Tax Map 36-3((6)63A.

Lori Greenleaf, Staff Coordinator, presented the staff report. Ms. Greenleaf explained that the applicants were requesting a variance of 6.7 feet from the minimum rear yard requirement. She mentioned that a variance from the front lot line had been granted the applicants in 1977.

Donn S. Smith, 3209 Latigo Court, Oakton, Virginia, came forward to present his justification for the variance request. Mr. Smith stated for the record that he was not in any way related to the applicants. He explained that the lot slopes to the back and the house is located on the extreme right rear.

Mr. Smith said because the lot slopes sharply downward to the left, they have a fully exposed brick basement wall, and to put the addition on the opposite side would block their walk-out basement. Mr. Smith said that his neighbors on Lots 53 and 55, adjacent to his house, are both in agreement with his variance request, and that there is approximately a 65 foot distance from their houses to his.

Chairman Smith asked if there was anyone present who wished to speak either in support or opposition. When no one came forward, and staff had no further comment, Chairman Smith closed the public hearing.

Mr. Kelley found that the applicant has met the requirements for a variance since the lot has exceptional shape and topographical conditions, and due to the fact that the placement of the house is on the extreme rear of the lot.

Mr. Kelley moved to grant VC 89-C-028.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-028 by DOWN S. AND BARBARA S. SMITH, under Section 3-107 of the Zoning Ordinance to permit construction of a sunroom addition to dwelling to 18.3 feet from rear lot line, on property located at 3209 Latigo Court, Tax Map Reference 36-3((6)63A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolutions:

Page 252, June 13, 1989, (Tape 2), (Donn S. and Barbara S. Smith, VC 89-C-028, continued from Page 251)

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1(C).
3. The area of the lot is 20,842 square feet of land.
4. That the applicant has met the requirements for a variance.
5. The lot has exceptional shape.
6. The lot has exceptional topography.
7. That the placement of applicant's house is at the extreme rear of the lot.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiulian and Hammack were absent from the meeting.

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\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 253, June 13, 1989, (Tape 2), Scheduled case of:

10:45 A.M. RONALD B. EATON, VC 89-C-023, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an entrance addition to dwelling to 27.7 feet from a street line of a corner lot (40 ft. min. front yard required under Sect. 3-107), located at 9938 Lawyers Road on approximately 1.083 acres of land, zoned R-1, Centreville District, Tax Map 38-1((1))5A.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which had been prepared by the absent Staff Coordinator, Bernadette Bettard.

Mrs. Harris asked about the presence of trees along the front of the property.

Ronald B. Eaton, 9938 Lawyers Road, Vienna, Virginia, the applicant, came forward to state his justification, and address the question about trees. He said that his entrance addition would not require the removal of any trees. He further explained that the living area in his home, which was originally a Methodist Church, was only 800 square feet. Mr. Eaton stated that he has tried to preserve the beauty of the existing, simple dwelling. He said that in designing the addition, they matched roof lines to the existing dwelling, and that he believes he meets all nine standards necessary for a variance.

Chairman Smith asked Mr. Eaton why the addition was necessary.

Mr. Eaton said the main reasons were to reduce the noise level from the traffic and for energy efficiency. He also mentioned needing space on either side of the door so that it would have room to open on one side and he could have a closet on the other side.

Chairman Smith said he does not agree with intruding into the non-conforming setback and asked why the addition could not be on the side rather than front.

Mr. Eaton stated that if he moved the addition to the side, he would wipe out a whole bank of pine trees.

Since the Board members were in disagreement over the granting of this variance, and since Mr. Eaton expressed the possibility that a decision to deny would not be totally fair due to the presence of only four Board members at this hearing, Mr. Kelley asked the applicant if he would object to having his case continued to another day with the idea in mind that it would be more equitable with a larger number of Board members present. The applicant concurred. Based on the above, the Board members voted to continue this public hearing until June 22, 1989 at 10:15 am.

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Page 253, June 13, 1989, (Tape 2), Scheduled case of:

11:15 A.M. FAIRFAX YACHT CLUB, INC., SP 83-V-007, approved under Sect. 3-803 of the Zoning Ordinance for a private, non-profit marina by the BZA on May 3, 1983, located at 10721 Old Colchester Road, on approximately 4.7506 acres of land, Mount Vernon District, Tax Map 117-1((11))4. Five Year review to determine location and design of a direct access to Old Colchester Road per condition 15.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which was prepared by the Staff Coordinator, Bernadette Bettard, who was absent from the hearing.

Ms. Kelsey stated that the Special Permit application was for the purpose of reviewing access and that staff had determined at this time that the existing location is preferable. Ms. Kelsey said there are environmental concerns about crossing Lots 3 and 34. She stated a site visit had been conducted and it appears the Special Permit is operating in accordance with all of the previous development conditions, satisfying number 15.

Chairman Smith asked if the continuance of the operation is the only issue.

Ms. Kelsey replied that it was.

Jack Connor, Esq., Miles & Stockbridge, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, attorney for the applicant, stated they had one additional request. He suggested the deletion of development condition number 15 so as not to be required to come forth in another five years.

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Chairman Smith was not in agreement, and Mr. Connor dropped his request.

Kathy Dove, 14608 N. Ashdale Avenue, Dale City, Virginia, co-owner of Lots 31 and 32, Old Colchester Road, Mount Vernon, Virginia, stated that Old Colchester Road is not well maintained and neighbors have been filling in the potholes themselves. Ms. Dove believed that access to the yacht club should continue as it has been for the sake of less adverse impact.

Mr. Connor was advised that no new Non-Residential Use Permit is required since there were no changes made in the Special Permit.

There being no further speakers, and staff having no further comment, Chairman Smith closed the public hearing.

Mr. Ribble, having found that the applicant presented testimony indicating compliance for Special Permit Use, moved to grant SP 83-V-007.

Mr. Ribble commented that although the law firm of Miles & Stockbridge once represented his company, it did not affect his vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 83-V-007 by FAIRFAX YACHT CLUB, INC., under Section 3-803 of the Zoning Ordinance to permit a five year review of a private, non-profit marina approved by the BEA on May 3, 1983 to determine location and design of a direct access to Old Colchester Road per Development Condition 15, on property located at 10721 Old Colchester Road, Tax Map Reference 117-1((11))4, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 4.7506 acres of land.
4. The applicant has presented testimony indicating compliance with conditions necessary for Special Permit use.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 3-806 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that NO CHANGE IN ACCESS TO THE PROPERTY will be made at this time. The following conditions continue to apply to this use:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the uses indicated on the plans submitted with this application except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a special permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this special permit.
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.

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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-four (94).
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. There shall be no on-site dry-dock boat storage, no gasoline pumps, no boat ramps, nor any other public service facility.
10. 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 the three (3) walkways across the marshland to the piers.
11. Conditions of all State and Federal permits shall be met.
12. No fill or grading shall be allowed within the 100 year floodplain.
13. Any exterior lighting and parking lot lights shall be the low 18 to 22 foot high design which direct the light directly downward.
14. 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 the Director of Environmental 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.
15. At such time as easements or rights-of-way adequate for the proposed use are available to provide direct access to the subject site from Old Colchester Road, or at the end of five (5) years, whichever occurs first, this application shall be reviewed by the staff to include the Office of Transportation, and the BPA, to determine the location and design of a direct site access to Old Colchester Road.
16. A ten foot (10') wide strip of existing vegetation shall be preserved adjacent to the access easement until such time as this access may be relocated. If the adjacent property develops prior to the relocation of the access road, the vegetation shall remain and be supplemented by additional screening at the discretion of the Director of DEM.
17. 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.

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, eighteen (18) months after the effective date\* of the Special Permit unless the activity authorized has been established, or unless construction has commenced, or unless an extension is granted by the Board of Zoning Appeals because of the occurrence of conditions unforeseen at the time of approval of the Special Permit. A request for additional time must be justified in writing, and shall be filed with the Zoning Administrator thirty (30) days prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0. Mrs. Thonen and Messrs. DiGiuliano and Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 254, June 13, 1989, (Tape 2), Scheduled case of:

11:30 a.m. WOODY'S GOLF RANGE, SFA 79-D-176-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend 8-176-79 for a golf driving range to permit continuation of the use without term, addition of a baseball hitting range and request for waiver of the dustless surface requirement, located at 11801 Leesburg Pike on approximately 30.1246 acres of land, zoned R-1, Branesville District, Tax Maps 6-3(1)33 and 33A.  
(OUT-OF-TURN HEARING) (DEFERRED FROM 5/18/89 AT APPLICANT'S REQUEST)

Carlos Montenegro, Esq., Shaw, Pittman, Potts & Trowbridge, 1501 Farm Credit Drive, McLean, Virginia, attorney for the applicant, requested a deferral in order to allow him to first meet with the Great Falls Citizens Association.

Mr. Ribble moved to defer the public hearing to July 11, 1989 at 8:30 p.m.

The motion was seconded by Mr. Kelley, and passed by a vote of 4-0, with Mrs. Thonen, Mr. DiGiulian and Mr. Hammack absent.

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Page 254, June 13, 1989, (Tape 2), After Agenda Item

Reston Area Child Care Center, Inc., SP 89-A-028  
Request for Out-of-Turn Hearing

Mr. Kelley moved to grant the out-of-turn hearing.

Mr. Ribble seconded the motion which passed by a unanimous vote of 4-0, with Mrs. Thonen, Mr. DiGiulian and Mr. Hammack being absent from the meeting.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested a hearing prior to the August recess, and also noted that the application must be in the name of the church as well since this will bring the church under the Special Permit also.

The applicant has been notified that this must be complied with prior to the time the Clerk to the Board of Zoning Appeals is required to prepare the Notice and newspaper advertisement, which will be the week of June 26, 1989.

The out-of-turn hearing was granted for August 1, 1989.

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Page 256, June 13, 1989, (Tape 2), After Agenda Item:

Approval of Resolutions of June 6, 1989

Mrs. Harris moved to approve the resolutions, with the following exceptions. Correct the Lake Forest Swim & Racquet Club Resolution by striking the words "both pedestrian" from the last line of number 6 in findings of fact; and hold the resolution for Radjhani Mandir until the maker of the motion, Mrs. Thonen, returns and can review it personally on June 22, 1989.

Mr. Ribble seconded the motion which passed by a vote of 4-0, with Mrs. Thonen, Mr. DiGiulian and Mr. Hammack absent from the meeting.

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Page 256, June 13, 1989, (Tape 2), After Agenda Item:

Donald J. & Arlene Giacomo, SP 89-M-029  
Request for Out-of-Turn Hearing

Lori Greenlief, Staff Coordinator, stated that this application has been accepted by Harvey Mitchell, and that the applicant was requesting an out-of-turn hearing.

Jane C. Kelsey, Chief, Special Permit & Variance Branch, suggested a hearing date of July 25.

Mr. Ribble moved to grant. The motion was seconded by Mr. Kelley and passed by a vote of 4-0, with Mrs. Thonen, Mr. DiGiulian and Mr. Hammack absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:45 p.m.

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Joanne R. Kiser, Associate/Clerk to the  
Board of Zoning Appeals

  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 6/27/89

APPROVED: 7/11/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, June 22, 1989. The following Board Members were present: Chairman Daniel Smith, John DiGiulian, Vice-Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 9:05 a.m. and gave the invocation.

Before calling the regularly scheduled agenda, Chairman Smith asked if any Board member had a matter to bring before the Board. Mrs. Thonen stated that she would like to discuss the parking situation on BSA days as it was becoming increasingly more difficult to find a place to park because the Board of Supervisors' staff was utilizing the assigned spaces. It was the consensus of the Board to discuss this after the regularly scheduled agenda.

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Page 259, June 22, 1989, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH ALEXANDER, VC 89-L-032, application under Sect. 18-401 of the zoning Ordinance to allow construction of a garage addition to dwelling to 5.8 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), located at 6107 Craft Road, on approximately 10,695 square feet of land, zoned R-3, Lee District, Tax Map 82-3((17))(E)16.

Mrs. Thonen abstained from participating in the public hearing as she and the applicant were close friends.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Joseph Alexander, 6107 Craft Road, Alexandria, Virginia, came forward and addressed his statement of justification submitted with his application. He submitted letters in support of the request from three abutting neighbors and pictures of other houses which have constructed similar additions.

There were no speakers to address this request, either in support or in opposition, and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant subject to the development conditions contained in the staff report dated June 13, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-032 by JOSEPH ALEXANDER, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 5.8 feet from side lot line, on property located at 6107 Craft Road, Tax Map Reference 82-3((17))(E)16, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,596 square feet of land.
4. The lot has an irregular shape as it is narrow and shallow.
5. There are topographic problems in the rear of the lot.
6. The light would be cut off from the house if the addition was constructed in the rear of the property.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen abstaining.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 260, June 22, 1989, (Tape 1), Scheduled case of:

9:15 A.M. FRANK VISCARDI, SP 88-P-099, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow enlarged nonconforming dwelling in the C-8 District to remain 28.0 feet from front lot line in C-8 and 8 feet from a side lot line in R-4 (40 ft. min. front yard required by Sect. 4-807, 10 ft. min. side yard required by Sect. 3-407), located at 2756 Cameron Road, on approximately 7,250 square feet of land, zoned R-4, C-8 and HC, Providence District, Tax Map 50-2((5))45.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She stated that staff cannot recommend approval of the request because staff believed that the applicant should have been aware of the requirement for obtaining a building permit prior to construction.

Chairman Smith questioned staff as to whom had determined this use to be nonconforming. Ms. Kelsey explained that the zoning Administrator had determined that the use was nonconforming and that the Planning Commission had heard the application because this was an expansion of a nonconforming use.

Mrs. Harris noted that it had been her understanding that the Planning Commission stated clearly that the parameters that they would use to review the application were much different than those used by the BZA. Ms. Kelsey stated that was correct. Chairman Smith stated that he hesitated making a decision on an application that was pending before the Board of Supervisors.

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Mr. Hammack questioned staff as to whether or not they had reviewed other setbacks in the area. Ms. Kelsey noted her research had not indicated the approval of other special exceptions for expansion of nonconforming uses nor any variances in the area. She added that there are other houses in the area that are as close as the subject house. Ms. Kelsey called the Board's attention to page 4 of the staff report where staff had noted that it did not appear that the addition would adversely impact on the surrounding neighbors. She stated that staff was concerned with the issue of good faith.

Mrs. Harris pointed out that in the applicant's statement of justification he stated that he had reason to believe that the building permit would be approved. She asked who would have conveyed this to the applicant. Ms. Kelsey stated that she could not respond to that as she did not know and suggested that perhaps the applicant's agent could respond.

Mrs. Thonen called staff's attention to page 2 in the staff report where the dates reflected "1989" and stated that she assumed that the date really should be 1988. Ms. Kelsey agreed and apologized to the Board.

Chairman Smith asked staff to put the area map back on the viewgraph and asked how many lots were affected by the split zoning. Ms. Kelsey replied that many of the lots were affected.

Mrs. Thonen stated that she could understand how staff and the applicant might overlook the fact that a piece of property was split zoned.

Mr. Hammack noted that he did not want to get into the issue of good faith unless the Board was ready to proceed with the public hearing. It was the consensus of the Board to proceed.

John Farrell, attorney with the law firm of Odin, Feldman and Pittleman, 10505 Judicial Drive, Fairfax, Virginia, represented the applicant and stated that he would confine his remarks to the good faith issue. He stated that prior to construction the applicant's brother applied for a building permit on June 8th and at that time he was given no indication that the building permit would not be issued, therefore they began construction as they could only work on the addition on weekends. Upon going back to pick up the building permit, they were told there was a problem as the property was split zoned, nothing was mentioned about an encroachment into the front yard. They were told that a building permit could not be issued until a special exception had been obtained from the Board of Supervisors and at that time the applicant stopped all activity except to make the structure weather tight. He stated that the applicant then contacted his law firm and the process for the special exception was begun and that application was filed in October 1988 and during that process the encroachment into the front yard was discovered and the applicant was advised that he would need to file a special permit. Mr. Farrell argued that the applicant did not flagrantly disregard the front yard requirements as he was not aware of the problem and it was not brought to his attention by the Department of Environmental Management (DEM) until well into the process of obtaining a building permit and a special exception. In closing, Mr. Farrell stated that the applicant and the applicant's brother were present to address the Board.

Mr. Hammack questioned staff on the procedure for notifying a citizen when a building permit was not going to be issued, as this applicant was not informed for a period of three weeks. Ms. Kelsey stated that she could not respond as those decisions were made by DEM. Mr. Hammack then asked what the setback requirements were and Ms. Kelsey replied that the front yard setback in a R-4 District was 30 feet for a conventional lot and 10 feet from the side lot line.

Mrs. Thonen stated that during a joint meeting between the Board and various staff members, it had been her understanding that staff would "red flag" any building permit that appeared to have a problem. She then made a formal motion which reiterated this request with Mr. DiGiulian seconding the motion.

Chairman Smith stated that he would not support the motion. Mr. Hammack asked that the Board defer the motion until the end of the agenda and Mrs. Thonen agreed.

The applicant, Frank Viscardi, 2756 Cameron Road, Falls Church, Virginia, came forward and explained that his brother applied for a building permit on June 8, 1988. He stated that it took three weeks for a decision to be made with respect to the issuance of the building permit because of the split zoning. When the permit was not issued, Mr. Viscardi stopped work on the addition.

Chairman Smith noted that the applicant had made a mistake in commencing construction without a building permit and Mr. Viscardi agreed. Mr. Viscardi noted that the houses across the street were set back 24 feet and his house set back 28 feet with the addition.

Mr. Hammack asked the applicant what had been told to his brother that led them to believe that the building permit would be issued. Mr. Viscardi stated that perhaps his brother could better respond.

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Mrs. Harris noted that she had been at the Planning Commission when this case was before them and it was brought out that the applicant's testimony at the first and second public hearings were not the same. Mr. Viscardi explained that he was very nervous at the first public hearing and had simply made a mistake, but he did have documentation available for the Board's review. Mrs. Harris stated that the Board had no way of knowing when construction was started, only when the application was made for the building permit.

Sharon L. Stiles, 2757 Cameron Road, Falls Church, Virginia, came to speak in support of the application. She stated that she believed that the improvements made by the applicant enhanced the neighborhood and the removal of the addition would benefit no one.

George Scharr, 2761 Cameron Road, Falls Church, Virginia, stated that he had lived in his house since 1942 and agreed that the addition was an improvement to the neighborhood.

The applicant's brother, Pete Viscardi, 6916 Jefferson Avenue, Falls Church, Virginia, assured the Board that he and his brother had acted in good faith. He stated that he had been informed that there was a problem with split zoning and it was suggested that the property should be rezoned to bring the property in line with the surrounding zoning.

Mr. Hammack questioned staff as to why they did not discuss in more detail the rezoning process with the applicant. Mrs. Harris commented that written information is available to citizens when applying for a building permit. Mr. Hammack asked Mr. Viscardi if DEN had informed him in writing when his building permit was denied and Mr. Viscardi replied no.

Mrs. Harris noted that the Planning Commission had requested the applicant to reconfigure the porch and asked if the plat before the Board reflected that change. Mr. Viscardi indicated that the porch had not been altered and the plat showed the addition as it now existed. Ms. Kelsey explained that because the property is in a C-8 District the amount of expansion exceeds the percentage allowed in the zoning Ordinance. She added that the Special Exception would be for the expansion of the nonconforming use. The Planning Commission recommended to the Board of Supervisors that the Special Exception be approved with the condition that the dwelling be brought into conformance with the provisions for expansions of nonconforming uses by removing three feet off the front of the porch.

Mr. Viscardi again assured the Board that they had acted in good faith and had they been aware of the problems they would encounter they would not have attempted to construct an addition.

Mrs. Thonen asked staff if it was true that the FAR only came into play under the commercial zoning and Ms. Kelsey replied that was correct. Mr. DiGiulian asked if a concrete patio was considered floor area in calculating FAR and if so would that change if the patio was called a driveway. Ms. Kelsey replied that the patio was included in the gross floor area of the building and she did not believe that would make any difference as far as resolving the problem. Mrs. Thonen stated that she believed that any space not covered with a roof was considered open space. Mrs. Harris stated that Commissioner Hanlon had referred to the zoning Administrator's memorandum several times during the Planning Commission public hearing but it had not been included in the staff report. Ms. Kelsey asked Ron Darrickson to research the Special Exception file to see a copy of the zoning Administrator's memorandum was available for the board to review. Mr. Darrickson presented the letter to the Board.

Chairman Smith polled the audience to determine if there was anyone else who wished to speak in support of the application.

Mark Letters, 6916 Jefferson Avenue, Falls Church, Virginia, stated that the removal of the addition would be more detrimental to the neighborhood and noted the show of support from the neighbors at the Planning Commission public hearing.

Chairman Smith closed the public hearing as there were no speakers in opposition to the request nor any further comments from staff.

In response to the Board's question, Ms. Kelsey noted that the Board of Zoning Appeals could act on this application because the application before the Board of Supervisors was a completely separate issue. Mr. DiGiulian asked Ms. Kelsey what the allowable FAR was in the C-8 District and Ms. Kelsey replied that the allowable FAR in the C-8 District is .70.

Mr. Farrell came back to the podium and explained that even if the addition met all the side yard requirements it would still have required a Special Exception because the addition was to a residential building in a commercial district.

Following a discussion between the Board and staff regarding the FAR calculations, Mr. Farrell stated that the reason for the reduction of the porch from 8 feet to 6 feet was that the zoning Ordinance stipulated that only the balconies which project more than 6

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feet was counted in the FAR, thus if this porch was reduced it would not then be included in the calculation. He added that the applicant agreed to reduce the porch by 2 feet.

Mr. Farrell continued by asking that the Board make a decision on this application and noted that the addition would have to be removed unless the Board of Supervisors made a decision to approve the Special Exception. Mrs. Harris questioned the validity of the plat and Mr. Hammack stated that a condition could be placed on the approval which required new plats.

Chairman Smith asked staff for any additional comments and Ms. Kelsey stated that condition number 4 was stated incorrectly.

Before making his motion, Mr. Hammack asked staff if this application should be under the mistake section and Ms. Kelsey replied that it should.

Mr. Hammack made a motion to grant the request with a new development condition number 4: "this permit is specifically conditioned on a Special Exception being granted by the Fairfax County Board of Supervisors for the nonconforming additions to remain and upon the submission of new plats which reflect the ultimate decision of the Board of Supervisors."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 88-P-099 by FRANK VISCARDI, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow enlarged nonconforming dwelling in the C-8 district to remain 28.0 feet from front lot line in C-8 and 8.0 feet from a side lot line, on property located at 2756 Cameron Road, Tax Map Reference 50-2((5))45, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

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.

Page 264, June 22, 1989, (Tape 1), (Frank Viscardi, SP 88-P-099, continued from  
Page 263)

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

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

1. This approval is granted for a location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. The materials used for the siding of this addition shall be identical in type and color to those used on the dwelling.
3. A building permit and all the necessary inspections and approvals shall be obtained for the addition.
4. This permit is specifically conditioned on a Special Exception being granted by the Fairfax County Board of Supervisors for the nonconforming additions to remain and upon the submission of new plats which reflect the ultimate decision of the Board of Supervisors.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 264, June 22, 1989, (Tape 1), Scheduled case of:

9:30 A.M. JEFFREY AND PAULA KAISER, VC 89-M-029, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage to 10.5 feet from a side lot line (15 ft. min. side yard required by Sect. 3-207), located at 3503 Beta Place on approximately 24,985 square feet of land, zoned R-2, Mason District, Tax Map 59-4(9)71.

Chairman Smith called the Board's attention to a letter from the applicant requesting a deferral.

Prior to suggesting a deferral date and time, Jane Kelsey, Chief, Special Permit and Variance Branch, explained that because of the number of applications received by staff it would be necessary to schedule two meetings during the week of September 11th. It was the consensus of the Board to schedule an additional meeting as suggested by staff.

Chairman Smith asked why the applicants were requesting a deferral. Ms. Kelsey explained that the applicants were now requesting an additional 5 feet to their original request. Chairman Smith polled the audience to determine if there was anyone present interested in this application other than the applicant. Hearing no reply, Chairman Smith asked staff for a deferral date and time. Ms. Kelsey suggested September 14, 1989 at 9:00 a.m. Hearing no objection, the Chair so ordered.

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Page 264, June 22, 1989, (Tape 2), Scheduled case of:

9:45 A.M. JOHN C. SIMON, SP 89-S-011, application under Sect. 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit additions to dwelling to 27.6 feet from front, and 19.1 feet from side lot lines (40 ft. min. front yard, 20 ft. min. side yard required by Sect. 3-C07), located at 15220 Elk Run Road on approximately 14,721 square feet of land, zoned R-C and WS, Springfield District, Tax Map 33-4(2)536.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

The applicant, John C. Simon, 15220 Elk Run Road, Chantilly, Virginia, came forward and referenced his statement of justification presented with his application. He added that this addition would be similar to other structures in his neighborhood.

Mrs. Harris asked if the material used to construct the addition would be similar to those on the existing dwelling and Mr. Simon replied that they would.

Because there were no speakers to address this application, Chairman Smith closed the public hearing.

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Mrs. Thonen made a motion to grant this request subject to the development conditions contained in the staff report dated June 13, 1989 with one addition.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-011 by JOHN SIMON, under Section 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit additions to dwelling to 27.6 feet from front, and 19.1 feet from side lot lines, on property located at 15220 Elk Run Road, Tax Map Reference 33-4((2))356, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 14,721 square feet of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this special permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Messrs. DiGiulian and Kelley.

\*This decision was officially filed in the office of the Board of zoning Appeals and became final on June 30, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 266, June 22, 1989, (Tape 2), Scheduled case of:

10:00 A.M. RICHARD EARL BRIGHT, VC 89-L-030, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage to 3.1 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), located at 3406 Burgundy Road on approximately 9,981 square feet of land, zoned R-4, Lee District, Tax Map 82-2((13))11.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

The applicant, Richard Bright, 3406 Burgundy Road, Alexandria, Virginia, stated that there is a sanitary sewer easement and right of way easement running across the middle of the property which prohibits construction.

Mr. DiGiulian noted that if the applicant moved the addition to the east he would still have a problem. Mrs. Thonen agreed with Mr. DiGiulian but added that she believed that the addition could be reduced to 22 feet.

Mrs. Harris asked the applicant where the neighbor's house on Lot 12 was located and Mr. Bright replied that his neighbor's house was sited the same as his, approximately 14 feet from the lot line.

There were no speakers to address this application nor any staff closing comments and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant-in-part the request allowing the applicant to construct the addition 8.1 feet from the side lot line rather than 5.1.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-030 by RICHARD EARL BRIGHT, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage to 3.1 (THE BOARD GRANTED 5.1 FEET) feet from side lot line, on property located at 3406 Burgundy Road, Tax Map Reference 42-2((13))11, Mrs. Harris moved that the Board of zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 9,981 square feet of land.
4. The subject property has an extraordinary condition due to the sewer hookup on the applicant's property which would prohibit moving the garage over any further.
5. The application does meet the requirements due to the fact that the strict application of this Ordinance would produce undue hardship and not allow the applicant to have reasonable use of his property.
6. The variance would be in harmony with the intended spirit and purpose of the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for 5.1 feet from the lot line with a garage no more than 22 feet in width. The applicant shall submit revised plats to the Board of Zoning Appeals for approval.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 267, June 22, 1989, (Tape 2), Scheduled case of:

10:45 A.M. RONALD B. EATON, VC 89-C-023, application under Sect. 18-401 of the zoning Ordinance to allow construction of an entrance addition to dwelling to 27.7 feet from a street line of a corner lot (40 ft. min. front yard required under Sect. 3-107), located at 9938 Lawyers Road on approximately 1.083 acres of land, zoned R-1, Centreville District, Tax Map 38-1((1))5A.

Chairman Smith noted that this case had been continued from June 13, 1989, at the applicant's request.

Jane Kelsey, Chief, Special Permit and Variance Branch, briefly outlined the application for those Board members who were not present at the previous public hearing.

Mr. Ribble stated that he believed this to be a very compatible use. Mrs. Harris asked if the applicant had the architectural drawings that the Board reviewed on June 22nd. Mr. Eaton replied he did not. Chairman Smith noted that he could not support the request as he believed that it was a further encroachment into the front yard.

The applicant, Ronald B. Eaton, 9938 Lawyers Road, Vienna, Virginia, stated that he had looked at other churches in the area and planned to model the entrance way after those. The same type of facade would be used on the addition as is on the existing structure. He stated that he would comply with the development conditions contained in the staff report. In December, he presented three options to the surrounding neighbors and this was the one that the neighbors believed to be more acceptable.

There were no speakers to address this application nor any staff closing comments and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request.

Mrs. Harris stated that she believed that because of the age of the house and because of the applicant's desire to stay in keeping with the existing architecture and because over the years the road had been moved closer to the house a variance was truly warranted.

Mrs. Thonen noted that this was a historical building and care must be taken when changes were made.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-023 by RONALD B. EATON, under Section 18-401 of the zoning Ordinance to allow construction of an entrance addition to dwelling to 27.7 feet

from a street line of a corner lot, on property located at 9938 Lawyers Road, Tax Map Reference 801((1))5A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.083 acres of land.
4. The property has an extraordinary situation due to the fact that this building was built in 1905, which was prior to the present Zoning Ordinance.
5. The applicant is trying to improve his living conditions.
6. The road adjacent to the property is heavily traveled.
7. The applicant's house is difficult to heat in the winter and this addition will help that problem.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

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Mrs. Harris seconded the motion.

The motion carried by a vote of 4-1 with Chairman Smith voting nay; Messrs. DiGiulian and Rammack not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 269, June 22, 1989, (Tape 2), Scheduled case of:

10:15 A.M. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, SP 89-C-012, application under Sect. 3-303 of the zoning Ordinance to allow a church and related facilities, located at the intersection of Poplar Grove Drive and Lake Newport Road on approximately 3.5557 acres of land, zoned PRC, Centreville District, Tax Map 11-3(13)1.

Chairman Smith noted that this application had been administratively withdrawn since this church was shown on an approved development plan for Reston, a planned community, and this was permitted without a Special Permit.

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Page 269, June 22, 1989, (Tape 2), Scheduled case of:

10:30 A.M. MOUNT VERNON HEALTH AND RACQUET CLUB, INC., SPA 80-L-085-2, application under Sects. 4-803 and 3-303 of the zoning Ordinance to amend S-80-L-085 for commercial tennis courts, similar courts and to permit building addition, addition of a commercial swimming pool and a school of special education (aerobics), increase in number of employees, and an increase in parking, located at 7952 Audubon Avenue on approximately 5.32 acres of land, zoned C-8 and R-3, Lee District, Tax Map 101-2(1)14 and 15.

Jane Kelsey, Chief, Special Permit and Variance, presented the staff report. She stated that the staff report recommended denial of the request based on staff's analysis outlined in the staff report. However, the applicant advised staff on June 21, 1989 that they would reduce the size of the building but because there was not sufficient time for staff to coordinate with the various staff members involved in the staffing of this application staff could not comment on the proposal.

At Mrs. Thonen's request, Chairman Smith called the applicant's representative to the podium. Lynn Townsend, attorney with the law firm of McGuire, Woods, Battle, & Boothe, 8280 Greensboro Drive, McLean, came forward.

Mrs. Thonen asked if the person in charge of the trailer park had been contacted with respect to the application. Ms. Townsend replied that she had not talked to them. She introduced Brad Gable, with Van Metre Corporation, Vice President of Mt. Vernon Health and Racquet Club, Inc., Pete Raney, manager of Mt. Vernon Health and Racquet Club, Inc., John Gavarkavich, engineer with Christopher Consultants. She stated that Mr. Gable and Mr. Raney have been working with the trailer park owner. Mrs. Thonen stated that she was very interested in the trailer park's input.

Ms. Townsend submitted a letter from Mr. Fagan, manager and general partner of the trailer park, which stated no opposition to the request. Mrs. Thonen stated that she believed that area had a great need for recreational facilities and stated that she would like to defer the application in order for the applicant and staff to work together to arrive at a solution.

Mr. Ribble stated that he would like to see pictures showing the travel aisle. Ms. Townsend submitted pictures to the Board and stated that she believed there would be no impact on the adjacent apartment buildings as they set back quite a distance from the property line.

Mrs. Thonen expressed concern that there was no way for the people living in the apartment complex to access the site without going onto Route 1. Ms. Townsend stated that the applicant had not closed off Audubon Lane and would be willing to construct an entrance. Mrs. Thonen stated that she would like to know if transportation would recommend opening the travel aisle on the side of the apartments. Ms. Kelsey explained that because these are private streets the County had no control. Ms. Townsend stated that perhaps many of the people living in the apartment complex would walk to the facility and Ms. Thonen suggested that the applicant should provide a hike/trail.

With respect to the corner of the lot, Ms. Townsend stated that the applicant had agreed to transportation suggestions to relocate two parallel parking spaces and change the curbing in one location in order to provide better interparcel circulation. If the

Page 270, June 22, 1989, (Tape 2), (Mount Vernon Health and Racquet Club, Inc., SPA #0-L-085-2, continued from Page 267)

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Department of Environmental Management determined there was not sufficient room for a travel way, the applicant would move the fence back and if that was not acceptable, then the applicant would provide a pedestrian cut through at the corner.

Ms. Townsend asked the Board whether or not the application would be deferred. Chairman Smith stated that he believed it would be to the applicant's benefit if the case were deferred as he could not support the application as it was submitted.

Mrs. Thonen asked Ms. Townsend about the location of the fence and Ms. Townsend used the pictures to show the location.

Mrs. Harris stated that she had concerns with the increase in the intensity of the use and that she would like to know if the tennis courts were going to have lights and what times the courts would be used as this would impact the adjacent neighbors. Ms. Townsend clarified that there would not be 100 people attending the aerobics class this was the number chosen because the Zoning Ordinance had a cut off at 100. Mrs. Harris agreed but added that if that was part of the approval that gave the applicant the right to have 100 people and those people had to be considered. Ms. Townsend stated that this had been addressed in the development conditions and the applicant was in agreement with the development conditions to limit the number to 25. Although transportation did not have a concern with the circulation to the rear of the property, Mrs. Harris stated that she did. Ms. Townsend stated that there would be an increase of approximately 50 parking spaces.

There were no speakers to address this application. Ms. Townsend asked the Board if they needed additional photographs of any of the site. Mr. Ribble stated that he would like to see the site from the front and Mrs. Thonen added that she would like to see more of the apartments.

Chairman Smith asked Ms. Kelsey if she had any additional comments and she stated that there were revised development conditions but that she would not distribute them as they may need further revisions.

Following a discussion between the Board, staff, and the applicant as to a deferral date, it was the consensus to defer to July 6, 1989 at 12:00 noon. Mrs. Thonen made a motion to defer to the date and time suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Messrs. DiGiulian and Kelley not present for the vote.

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Page 270, June 22, 1989, (Tape 2), Scheduled case of:

11:00 A.M. D.R.W. LIMITED PARTNERSHIP APPEALS, A 88-C-011 and A 88-C-012, Department of Environmental Management's decisions refusing to provide geotechnical reports and issue Residential Use Permits for nine (9) lots in Section 2 of the Chantilly Farms Subdivision. (DEF. FROM 3/21/89 AT APPLICANT'S REQUEST) (NOTICES WILL NEED TO BE DONE)

Chairman Smith stated that a request for a November deferral had been received from the applicant.

Jane Kelsey, Chief, Special Permit and Variance, stated that notices would have to be done again, the application would have to be readvertised, and the property would have to be posted, therefore a definite date and time would not need to be scheduled.

Mrs. Thonen made a motion to defer this application to November. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Messrs. DiGiulian and Kelley not present for the vote.

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Page 270, June 22, 1989, (Tape 2), After Agenda Item:

Sunrise Country Day School, SPA #1-D-030-1  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, outlined the history of the application for the Board. She stated that this applicant has been under violation since June and the school continues to operate.

Mrs. Thonen made a motion to deny the request so that staff would have time to research the violations. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian not present for the vote.

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Page 271, June 22, 1989, (Tape 2), After Agenda Item:

Approval of June 13, 1989 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted. Hearing no objection, Chairman Smith so ordered.

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Page 271, June 22, 1989, (Tape 2), After Agenda Item:

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Jane Kelsey, Chief, Special Permit and Variance Branch, questioned finding of fact number 5. Mrs. Thonen, the maker of the motion, stated that what had been submitted by staff was correct.

Mrs. Thonen then moved to approve the Resolution as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian not present for the vote.

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Page 271, June 22, 1989, (Tape 2), After Agenda Item:

Approval of March 14, 1989 Minutes

Mr. Hammack moved to approve the Minutes as submitted. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian not present for the vote.

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Page 271, June 22, 1989, (Tape 2), Information Item:

Procedure for Alleviating Split Zoning Problems.

Following a discussion among the Board members, Mrs. Thonen made a motion to request that staff forward a Memorandum to the Department of Environmental Management outlining the Board's request that a procedure be implemented to "red flag" any application with a split-zoning problem to the Zoning Administrator immediately.

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The Board recessed at 12:15 p.m. and reconvened at 12:20 p.m.

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Page 271, June 22, 1989, (Tape 2), Information Item:

Belle Haven Country Club  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she had discussed this application with Harvey Mitchell, Zoning Administration, and with the County Attorney's Office and it was the consensus that the application was not acceptable for scheduling.

Mr. Kelley stated that he was President of Belle Haven Country Club and explained that the justification for the out of turn hearing would allow time for the application to be processed and, if approved, for construction to commence prior to cold weather.

Mrs. Thonen questioned staff as to whether or not the Board could act on this application if it had not been accepted. Ms. Kelsey stated that an out of turn hearing would depend on whether or not the additional information was received in time for staff to process the application. Mr. Hammack noted that the deficiencies were very minor. Mrs. Thonen made a motion to approve the out of turn hearing. Mr. Hammack seconded the motion. Mrs. Harris stated that she saw no justification for granting an out of turn hearing. Mr. Hammack asked if there was any proposed increase in membership and Mr. Kelley replied there was not. Chairman Smith called for the vote which carried by a 3-1 vote with Mrs. Harris voting nay, Messrs. Kelley and Ribble abstaining; Mr. DiGiulian not present for the vote.

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Page 271, June 22, 1989, (Tape 2), Information Item:

The Board again took up the Memorandum to be forwarded to the Department of Environmental Management (DEM) regarding split zoning. Mrs. Thonen read into the record her written statement and asked staff to forward it to DEM.

"When Department of Environmental Management (DEM) or Zoning Administration Division finds there are multiple zonings on properties and an application is filed, that DEM or Zoning Administration Division red flag this to the Zoning Administrator."

Page 272 June 22, 1989, (Tape 2), Information Item:

Chairman Smith called for the vote as it was seconded earlier and the motion carried by a vote of 6-0 with Mr. DiGiulian not present for the vote.

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Page 272 June 22, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Betsy S. Flett  
Betsy S. Flett, Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 8/28/89

APPROVED: 9/2/89



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, June 27, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

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Chairman Smith called the meeting to order at 9:00 a.m. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board. There were none. Since the first case was not scheduled to be heard until 9:30, the Board decided to address the After Agenda Items first.

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Page 215, June 27, 1989, (Tape 1), After Agenda Item:

Request for Additional Time  
Norma & Eddie Bellett, VC 86-M-011

Lori Greenleaf, Staff Coordinator, stated that the applicant had made a request for additional time along with a waiver of the eight day waiting period, since the subdivision plan was ready for approval by the Department of Environmental Management (DEM). She stated that the original variance was granted May 20, 1986, and there had been two requests for additional times granted for the purpose of overcoming various obstacles.

Mr. Hammack wanted to know why the waiver was required and asked what the expiration date would be.

Ms. Greenleaf said that the variance expired on May 20, 1989 and the letter requesting additional time had been received on May 16, 1989.

Mrs. Thonen moved to grant the request for additional time. Mr. DiGiulian seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

Mrs. Thonen moved to waive the eight day waiting period. Mr. DiGiulian seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 216, June 27, 1989, (Tape 1), After Agenda Item:

Approval of Resolutions for June 22, 1989

Mr. Hammack moved to approve the Resolutions as submitted by staff.

Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 217, June 27, 1989, (Tape 1), Information Item:

Lack of Parking at the Massey Building

Mrs. Thonen brought up the situation surrounding the serious lack of parking at the Massey Building. She commented that on Tuesdays and Thursdays, the meeting days of the Board of Zoning Appeals, the parking lot is so full that it had become necessary to contact security. She said she believed it would be necessary to write a letter to the County Executive in order to resolve this problem.

Mrs. Thonen made a motion to request staff to prepare a memo to the County Executive stating that official parking is allowed only by executives.

Mrs. Harris commented that she had occasionally parked in the County Executive's parking spot out of necessity.

Jane Kelsey, Chief, Special Permit and Variance Branch, mentioned that since Board members are being faced with illegal parking situations, she would be sure to obtain former Board member Ann Day's parking sticker which would be turned over to Mrs. Harris.

The motion was seconded by Mr. DiGiulian and passed by a unanimous vote of 7-0.

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Page 218, June 27, 1989, (Tape 1), After Agenda Item:

Approval of Minutes of April 25, 1989

Mrs. Thonen moved to approve the Minutes of the meeting of April 25, 1989. The motion was seconded by Mr. DiGiulian, and passed by a unanimous vote of 7-0.

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Page 274, June 27, 1989, (Tape 1), After Agenda Item:

Approval of Minutes of May 18, 1989

Mrs. Harris moved to approve the Minutes of May 18, 1989 meeting, as submitted. The motion was seconded by Mr. Hammack, and passed by a unanimous vote of 7-0.

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Page 274, June 27, 1989, (Tape 1), Information Item:

Updating of Zoning Ordinance and By-laws

Mrs. Thonen stated that she had been in the process of updating over 5 years worth of amendments to the Zoning Ordinance.

Mrs. Thonen asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, if all of the By-Laws and Policy Statement has been updated.

Ms. Kelsey replied that Mr. Hammack had agreed to do the updating and Staff will be glad to assist in this during the August recess.

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Page 274, June 27, 1989, (Tape 1), Information Item:

Speaker Sign-Up Sheets for Board of Zoning Appeals' Meetings

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that staff had been contacted by a citizen group wanting to know why there were no sign-up sheets for speakers prior to the Board of Zoning Appeals meetings as there are with the Planning Commission meetings. Ms. Kelsey said that a similar procedure would make it possible to contact citizens prior to a hearing in the event of a deferral.

Chairman Smith said there were reasons for not doing this. He said the objections of speakers to deferrals needed to be heard, and at least three members of the Board are required to make a decision of whether or not to defer a case. Chairman Smith said if there are requested changes in hearing dates, staff could not call all of the speakers if there is a sign-up sheet.

Mrs. Thonen and Mrs. Harris mentioned that they had experiences when their names had been on Planning Commission meeting sign-up sheets, and they had never been contacted about changes prior to a meeting.

It was the consensus of the Board that sign-up sheets for speakers at Board of Zoning Appeals meetings were not practical.

Having addressed all of the items of information pertinent to the Board and having voted on all of the After Agenda Items, Chairman Smith called for the first case.

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Page 274, June 27, 1989, (Tape 1), Scheduled case of:

9:30 a.m. LESLIE KARA, VC 89-D-031, application under Sect. 18-401 of the zoning Ordinance to allow construction of garage addition to dwelling to 7.6 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), located at 6518 Byrnes Drive, on approximately 11,716 square feet of land, zoned R-3, Dranesville District, Tax Map 30-4((8))(4)18.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief explained that the applicant was requesting a variance of 4.4 feet from the minimum side yard requirement.

Mr. Hammack asked the total length of the garage.

Ms. Greenlief replied that the dimensions were 13 feet wide by 30 feet long.

Mrs. Thonen asked the maximum length of the average present-day automobile.

Chairman Smith stated that he believed American cars to be an average of less than 19 feet in length. He then wondered if the applicant was intending to place two cars back-to-back in the proposed garage.

Mr. Hammack asked how far the garage was from the street.

Ms. Greenlief replied that it was 42.3 feet from the street.

Chairman Smith called for the applicant.

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Leslie Kara, 6518 Byrnes Drive, McLean, Virginia, came forward and stated that the garage dimensions as stated by Ms. Greenleaf were correct.

Mrs. Thonen asked Mr. Kara why he did not place the proposed garage at the rear rather than in the front.

Mr. Kara explained that his property slopes considerably to the rear. He also said that the air conditioning unit was also located to the rear which would prevent the garage from being located there.

Mrs. Harris mentioned that the variance would not intrude into the front yard requirement.

Mr. Kara said he did not wish to add anything further to his statement of justification.

Chairman Smith questioned some of the plat dimensions as stated by saying they appeared to be less than stated.

Ms. Greenleaf said the apparent 32 foot length garage and 38 foot front yard could be distorted in scale due to the photo copy of Mr. Kara's property.

Mr. Hammack asked about the possibility of moving the garage to the rear.

Mr. Kara replied there was an 8 foot drop in level from the driveway to the rear of the lot. He said if the Board preferred, the 28 feet in length would be acceptable. Mr. Kara also stated that he was an engineer.

Chairman Smith asked if it was Mr. Kara's plan to have a covered walkway in the front of his house which seemed to him to be very practical.

Mr. Kara said that his plans did include a covered walkway.

Mr. Hammack moved to grant-in-part, reducing the length of the garage to 28 feet, based on findings that the nine variance standards had been satisfied, that the applicant had testified to an unusual grade on his property to the rear requiring the garage to be placed to the left side 7.6 feet from the side lot line.

The motion failed for lack of a second.

Mrs. Thonen moved to grant the variance as requested due to the topographical slope on the right rear of the property, with one condition in addition to the Development Conditions as contained in the staff report, that the garage facade be constructed of the same material as the dwelling.

Mrs. Harris seconded the motion to grant, which passed by a vote of 6-1, with Mr. Hammack voting nay.

Mrs. Thonen moved to waive the eight day waiting period at the applicant's request.

The waiver motion was seconded by Mrs. Harris, and passed by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-031 by LESLIE KARA, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 7.6 feet from side lot line, on property located at 6518 Byrnes Drive, Tax Map Reference 30-4((8))(4)18, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,716 square feet of land.
4. The applicant has satisfied the nine standards for variance.
5. The property has an unusual topography with a slope on the back right and rear requiring the garage to be placed to the left side of the property.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The facade of the addition shall match the existing dwelling unit.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-1. Mr. Hammack voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1989; the Board waived the eight day limitation. This date shall be deemed to be the final approval date of this variance.

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Page 276, June 27, 1989, (Tape 1), Scheduled case of:

9:45 a.m. C. RONALD KEYSER, VC 89-S-034, application under sect. 18-401 of the zoning Ordinance to allow construction of deck addition to dwelling to 0.82 feet from side lot line (3.2 ft. min. side yard required by Sect. 2-412), located at 9824 Burke Pond Lane, on approximately 3,264 square feet of land, zoned PRC, Springfield District, Tax Map 78-3((14))14.

Lori Greenlief, Staff Coordinator, presented the staff report, explaining that the applicant was requesting a variance to .82 feet of the side lot line. Ms. Greenlief stated that research indicated no other variances had been requested in this development.

Mrs. Harris said she could not tell from the plat if the planter was at deck level or below.

Ms. Greenlief said she believed it was below the deck.

Chairman Smith called for the applicant to state his justification.

C. Ronald Keyser, 9824 Burke Pond Lane, Burke, Virginia, came forward.

Mr. Kelley said he believed a deck to the side would give full use of the property and would only need to be 4 feet higher than the walkout basement and require a lot less steps.

Mr. Keyser said that of the 10 neighbors contacted, not one expressed opposition to his deck plans. He added that one neighbor who was scheduled to speak in support of the variance request was unable to appear.

Mr. Keyser said that his exception to the staff report was the 6.4 feet at the left rear corner of the property.

Ms. Greenlief and Mrs. Harris proceeded to explain the side yard requirements and in order that Mr. Keyser would more fully understand how they are measured.

There being no other speakers, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to deny VC 89-8-034.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-8-034 by C. RONALD and MARY L. KEYSER, under Section 2-412 of the Zoning Ordinance to permit construction of deck addition to dwelling to 0.82 feet from side lot line, on property located at 9824 Burke Pond Lane, Tax Map Reference 78-3(14)14, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 3,264 square feet of land.
4. That no other variances have been requested in this development.
5. That denial would not deprive applicant of reasonable use of the property.
6. The deck could be in line with the house and still meet the setback.

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

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

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

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

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

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

Mrs. Thones seconded the motion. The motion carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 5, 1989.

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10:00 a.m. ABBAS MOHAJERI AND EVANGELINE PARTILLO, VC 89-C-033, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed corner lot A-1 having a lot width of 123.56 feet (125 ft. min. lot width required by Sect. 3-206), located at 9950 Vale Road, on approximately 1.349 acres of land, zoned R-2, Centreville District, Tax Map 37-4((1))45.

Denise James, Staff Coordinator, presented the staff report.

In response to questions from the Board, Ms. stated that the present zoning is R-2.

Abbas Mohajeri, 1700 Paisley Blue Court, Vienna, Virginia, the co-applicant, came forward along with a translator.

Mrs. Harris asked Mr. Mohajeri why he needed to allow subdivision of this property.

Amir Motlagh, 205 Berry Street, Vienna, Virginia, the gentleman speaking for and interpreting for Mr. Mohajeri, came forward and replied that Mr. Mohajeri, although subdividing, was not changing the building on Lot A-1.

Chairman Smith asked if it was correct that under RE 87-C-101 there was a proffer dedicating a strip of land on the Vale Road side of the property, and asked if all the neighboring parcels were zoned R-2.

Mr. Motlagh replied that was correct.

Ms. James stated for the record that Mr. Motlagh was serving only as translator and did not appear on the applicant's affidavit.

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

Mrs. Thones moved to grant VC 89-C-033 as she believed the dedication of the road would be an asset to the neighborhood. She stated the granting of this variance would be in accordance with the development conditions stated in the staff report of June 20, 1989, and that the applicant must develop in accordance with the proffers set forth in RE 87-C-101.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-033 by EVANGELINE PARTILLO and ABBAS MOHAJERI, under Section 3-206 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed corner lot A-1 having width of 123.56 feet, on property located at 9950 Vale Road, Tax Map Reference 37-4((1))45, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.34 acres of land.
4. That all surrounding parcels of land are zoned R-2.
5. That in the granting of R1 87-C-101, the applicant proffered to dedicate land along the Vale Road side of the property for road improvements thereby creating the need for a variance.

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into 2 lots as shown on the plat submitted with this application and dated February 6, 1989
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA

Page 279, June 27, 1989, (Tape 1), (Abbas Mohajeri and Evangeline Partillo, VC 89-C-033, continued from Page 278)

because of the occurrence of conditions unforeseen at the time of approval of this variance. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

- 3. If requested by the Department of Environmental Management, a trail shall be provided in accordance with the county wide trail program along Vale Road for the full frontage of Lot A-1 to the satisfaction and approval of the Department of Environmental Management.
- 4. The applicant must develop in accordance with the proffers approved under RS 87-C-101.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 5, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 280, June 27, 1989, (Tape 1), Scheduled case of:

10:15 a.m. SAINT MARK COPTIC ORTHODOX CHURCH, SP 89-S-013, application under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities, located at 11821 Braddock Road, on approximately 3.1142 acres of land, zoned R-C and MS, Springfield District, Tax Map 67-1(4)34.

Patrick Via, attorney for the applicant, appeared before the Board.

As requested by the applicant's attorney, Mrs. Harris moved to defer SP 89-S-013 to July 25, 1989 at 11:30 a.m. since the notices were not in order.

Mrs. Thones seconded the motion which passed by a unanimous vote of 7-0.

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Page 280, June 27, 1989, (Tape 1), Scheduled case of:

11:00 a.m. BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that special exception approval is required for a telecommunication facility in the PRC District where such use is not indicated on the approved development plan, located at 11810 Sunrise Valley Drive, zoned PRC, Centreville District, Tax Map 17-3(3)11.

Mrs. Thones moved to defer A 89-C-006 to September 21, 1989 at 11:00 a.m.

Mr. DiGiulian seconded the motion which passed by a unanimous vote of 7-0.

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Page 282, June 27, 1989, (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 10:21 a.m.

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Joanne R. Kiser  
Joanne R. Kiser, Associate Clerk to the Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman Board of Zoning Appeals

SUBMITTED: 7/25/89

APPROVED: 8/1/89



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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 6, 1989. The following Board Members were present: Chairman Daniel Smith, Vice Chairman John DiGiulian, Martha Harris, Mary Thonen, Paul Hammack, Robert Kelley, and John Ribble.

Chairman Smith called the meeting to order at 10:17 a.m. He explained that the hearing was convening later than usual due to a scheduling conflict in the Board room. Following the prayer, Chairman Smith asked the Board members if they had any pertinent matters to bring before the Board. There being none, the Board took up the regularly scheduled agenda.

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Page 281, July 6, 1989, (Tape 1), Scheduled case of:

9:00 a.m. WORD OF LIFE ASSEMBLY OF GOD BY REV. WENDEL COVER, PASTOR, SPA 81-A-078-2, application under Sect. 3-303 of the Zoning Ordinance to amend SP 81-A-078 for a church and related facilities to permit revision to size and configuration of the approved sanctuary addition, located at 5225 Backlick Road, on approximately 12.42 acres of land, Lee District, zoned R-3, Tax Map 71-4((1))40-C. (DEFERRED FROM 5/9/89 AT APPLICANT'S REQUEST)

Chairman Smith stated that the applicant had requested a deferral and asked if there was anyone present who wished to address the deferral.

Pat Sines, 7004 Braddock News Place, Springfield, Virginia, representing Braddock News Homeowners Association, came forward to state that she was in agreement with the deferral.

Chairman Smith asked the applicant's attorney if he had a deferral date in mind.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P.O. Box 547, Fairfax, Virginia, came forward and stated they had hoped for July 25th.

Chairman Smith said that date would not be possible, unfortunately, with the load of cases that the Board had between now and August 1st.

Mr. Hammack commented that the Board had been assured this case would be ready to roll on July 6th and commented that he did not believe that deferrals for short periods were realistic.

Mr. Via stated that he was trying to learn the status of Special Permits as they exist. He added that they have not remained idle and that his law firm was retained shortly after the last deferral. He said that since then he had contacted various County agencies, engineers, DEN, and that he had walked the site with the County Arborist. Mr. Via said that it was only two weeks ago that he was able to meet with the citizens and tell them what the situation was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch suggested the night meeting of October 3, 1989 at 8:00 p.m., which was agreeable with Mr. Via. Ms. Kelsey mentioned that the citizens had requested a night meeting as well.

Mrs. Thonen moved to defer SPA 81-A-078-2. Mr. DiGiulian seconded. The motion to defer passed by a vote of 6-0, with Mr. Ribble not present for the vote.

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Page 281, July 6, 1989, (Tape 1), Scheduled case of:

9:15 A.M. TYSONS II, DBA THE SPORTING CLUB, SPA 81-D-075-1, application under Sect. 4-403 of the Zoning Ordinance to amend SP 81-D-075 for commercial recreation facilities to permit addition of locker rooms to existing facilities, located at 8250 Greensboro Drive, on approximately 10.00 acres of land, zoned C-4, Branesville District, Tax Map 29-3((15))11A.

Lori Greenleaf, Staff Coordinator, presented the staff report. She explained that the amendment application was for the construction of a locker room addition to the commercial swim facility. Ms. Greenleaf said the hours of operation, which were not previously conditioned, would remain the same, 6:00 a.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 8:00 p.m. on Saturday and Sunday. She said there was no anticipated increase in the number of employees nor in the number of memberships.

Chairman Smith called for the applicant's representative.

Paul T. Wickman, 11709-L Karbon Hill Court, Reston, Virginia, came forward and stated that he had nothing to add and that he was in agreement with the development conditions as contained in the staff report.

There being no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Hammack moved to grant SPA 81-D-075. Mr. Hammack asked if there were revisions to the parking lot and if there were any known violations.

Ms. Greenleaf stated that it was not necessarily a violation but that the applicant had eliminated some of the spaces creating inadequate traffic flow and had put up gates.

Mr. Hammack questioned staff as to why the applicant was not in violation if these changes had not been a part of the original approval.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated the actual layout was not included on the approved special permit plat. She said, however, if it was shown on the approved site plan, then it would be in violation. Ms. Kelsey reviewed the plat approved with the previous approval and said the plat did show parking but did not show gates, so they were in violation. She stated that staff would make the appropriate notes and forward them to the Zoning Enforcement Branch.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 81-D-075-1 by TYSONS II, DBA THE SPORTING CLUB, under Section 4-403 of the Zoning Ordinance to permit amend SP 81-D-075 for commercial recreation facilities to permit addition of locker rooms to existing facilities, on property located at 8250 Greensboro Drive, Tax Map Reference 29-3((15))11A, 11B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. That the applicant is the lessee of the land.
2. The present zoning is C-4.
3. The area of the lot is 10.00 acres.
4. That the applicant has satisfied the requirements necessary for special permit use.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. A revised parking tabulation shall be provided to the Department of Environmental Management which reflects the requirements of the Sporting Club and the current requirements for the office use.
5. The maximum number of employees on the premises at any one time shall be thirty-two (32).
6. There shall be no more than 523 patrons on the premises at any one time.

7. A minimum of 656 parking spaces shall be provided in the lot shared by the Tysons Sporting Club and the office building. A minimum of 198 spaces shall be provided for Sporting Club use. All parking for this use shall be on-site.
8. Stormwater management shall be provided to the satisfaction of the Director, Department of Environmental Management.
9. The southern portion of the parking lot shall be redesigned to provide access between the three travel aisles. The result shall be smooth traffic flow between the three travel aisles. This redesign shall not result in a loss of parking spaces.
10. Regulatory traffic signs, such as "yield" and "keep right" signs, in the parking area shall conform in size and color to those in the National Manual on Uniform Traffic Control Devices.

The above conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 283, July 6, 1989, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE KENNEY, VC 89-V-022, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 15.0 feet from a street line on a corner lot (35 ft. min. front yard req. by Sect. 3-207), located at 8611 Old Mt. Vernon Road on approximately 5,679 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 101-4((10))1. (DEF. FROM 5/23/89 IN ORDER FOR THE APPLICANT TO MEET THE NOTICE REQUIREMENT)

Denise James, Staff Coordinator, presented the staff report. Ms. James explained that the applicant wanted to build a single family dwelling to 15 feet from the front lot line and had already been granted the temporary construction and grading easements for a storm drainage easement project.

Chairman Smith stated that there was no doubt about the applicant's having a hardship on this lot, and also mentioned that the proposed house is one of minimum size.

George Kenney, 10404 Artemel Lane, Great Falls, Virginia, came forward and stated that the lot was exceptionally shallow and was bordered by three streets which made it hard to develop, and that he was asking the Board for relief. Mr. Kenney said he had owned the property for one and one half years and had inherited it from his father.

Mrs. Thomas asked about Lot 2. Ms. James said there are single family dwellings on Lots 2 and 3.

There being no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mrs. Thomas moved to grant VC 89-V-022.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-022 by GEORGE KENNEY, under Section 3-207 of the Zoning Ordinance to allow construction of dwelling to 15.0 feet from a street line on a corner lot, on property located at 8611 Old Mt. Vernon Highway, Tax Map Reference 101-1((14))(10)1, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 5,679 square feet of land.
4. The lot is exceptionally shallow.
5. The applicant will experience a hardship without the variance.
6. The lot, like others in the Mt. Vernon District, is very small.
7. The lot has three front yards.
8. The applicant has satisfied the nine requirements.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of

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conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 285, July 6, 1989, (Tape 1), Scheduled case of:

9:45 A.M. DAVID K. HOWARD AND SUSAN A. HOWARD, VC 89-C-036, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 0.5 feet from side lot line such that side yards total 35.7 feet (12 ft. min., 40 ft. total min. side yard required by Sect. 3-107), located at 3515 Willow Green Court, on approximately 22,846 square feet of land, zoned R-1, Centreville District, Tax Map 46-2((13))27.

Denise James, Staff Coordinator, presented the staff report.

Chairman Smith asked when the house was constructed and what the zoning was where the addition would be built.

Ms. James said it was R-1 (cluster) but that the applicant would have to answer as to when the house was constructed.

David K. Howard, 3515 Willow Green Court, Oakton, Virginia, came forward and stated that he had owned this property for six years. He said he believed the dwelling had been built in 1978.

Chairman Smith asked Mr. Howard for the justification.

Mr. Howard stated that his lot was long and narrow, that the house was near the back to make room for the septic field in front. Mr. Howard said his lot backed up to a floodplain and there was a small pump well which pumps the affluent up to the septic field. He said there was no place in the back to construct the garage due to the piping from the septic system. Mr. Howard said the primary reasons for building the garage were that he needed a sheltered area for the protection of his wife and new baby, a place for his woodworking hobby which would protect his house from sawdust, and for protection of his vehicles from bad weather.

Mr. DiGiulian asked Mr. Howard if he could cut the width by 2 feet to a total width of 22 feet, rather than the requested 24 feet.

Mr. Howard stated that he had no storage area for his yard tools right now and that contiguous Parcel A was common ground for a homeowners association. He said he had submitted his plans to the president of his homeowners association who was in agreement.

Mrs. Harris asked Mr. Howard if it would be possible to extend the addition to the rear and narrow it down by two feet on the side.

Mr. Howard said he did not believe there would be room for two cars with a 19 foot width garage but that it might be possible. He mentioned that the addition would be built of brick and block construction which would match the existing house as closely as possible.

Mr. Hammack asked why the garage could not be moved forward to get the benefit of the easement. Mr. Howard explained that it is a very steep grade which if the garage were raised would allow water to come into the house.

There being no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to grant-in-part VC 89-C-036 to within 4.5 feet of the side lot line, with a maximum garage width of 20 feet, extending no further back than the rear wall of the house, a maximum depth of 28 feet. The applicant was required to submit a revised plat showing the approval.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-036 by DAVID K. and SUSAN A. HOWARD, under Section 3-107 of the Zoning Ordinance to allow construction of garage addition to dwelling to 0.5 feet from side lot line such that side yards total 35.7 feet (THE BOARD GRANTED TO 4.5 FEET FROM SIDE LOT LINES), on property located at 3515 Willow Green Court, Tax Map Reference 46-2(13)0027, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is 22,846 square feet of land.
4. The lot is irregularly shaped.
5. The lot has exceptional narrowness.
6. The lot slopes to the rear.
7. The applicant must build where requested due to location of drain field in the front of the lot.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

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- 2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
- 3. A Building Permit shall be obtained prior to any construction.
- 4. A revised plat shall be submitted to the Board of Zoning Appeals showing a 4.5 foot side yard and a garage width of 20 feet.
- 5. The facade of garage addition shall be compatible with dwelling.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-1. Chairman Smith voted nay. Mr. Kelley and Mr. Ribble were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this variance.

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10:00 A.M. FLOYD L. WALL, VC 89-M-037, application under Sect. 18-401 of the zoning Ordinance to allow construction of garage addition to dwelling to 29 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-407), located at 7106 Hickory Hill Road, on approximately 10,047 square feet of land, zoned R-4, Mason District, Tax Map 60-1((10))16.

Denise James, Staff Coordinator, presented the staff report.

Floyd L. Wall, 7106 Hickory Hill Road, Falls Church, Virginia, came forward and stated that he needed to build the garage to the front of the dwelling.

Mrs. Thonen asked if there was a 6 foot fence in the front yard. Mr. Wall stated that there was no fence. After being referred to the plat, Mr. Wall stated that what the Board was referring to was a temporary thing by the roadside so that he could park his car. He said it would be removed.

Chairman Smith asked Mr. Wall for his justification.

Mr. Wall stated that he needed the addition for lawn equipment storage and a workshop. He said that a minimal one foot variance was needed to construct a 20 foot garage. He said his chimney was 5 feet wide and 18 inches deep, so he was already losing a foot and one half off his existing area. Mr. Wall said he was asking for a minimum of one foot.

Chairman Smith said the one foot was only for a short distance and it would meet the setback requirement about half way in to the 26 feet on that one corner.

Mrs. Harris asked Mr. Wall if the garage could be moved back one foot so as not to need a variance. Mr. Wall said he would like to keep it in line with the house so that it all ties in together, keeping it the depth of the house.

Mrs. Thonen asked Mr. Wall about the roof line. Mr. Wall stated that the garage would be vinyl siding and the garage roof line would drop down a bit from the dwelling which was the usual design form.

There being no further speakers, Chairman Smith closed the public hearing.

Ms. James stated she wished to add one further development condition which would require the applicant to move the offending fence from the front yard as part of the construction.

Chairman Smith suggested sending in the inspector first to see if the fence was in violation.

Mrs. Harris moved to grant VC 89-M-037.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-037 by FLOYD L. WALL, under Section 3-407 of the Zoning Ordinance to allow construction of garage addition to dwelling to 29 feet from a street line of a corner lot, on property located at 7106 Hickory Hill Road, Tax Map Reference 60-1(10)16, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1989; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,047 square feet of land.
4. The lot has unusual shape.
5. The construction of a garage on this lot would need a variance.
6. The applicant has satisfied the necessary requirements.
7. The applicant is requesting a minimum variance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of



conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. HECHT'S COMPANY, SP 89-P-014, application under Sect. 8-901 of the Zoning Ordinance to allow redistribution of sign area and additional sign area for a regional shopping center, located at 11700 Lee Jackson Memorial Highway, on approximately 618,003 square feet of land, zoned C-8, Providence District, Tax Map 46-3((8))5.

Denise James, Staff Coordinator, presented the staff report. Ms. James explained that the applicant wished to add a new 82 square foot sign in addition to their existing 193 square foot signage and that the Zoning Ordinance limits each tenant in Fair Oaks Mall to 200 square feet. Ms. James pointed out the location of the two signs on the viewgraph for the benefit of the Board.

Marianne Bundren, 8280 Greensboro Drive, McLean, Virginia, attorney for the applicant, came forward.

Chairman Smith asked Ms. Bundren if she was in agreement with the conditions as stated in the staff report.

Ms. Bundren stated that they are in agreement with the proposed development conditions and with the staff report. She said she only wanted to add that this application was prompted by the recent renovations to the Hecht's store.

There being no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Ribble moved to grant SP 89-P-014.

Ms. Bundren requested that the Board grant a waiver to the eight day waiting period so that they might proceed with their sign applications.

Mr. Ribble moved that the eight day waiting period be waived. The motion was seconded by Mrs. Harris. 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

In Special Permit Application SP 89-P-014 by HECHT'S COMPANY, under section 8-006 of the Zoning Ordinance to permit redistribution of sign area and additional sign area for a regional shopping center, on property located at 11700 Lee Jackson Memorial Highway, Tax Map Reference 46-3((8))5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following Resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. That the applicant is the lessee of the land
2. The present zoning is C-8, HC.
3. The area of the lot is 618,003 square feet of land.
4. That applicant's testimony indicates compliance with special permit uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-912 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the following new and replacement signage:

"HECHT'S" 193 square feet  
"HECHT'S" 82 square feet

This special permit is granted for the replacement and new signage indicated by location and size on the special permit plat submitted with this application dated May 19, 1989, as qualified by these conditions. This condition shall not preclude directional signs and refacing and maintenance of existing signs. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit. This condition shall not preclude the approval of additional sign permits in accordance with Article 12 for signs which would be allowed by right within Fair Oaks Mall.

3. Sign permits, as regulated by Article 12, shall be obtained for all signs.
4. Illumination of the signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1989; the Board waived the eight day limitation. This date shall be deemed to be the final approval date of this special permit.

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Page 290, July 6, 1989, (Tape 1), Scheduled case of:

10:30 A.M. VERNON T. AND MARILYN A. MISKOWICH, VC 89-P-035, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7 feet from a side lot line (12 ft. min. side yard required by Sect. 3-307), located at 3324 Hartwell Court, on approximately 10,823 square feet of land, zoned R-3, Providence District, Tax Map 59-2((8))(9)19.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the proposed addition would be 12 feet by 8 feet and would be used as additional dining space. Ms. Bettard also pointed out that other variances have been granted in the area.

Vernon T. Miskowich, 3324 Hartwell Court, Falls Church, Virginia, came forward to give his justification. He explained that his present dining room was approximately 6 x 9 feet and that after speaking with several architects, the only location which would cause a minimum disruption to the line of the house and to the neighbors, would be in the area indicated. Mr. Miskowich said the approximate dimensions of the new dining room would be 10 x 14 feet.

Mrs. Thonen said that from looking at the plat, there appeared to be a need for a variance only at the top corner.

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Hearing no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Kelley moved to grant VC 89-P-035.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-035 by VERNON T. and MARILYN MISKOWICH, under Section 3-307 of the Zoning Ordinance to allow construction of additional dwelling to 7.0 feet from a side lot line, on property located at 3324 Hartwell Court, Tax Map Reference 59-2((8))(9)19, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,823 square feet of land.
4. That the lot has exceptional narrowness.
5. That the house is set at an angle on the lot.
6. That only the tip of the addition requires a variance.

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

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

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

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

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

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1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 292, July 6, 1989, (Tape 1), Scheduled case of:

10:45 A.M. NELSON AND MARTHA GETCHELL APPEAL, A 89-D-004, to appeal Zoning Administrator's determination regarding the calculation of the maximum permitted FAR for a structure located on a split zoned lot, located at 718 Walker Road, zoned C-5 and C-8, Dranesville District, Tax Map 13-1((1))1. (DEFERRED FROM 5/9/89 AT APPLICANT'S REQUEST)

Chairman Smith noted that a deferral had been requested and asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, for a suggested date to reschedule this hearing.

Ms. Kelsey suggested September 21, 1989, stating there were only four cases scheduled to be heard that day.

Mrs. Thonen stated that the request had been for 120 days.

Mr. Hammack wanted to know why an additional 120 days was necessary.

Mrs. Thonen read the deferral letter which stated that the applicant wished the additional time for the purpose of working out the development plan with the community.

Ms. Kelsey suggested October 10, 1989 at 9:00 a.m.

Chairman Smith asked if there was anyone present interested in this application and no one responded.

Hearing no reply, the Chair so ordered to defer to the date and time suggested by staff.

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Page 292, July 6, 1989, (Tape 1), Scheduled case of:

11:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK APPEAL, A 89-A-007, to appeal decision of the Director, Department of Environmental Management denying site plan waiver to allow construction of addition to existing office building, located at 9906 Braddock Road, zoned R-1, Annandale District, Tax Map 69((1))1 and 12.

Chairman Smith stated that the Board had received additional information pertaining to this appeal which was not originally part of the case. He said in view of this additional information and the legalities of that and other factors, they would like to defer this appeal in order that the Board could obtain legal counsel.

Mrs. Thonen said if she had been aware that staff would have legal counsel present, she would have requested Board counsel. She said she believed that this was the first instance when legal representation had been present for staff, and that she would definitely like to defer this appeal.

Mrs. Thonen moved that the Board have its own attorney available when this appeal was heard. This motion was seconded by Mr. DiGiulian.

Chairman Smith stated that it was moved and seconded that the Board defer this appeal to a later date in order to get legal representation. He asked for concurrences on time and date from the parties involved.

Pat Taves, County Attorney's office, stated that he had no opposition to the deferral for the reasons stated.

Mike Dougherty, attorney with the law firm of Dougherty, Sheridan & Gramaldi, 8408 Arlington Boulevard, Suite 200, Fairfax, Virginia, stated that he understood the Board's position and agreed with a deferral. However, he did ask that the Board consider the case as soon as possible.

Chairman Smith asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, for a suggested date.

Mrs. Thonen asked Chairman Smith how he could find out when the Board's counsel could be present.

Chairman Smith believed the Board should set it as early in September as possible, then if for some reason counsel could not make it at that time, the Board would have to work with the involved parties to try to set a mutual agreeable date.

Mr. Dougherty asked if there were any dates still available in July before the Board recessed.

Chairman Smith said July was out of the quest as some of today's cases had to be moved to October. He said it would be set as early in September as possible.

Mr. Kelley asked if the Board felt a special meeting for this case was necessary. Chairman Smith said he did not believe the length would require a special meeting. Mr. Kelley said the case troubled him in several areas. Chairman Smith said that was why he believed that legal representation was needed. Mrs. Thonen said it was difficult when there are long meetings to go through a long case such as this appeal. Chairman Smith said he believed 40 minutes would be sufficient to hear this case, and Mr. Hammack concurred. Mrs. Thonen moved that this appeal case be heard on a separate day. The motion was not seconded.

Ms. Kelsey made alternate suggestions of various dates, suggesting once again September 14th since there were only seven cases currently scheduled, or September 21, 1989 at 9:00 a.m. allowing one hour. Ms. Kelsey mentioned the other cases on the 21st to be Bell Atlantic Mobil Systems Appeal, Tuckahoe Recreation, Vietnamese Buddhist, and Gunston Plaza Associates. Bell Atlantic had already been deferred until 11:00 a.m., so this appeal would have to be 11:15 a.m.

Mrs. Thonen withdrew her motion for a separate hearing day.

Chairman Smith returned to the original motion, stating that the suggested time was September 21, 1989 at 11:15 a.m., which passed by unanimous vote.

Chairman Smith asked if there was anyone else present interested in this application.

Gordon Lawrence, Fairfax County Public Schools, General Services support Center, 6800-B Industrial Road, Springfield, Virginia, came forward to state that he was one of the parties involved in requesting a sidewalk.

Chairman Smith asked if Mr. Lawrence had any comments regarding the deferral. Mr. Lawrence replied he did not and agreed to the date and time of the deferral.

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Page 293, July 6, 1989, (Tape 1), Scheduled case of:

11:30 A.M. MICHAEL MANSY, VC 89-P-038, application under Sect. 18-401 of the zoning Ordinance to allow construction of addition to dwelling to 21 feet from rear lot line with a deck extending to 11 feet from rear lot line (25 ft. min. rear yard for dwelling and 13 ft. min. rear yard for deck required by Sects. 3-207 and 3-412), located at 2018 Westwood Terrace, on approximately 10,503 square feet of land, zoned R-2(C), Providence District, Tax Map 39-1((19))5.

Chairman Smith said that there was a request for withdrawal. Hearing no objection, the Chair so ordered.

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Page 294, July 6, 1989, (Tape 1), Scheduled case of:

11:45 A.M. OMER L. HIRST, TRUSTEE, SP 89-M-015, application under Sect. 8-901 of the Zoning Ordinance to allow waiver of the dustless surface requirement, located at 7215 Little River Turnpike, on approximately 41,360 square feet of land, zoned C-8, Mason District, Tax Map 71-1((1))88.

Ms. Bernadette Bettard, Staff Coordinator, presented the staff report which recommended approval in accordance with development conditions set forth in appendix 1 of the report.

Phil Lieber, attorney with the law firm of McGuire, Woods, Greensboro Drive, McLean, Virginia represented the applicant before the Board. He stated that this was an interim use until the property was redeveloped. This variance would prevent the trees from being torn down. He agreed with the development conditions contained in the staff report. He stated that when the property was redeveloped the parking lot would be paved.

Mr. Hammack moved to approve the application.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-015 by OMER L. HIRST, TRUSTEE and B. A. PRICHARD, under Section 8-006 of the Zoning Ordinance to permit waiver of the dustless surface requirement, on property located at 7215 Little River Turnpike, Tax Map Reference 71-1((1))88, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-8.
3. The area of the lot is 41,360 square feet of land.
4. The rear of the lot is subject to rezoning, and applicant wishes to use without removal of any existing trees.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-901 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the gravel surfaces indicated on the plat submitted with this application, except as qualified below.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform with the approved Special Permit plat and these conditions.
5. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.
6. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire on July 14, 1994.
  - o Speed limits shall be kept low, generally 10 mph or less.
  - o The areas shall be maintained with clean stone with as little fine material as possible.

- o The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring.
  - o Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
  - o During dry seasons, water shall be applied to control dust.
  - o Runoff shall be channeled away from and around driveway and parking areas.
  - o The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.
7. There shall be a minimum and maximum of thirteen parking spaces, including two garage spaces.
8. The driveway shall be paved at least twenty-five (25) feet into the site from the right-of-way of Little River Turnpike to prevent gravel from spreading onto Little River Turnpike and to allow for safe acceleration from the driveway onto Little River Turnpike. It should also be improved to VDOT standards.
9. The applicant shall provide right-of-way dedication of 98 feet from the centerline of Route 236, temporary grading and construction easements and interparcel access to the adjacent properties to the east and west. These improvements shall be provided upon redevelopment of the subject site.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 292, July 6, 1989, (Tapes 1 and 2), scheduled case of:

12:00 NOON MOUNT VERNON HEALTH AND RACQUET CLUB, INC., SPA 80-L-085-2, application under Sects. 4-803 and 3-303 of the Zoning Ordinance to amend 8-80-L-085 for commercial tennis courts, similar courts and recreational facilities to permit building addition, addition of a commercial swimming pool and a school of special education (aerobics), and increase in number of employees, located at 7952 Audubon Avenue on approximately 5.32 acres of land, zoned C-8 and R-3, Lee District, Tax Maps 101-2(1)14 and 15. (DEFERRED FROM 6/22/89 FOR ADDITIONAL INFORMATION)

Lynn Townsend, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, represented the applicant. She requested a deferral until such time as the adjacent property owner could be present.

Mrs. Thones stated that she had talked with Mrs. Ritchie, the manager of the adjacent trailer park, and Mrs. Ritchie had indicated that she wished to poll the people who live in the park. The applicant had discussed this application with the property owner, not the people who actually live in the park, therefore, she was in favor of the deferral.

Mrs. Thones moved that the application be deferred until September 14, 1989 at 9:00 a.m. Mr. DiGiulian seconded the motion and the motion passed by a vote of 6-0. Mr. Hammack was out of the room.

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Page 296, July 6, 1989, (Tape 2), After Agenda Item:

Trinity Christian School, SP 89-A-027  
Out of Turn Hearing

Jane C. Kelsey, Chief, Special Permit and Variance Branch explained that the applicant was requesting a reconsideration of the Board's decision last week to deny the request for an out of turn hearing.

Mrs. Thonen moved that the request for reconsideration be denied. Mr. DiGiulian seconded the motion which passed unanimously 7-0.

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Page 296, July 6, 1989, (Tape 2), After Agenda Item:

Resolutions for June 27, 1989

Mrs. Thonen moved that the resolutions of the BZA from June 27, 1989 be approved as submitted. Mr. Ribble seconded the motion which passed unanimously with a 7-0 vote.

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Page 296, July 6, 1989, (Tape 2), After Agenda Item:

Scheduling of Appeals

Chairman Smith called the Board's attention to three appeals which had been given to the Board for acceptance.

Following a discussion among the Board, it was the consensus of the Board to defer action until the following week.

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As there was no other business to come before the Board, the meeting was adjourned at 12:21 p.m.

Jeanne R. Kiser  
Jeanne R. Kiser, Associate Clerk to the  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 8/28/89

APPROVED: 9/7/89



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The regular meeting of the Board of zoning Appeals was held in the Board Room of the Massey Building on Tuesday, July 11, 1989. The following Board Members were present: Chairman Daniel Smith; Paul Hammack; Mary Thonen; Martha Harris; John Ribble; and Robert Kelley. John DiGiulian, Vice Chairman, was absent from the meeting.

Chairman Smith called the meeting to order at 8:05 p.m. and gave the invocation. He then asked if there were any matters to bring before the Board. Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Alicia Caperton, with the Office of Comprehensive Planning, and stated that she would be filling in as Clerk for the meeting. There were no other matters of discussion and Chairman Smith called for the first scheduled case.

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Page 297, July 11, 1989, (Tape 1), Scheduled case of:

8:00 P.M. RICHARD AND CLAIRE ERLANDSON AND M. BENGEN & COMPANIES, VC 89-P-041, application under Sect. 18-401 of the zoning Ordinance to allow subdivision into five (5) lots, proposed Lots 2, 3, and 4 each having a lot width of 6.7 feet (80 ft. min. lot width required by Sect. 3-306), located at 3414 Annandale Road, on approximately 2.493 acres of land, zoned R-3, Providence District, Tax Map 60-1((1))11A and 12.

Denise James, Staff Coordinator, presented the staff report and noted that the date in the second to last line of development condition #5 should be corrected to reflect "July 30, 1989" rather than July 3, 1989. She added that the applicant had requested that condition number 4 be revised to read, "... A standard conservation easement ..." and that staff had no objections. In closing, Ms. James stated that it was staff's understanding that the applicant agreed with the development conditions with two exceptions which would be addressed during their presentation.

Stephen Fox, attorney with the law firm of Fox & Proffitt, 10385 Main Street, Suite 203, Fairfax, Virginia, came forward to represent the applicant. He stated that Mary Flinn, with the law firm, would assist him.

Mr. Fox continued by stating that the property consists of approximately 2.49 acres and was zoned R-3. The property was bounded on the north side by Annandale Road across from its intersection with Starcrest Drive and was bordered by Holmes Run Stream Valley Park to the north with predominantly large single family residential lots to the east and west. The applicant was requesting a variance to the minimum lot width requirement to allow a subdivision of the property into 5 lots, proposed Lots 2, 3, and 4 each having a lot width of 6.7 feet along a proposed pipestem driveway. The zoning Ordinance requires a minimum lot width of 80 feet, therefore the applicants are requesting a variance of 73.3 feet each for proposed Lots 2, 3 and 4. The applicants proposed a change to development condition #11 wherein staff had recommended, "Storm water management ponding shall not be implemented within the EOC, but shall be on a separate outlot." Mr. Fox suggested that the EOC area be dedicated to the Park Authority and that the language be added stating that it shall not be implemented in that land unless approved by the Park Authority and that the Park Authority would have the final say. He also suggested that the stormwater management be located as approved by DEM. With regard to condition number 10, he explained that the existing berm would have to be cut to permit an asphalt trail and this would disturb some of the tree cover that protects the site from Annandale Road. This would also be a strip that connects to nothing on that side of Annandale Road. Mr. Fox requested that condition number 10 be deleted and that the alternate wording for condition number 11 be adopted by the Board. Also, Mr. Fox stated that there are other properties in that region that have been developed in a like manner. Mr. Fox submitted two sketch proposals, Exhibit A and B, showing how the property could be developed on a cul-de-sac. Exhibit A showed what could be done with the property if a cul-de-sac was constructed on the east side of the property which would take up more of the property than the lot areas and there would be a significant amount of cutting to be done which would require retaining walls. Exhibit B showed a cul-de-sac on the west side of the property which would limit the subdivision to 2 lots, which is currently there, but the street would not meet VDOT's public service requirements to serve at least 3 houses.

Chuck Dealap, a land surveyor with the firm of Matthews, Wheatley and Ellison, 3887 Pickett Road, Fairfax, Virginia who had been working with Mr. Fox on this application agreed with the idea of possibly developing the site with a cul-de-sac, but also stated that it would not comply with VDOT regulations.

Bob Moorehouse, owner of adjacent property Lot 12A, 3418 Annandale Road, spoke in support of the development but made reference to the consolidation of the road that would go back to the proposed development. Mr. Moorehouse stated that he would like for the roadway access to be carefully considered and noted that possibly a setback would make ingress/egress more safe from Annandale Road, and suggested that a barrier along the west boundary line be constructed.

Richard Erlandson, 3414 Annandale Road, stated that all the neighbors on all sides of the property had been contacted and there had been no objections to the redevelopment of this property.

Jack Lewis, 3404 Annandale Road, an abutting property owner spoke in support of the development as proposed but expressed concern that the common boundary between his property and Lot 12 would bring the proposed development very close to his property. He asked that the existing natural laurel hill aspect of the community remain but if this did not occur, he would like some sort of a permanent barrier.

Dan Sedkowski, 7410 Austin Street, Vice President of the Masonville Heights Civic Association, believed that it was necessary to maintain the R-3 zoning in order to preserve the wooded laurel hill character of the area. He noted that there are no other pipestems in the area and that the proposed changes would increase the traffic in the area as it was very close to the Walnut Hill single entrance. He expressed concern over the further loss of trees along the frontage and that a deviation here would encourage further high density redevelopment and degrade quality of life in Masonville Heights. He agreed that the owner had the right to develop at the R-3 standard but did oppose a deviation to the R-3 standard. He asked that the Board reject the request.

Dr. Matsin, 3411 Annandale Road, owner of the house directly across from the subject site expressed concern that the headlights of the vehicles entering and exiting the site would be directed onto his property. Dr. Matsin stated that he had not been contacted with respect to the request.

During rebuttal, Mr. Fox proposed an additional condition which would read, "That there shall be no disturbance of the northeast border of the subject property contiguous with Lot 9, owned by Jack Lewis and his wife" to alleviate the neighbor's concerns. He noted that there are other pipestems, noncluster-related, in the immediate area on Annandale Road and added that this property had unique topographical problems and stated that he believed that the development conditions were very reasonable except where noted.

Ms. James stated that staff did not concur with the submitted change to development condition number 11

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to deny the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-041 by RICHARD & CLAIRE ERLANDSON AND M. BENSON AND COMPANIES, under Section 3-306 of the Zoning Ordinance to permit a variance to the minimum lot width requirement to allow a subdivision of the property into 5 lots, proposed lots 2, 3, and 4 each having a lot width of 6.7 feet along a proposed pipestem driveway, on property located at 3414 Annandale Road, Tax Map Reference 60-1(1)11A, 12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 1989; and

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

1. That the applicant is the owner of the property and that the co-applicant is the contract purchaser.
2. The present zoning is R-3.
3. The area of the lot is 2.49 acres of land.
4. There have been other pipestem developments approved in the area but each development must be reviewed on its merits and this one would set a very bad precedent especially in view of Lot 12A next door.
5. The applicant has not satisfied the Board that the property could not be developed to a reasonable level without a variance.
6. The applicants are trying to maximize the development as four of the requested lots are only marginally larger than the minimum required lot size.
7. Lots 12 and 12A would be better consolidated.

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

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

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

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

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

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

Mrs. Harris seconded the motion.

The motion carried by a vote of 5-1 with Chairman Smith voting nay. Mr. DiGiulian not being present.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1989.

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Page 299, July 11, 1989, (Tape 1), Scheduled case of:

8:15 P.M. MARK ZAMPERINI AND BARBARA WOLFE, SP 89-C-018, application to allow modification to minimum yard requirements based on error in building location to allow decks to remain on the rear lot line (5 ft. min. rear yard required by Sect. 2-412), located at 3853 Zelkova Court, on approximately 1,650 square feet of land, zoned PDZ-5, Centreville District, Tax Map 45-2((7))391.

Denise James, Staff Coordinator, presented the staff report.

Mark Zamperini, 15159 Stillfield Place, Centreville, Virginia, the applicant, stated that the lot extended approximately 10 feet farther than it actually did, so he thought he was in conformance with what was required, also there was a sloping hill behind where the deck was located.

There were no speakers either in support or in opposition to the request, nor any further staff comments, and Chairman Smith closed the public hearing.

Ms. Thonen made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-C-018 by BARBARA WOLFE AND MARK ZAMPERINI, under Section 8-901 of the zoning Ordinance to permit a modification to the minimum rear yard requirement based on an error in building location to allow a two level deck to remain on the lot line, on property located at 3853 Zelkova Court, Tax Map Reference 45-2((7))391, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PDR-5.
3. The area of the lot is 1,650 square feet of land.
4. The applicant acted in good faith.
5. The addition does not impair the purpose or the intent of the zoning district.
6. The addition will not be detrimental to the use or enjoyment of other properties.
7. The addition will not create an unsafe addition.
8. To enforce compliance with the minimum yard requirements would cause unreasonable hardship.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specific deck shown on the plat submitted with this application and is not transferable to other land.
2. A plat showing the approved location and dimensions of the deck in accordance with this special permit shall be submitted and attached to the original building permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. This Special Permit shall not be valid until this has been accomplished.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay. Mr. DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 300, July 11, 1989, (Tape 1), Scheduled case of:

8:30 P.M. WOODY'S GOLF RANGE, SPA 79-D-176-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend 8-176-79 for a golf driving range to permit continuation of the use without term, addition of a baseball hitting range and request for waiver of the dustless surface requirement, located at 11801 Leesburg Pike on approximately 30.1246 acres of land, zoned R-1, Branesville District, Tax Maps 6-3(1)33 and 33A. (OUT-OF-TURN HEARING) (DEFERRED FROM 5/18/89 AT APPLICANT'S REQUEST) (DEFERRED FROM 6/13/89 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Carlos Montenegro, attorney with the law firm of Shaw, Pittman, Fotts & Trowbridge, 1501 Farm Credit Drive, McLean, Virginia, came forward to represent the applicant. Mr. Montenegro stated that the property consisted of approximately 33 acres and was currently zoned R-1. The property is located on the south side of Route 7, with a deceleration lane turning in it, and is on the north side of Stuart Road. The applicant was requesting the continuation of the driving ranges and the addition of batting cages. He noted that there is a demonstrated need for this type of batting facility and called the Board's attention to the letters from various little league programs and softball associations which supported this request. Mr. Montenegro stated that this was the same category and zoning classification as the driving range, a group 6 special permit use and also a temporary use, and noted that the Architectural Review Board had reviewed the application and their only concern was the possible visual impact from Branesville Tavern. They elected not to comment on the facilities. With respect to the development conditions, Mr. Montenegro agreed with the development conditions but asked that condition number 19 be revised to reflect "5 years" as opposed to 3 years. He

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submitted a petition with 955 signatures into the record in support of the batting cages. In closing, Mr. Montenengro stated that there would be 9 batting stations with a row of 6 foot high evergreen plantings, the proposed lighting would be directed onto the driving range rather than the surrounding properties, and that the batting cages had been approved by the Little League Association.

Bob Nemeo, 11159 Rich Meadow Drive, Great Falls, Virginia, a representative of the Great Falls Little League, stated that these batting cages are very badly needed and would greatly improve the Great Falls Little League program. He stated that when he took his kids to batting cages he had to take them all the way to Cameron Run or to Prince William County and stated that he strongly supported the request.

Vivian Lyons, 10808 Nichols Ridge Road, Great Falls, Virginia, Vice-President and Co-Chairman of Planning and Zoning for the Great Falls Citizens Association, appeared before the Board. She stated that the Association agreed with the modification to the dustless surface requirement as agreed to by the applicant, that the association agreed that there should be a fixed term, and that the association agreed with staff that the batting cages should be denied. She stated that the association believed that the zoning and land use issues generated by the application and the need to uphold the integrity of the Master Plan must outweigh the desire for additional commercial, recreational facilities and believed that the granting of the request would start a precedent for expansion in areas along Route 7. Ms. Lyons stated that the Association would rather see the area developed with houses rather than commercial facilities and noted that Citizens Association Planning Committee had voted to accept the application for approval.

Larry Salamone, 14350 Sullyfield Circle, Chantilly, Virginia, president of Grand Slam USA, spoke in opposition to the request. He stated that there needed to be a regional approach used when citing a batting cage facility and that his firm had worked closely with the Northern Virginia Regional Park Authority (NVRPA) so as not to overlap facilities. He noted that there are other facilities located at Occoquan, Cameron Run Park, Dpton Hill, and Chantilly, which served the Great Falls area as well as Sterling, McLean, Reston and areas to the south and west. Mr. Salamone stated that this matched the siting criteria used for the batting cages, which was a population figure of 500,000 and noted that there are Little Leagues that are installing these cages next to their ballfields, which would satisfy the need.

There were no other speakers nor further staff comments and Chairman Smith closed the public hearing.

Mr. Harris made a motion to grant-in-part the request which would be to deny the batting ranges. The motion died for the lack of a second.

Mr. Kelley made a motion to approve the request in full with development condition number 19 revised to "5 years."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 79-D-176-1 by WOODY'S GOLF RANGE, under Section 3-103 and 8-901 of the Zoning Ordinance to permit an amendment to the existing Special Permit for a golf driving range and to permit continuation of the golf driving range without term and the addition of a baseball hitting range on the property and to permit modification to the dustless surface requirement for the parking areas and driveway, on property located at 11801 Leesburg Pike, Tax Map Reference 6-3(1)33 and 33A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 30.1246 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 and 8-901 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board. The application is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The maximum number of employees on the premises at any one time shall be thirteen (13).
6. The hours of operation shall be limited to 9:30 A.M. to 9:30 P.M.
7. The applicant shall provide parking spaces in accordance with Article 11 of the Zoning Ordinance. There shall be a minimum and maximum of 60 spaces as shown on the plat submitted with this application.
8. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.
  - o Speed limits shall be kept low, generally 10 mph or less.
  - o The areas shall be constructed with clean stone with as little fines material as possible.
  - o The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.
  - o Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
  - o Runoff shall be channeled away from and around driveway and parking areas.
  - o The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.
9. The driveway shall be paved at least twenty-five (25) feet into the site from the right-of-way of Leesburg Pike to prevent gravel from spreading onto Leesburg Pike and to allow for safe acceleration from the driveway onto Leesburg Pike.
10. The limits of clearing and grading as currently shown on the plat as a tree line shall be established as the clearing and grading line and shall not be disturbed. If any existing trees remain outside that area, as determined by the County Arborist, worthy of saving, a tree preservation plan shall be reviewed and approved by the County Arborist.
11. The existing vegetation shall be used to satisfy the transitional screening and barrier requirement provided additional plantings are provided along Leesburg Pike and along the eastern lot line which will be equivalent to Transitional Screening 1. The type, quantity, size and location of these additional plantings shall be approved by the County Arborist.
12. The existing lights shall be shielded so as to prevent light, glare, and nuisance light from adjacent properties. If this shielding does not satisfactorily correct this problem as determined by Zoning Enforcement Branch of the Zoning Administration Division, then the height of the light poles shall be reduced to a height that will ameliorate this impact.
13. If any additional lights are provided for the driving range, the height of the light standards shall be limited to 20 feet and the design such that no glare or light shall project off the property. Any lights in the parking area shall

be no higher than eight (8) feet and shall be directed onto the parking area. Shields shall be installed, if necessary, to prevent the light or glare from projecting beyond the facility.

The lights for the golf driving range shall be turned off at 9:30 P.M. every day.

14. There shall be no use of loudspeakers on the property.
15. Construction of the entrance shall be provided in accordance with VDOT standards within ninety (90) days, or demand of Fairfax County or at the time of site plan approval whichever comes first.
16. Right-of-way to thirty-five feet (35') from the existing centerline of Sugarland Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple. Ancillary access easements shall be provided to facilitate the road improvements as determined by DEM.
17. The right-turn deceleration lane shall be constructed in accordance with VDOT standards;
18. The applicant shall demonstrate to the Health Department that the septic system and well can adequately serve the use prior to the issuance of a Non-Residential Use Permit for the use, and the well cap should be adequately secure at all time. If this cannot be demonstrated, then this special permit is null and void.

The applicant shall address the subsurface drainage problems with appropriate drainage and engineering designs as approved by DEM prior to approval by the Department of Environmental Management (DEM). Should the batting cages be approved, drainage from the batting cage discharge pump and surface water runoff shall be designed to drain into a vegetated swale consisting of appropriate infiltration soils to prevent water quality impacts downstream from the batting cage development.

19. This approval is for a period of five (5) years from the date of final decision of approval. The permit may be extended in accordance with Sect. 8-012 for a period not to exceed three (3) successive period of one (1) year each provided the use remains in conformance with all applicable Codes and Ordinances and the conditions of this special permit.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 303, July 11, 1989, (Tape 1), After Agenda Item:

Colvin Run Pet Otel Additional Time

Ms. Thonen made a motion to grant an additional 6 months making the new expiration date December 16, 1989. The motion was seconded by Mr. Hammack and carried by a vote of 5-0, with Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

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Page 303, July 11, 1989, (Tape 1), After Agenda Item:

Approval of July 6, 1989 Resolutions

Ms. Thonen made a motion to approve the Resolutions as presented. The motion was seconded by Mr. Hammack and carried by a vote of 5-0, with Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

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Page 303, July 11, 1989, (Tape 1), After Agenda Item:

Approval of the Minutes for May 9, 1989 and June 13, 1989

Ms. Thonen made a motion to approve the Minutes as presented. The motion was seconded by Mr. Hammack and carried by a vote of 5-0, with Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

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Page 304, July 11, 1989, (Tape 1), After Agenda Item:

Triangle Development Company Appeal

Ms. Thonen noted that this involved a proffer interpretation and according to Par. 10, S18-204 stated that "proffer interpretations are to be appealed to the Board of Supervisors". Ms. Thonen made a motion to deny the appeal. The motion was seconded by Mr. Hammack and carried by a vote of 5-0, with Mr. Kelley not present for the vote, Mr. DiGiulian absent from the meeting.

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Page 304, July 11, 1989, (Tape 1), After Agenda Item:

Charles A. Rossi Appeal

Mr. Hammack made a motion that the appeal not be accepted as it was not timely filed. The motion was seconded by Ms. Thonen and carried by a vote of 6-0 Mr. DiGiulian absent from the meeting.

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Page 304, July 11, 1989, (Tape 1), After Agenda Item:

Hunter Development Company of Fairfax, Inc. Appeal

Ms. Thonen made a motion to accept the appeal and scheduled the public hearing for September 14, 1989 at 11:00 a.m. The motion was seconded by Mr. Hammack and carried by a vote of 6-0 Mr. DiGiulian absent from the meeting.

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Page 304, July 11, 1989, (Tape 1), After Agenda Item:

Julia Campagna Appeal

The appellant, Julia Campagna, came forward to address the Board. She stated that her attorney would be unable to attend the public hearing on September 26th as suggested by staff and asked that the appeal be scheduled for another date. Ms. Thonen made a motion to schedule this appeal for September 14, 1989 at 9:30 a.m. The motion was seconded by Mr. Hammack and carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:25 p.m.

Alicia Caperton  
Alicia Caperton, Substituting for the  
Associate Clerk, Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 8/28/89

APPROVED: 9/1/89



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 20, 1989. The following Board Members were present: Chairman Daniel Smith; John Digiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

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Chairman Smith called the meeting to order at 9:20 a.m. and gave the invocation. He then asked if there were any matters to bring before the Board and hearing no reply called for the first scheduled case.

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Page 305 July 20, 1989, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD A. WATERVAL, LTD., VC 89-M-043, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a commercial building to 15 feet from a street line with a 22 degree angle of bulk plane (40 ft. min. front yard, 45 degree angle of bulk plane required by Sect. 4-807), located at 6318 Leesburg Pike, on approximately 24,506 square feet of land, zoned C-8, Mason District, Tax Map 51-3((1))33.

Lori Greenlief, Staff Coordinator, presented the staff report and noted that paragraph 2, page 1, should be corrected to "45 feet" as opposed to "35 feet" and Appendix 1, page 1, of the development conditions should be corrected to reflect "structure" rather than "deck".

Richard R. G. Hobson, attorney with the law firm of McGuire, Woods, Battle & Booth, 8280 Greensboro Drive, Suite 900, McLean, Virginia, came forward to represent the applicant. He stated that Adena Patterson, Planner/Paralegal with the law firm, would assist him in using the viewgraph during his presentation.

Mr. Hobson began by stating that the subject property is a pie shaped lot of approximately 24,000 square feet located between Route 7 and the Route 50 service road at Seven Corners near the apex of that angle. The service road serves as a ramp from Route 7 to eastbound Route 50, which is one-way at the property. The applicant's request is for the setback only to the Route 50 service road as the setback to Route 7 and the angle of bulk plane can be met. Mr. Hobson submitted an exhibit to the Board which showed a proposed dedication for the widening of Route 7, a dedication of a public ingress/egress easement across the property for interparcel access, and underground parking. He stated that the parcel falls off from the Route 7 side of the property to the Route 50 side approximately 9 feet and the property had been reduced over the years through several dedications for the widening of the roads at Seven Corners and that the applicant's request did not differ greatly from what the property would be if it did not have a double front yard. The site plan has been processed through the Department of Environmental Management (DEM) and through the Virginia Department of Transportation (VDOT) and was ready for approval if the Variance was granted. In closing, Mr. Hobson stated that the property was acquired in good faith, the change in traffic patterns over the years, and the widening of the roads have made the continued use as a service station impractical.

There were no speakers either in support or in opposition to the request nor any staff comments and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant the request.

Chairman Smith stated that he had been reluctant to support the request but based on the applicant's testimony would now support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-043 by RICHARD A. WATERVAL, LTD., under Section 18-401 of the Zoning Ordinance to allow construction of a commercial building to 15 feet from a street line with a 22 degree angle of bulk plane, on property located at 6318 Leesburg Pike, Tax Map Reference 51-3((1))33, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-8.
3. The area of the lot is 24,506 square feet of land.

4. This is a unique parcel of land located at the intersection of Route 7 and Route 50 in the 7-corners shopping area.
5. The property has unusual topographic problems and is subject to the double front yard requirements.

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

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

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

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

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

1. This variance is approved for the location and the specific structure shown on the plat included with this application and is not transferable to other land.
2. Under sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this variance.

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9:15 A.M. EMAD AWADALLA, SP 89-P-017, application under Sect. 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow addition to dwelling to remain 21.3 feet from front lot line and 7.4 feet from a side lot line (30 ft. min. front yard, 10 feet min. side yard required by Sect. 3-407), located at 2928 Irvington Road, on approximately 10,584 square feet of land, zoned R-4, Providence District, Tax Map 50-3(9)228 and pt. 227.

Lori Greenliel, Staff Coordinator, presented the staff report and noted that in the development conditions, Appendix 1, the word "garage" should be changed to "addition."

Ava Sawyer, 116-S Edwards Ferry Road, Leesburg, Virginia, attorney for the applicant, came forward and agreed with the staff report.

Norma Storey, 2926 Irvington Road, Falls Church, Virginia and William Harms, 2932 Irvington Road, Falls Church, Virginia, spoke in support of the request.

There were no speakers in opposition to the request nor any staff closing comments and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SP 89-P-017.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-017 by EMAD AWADALLA, under Section 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow addition to dwelling to remain 21.3 feet from front lot line and 7.4 feet from a side lot line, on property located at 2928 Irvington Road, Tax Map Reference 50-3(9)228 and pt. 227, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1989; and

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

1. The Board has determined that:
  - A. The error exceeds ten (10) percent of the measurement involved, and
  - 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, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

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

Page 308, July 20, 1989, (Tape 1), (Emad Awadalla, SP 89-P-017, continued from  
Page 307)

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

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

1. This approval is granted for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Six rhododendron bushes, at least four feet in planted height, shall be installed, three on each side of the entrance. This planting shall be in place within 60 days of the date of approval.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 308, July 20, 1989, (Tape 1), Scheduled case of:

9:30 A.M. HARVEST ASSEMBLY BAPTIST CHURCH, SP 89-V-020, application under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities, located at 8008 Fordson Road, on approximately 1.0213 acres of land, zoned R-3, Mount Vernon District, Tax Map 102-1(1)61.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that staff had paid special attention to the land use impacts of this application because the property is located in the Gum Springs Neighborhood Conservation Area. The plan's objective is to preserve the residential character of the area, to prevent the deterioration of the area, and to provide for its improvement in the future. Based on these goals, she stated that staff believed that adequate screening and buffering are essential for this use. She stated that due to the close proximity of the proposed structure and parking lot to the side lot lines, staff recommended additional screening be added by reducing the width of the travel aisle. In closing, Ms. Greenlief stated that staff believed that a church could work on the site and recommended approval subject to the development conditions being implemented.

Mr. DiGiulian asked the width of the travel lane and Ms. Greenlief replied 34 feet. Chairman Smith questioned why staff recommended 35 feet of transitional screening when 25 feet was the requirement. Ms. Greenlief again referenced the goals of the Conservation District.

Mrs. Thonen asked staff how the proposed church would fit into the overall development that was currently ongoing in the area and what type of road improvements were proposed. Ms. Greenlief stated that the Office of Transportation had looked at this application with respect to traffic and believed that because of the low volume currently on Fordson Road that the additional traffic could be handled on Sunday with no adverse impact. Mrs. Thonen expressed concern with the future impact.

Chairman Smith stated that he did not believe that there would be a traffic problem and noted that it appeared that staff's only concern was screening. Ms. Greenlief noted that staff believed that the travel aisle was rather wide and ambiguous as it was difficult to determine exactly where the travel lane was located. Chairman Smith asked the minimal width of a travel lane. Ms. Greenlief stated that the Public Facilities Manual (PFM) required 20-24 feet. Chairman Smith noted that he believed at least 23 feet was needed.

Mr. Ribble asked staff if there had been a similar application before the Board by this applicant and Ms. Greenlief replied that there had not.

Robert Easter, architect with Kelso and Easter, 6911 Richmond Highway, Suite 325, Alexandria, Virginia, came forward to represent the applicant. He noted that Paul C. Wilder, with R. C. Fields Jr. & Associates, civil engineer for the church, and Rev. Johnnie Abrams, pastor of the church, were present to respond to questions from the Board if necessary.

Mr. Easter stated that the church had approximately 75-90 members and was currently meeting in the Woodlawn Elementary School. He noted that the applicant had met with the

surrounding neighbors and the parking lot had been reconfigured to address the citizens concerns. He addressed the development conditions by stating that the applicant would like condition number 6 deleted because the building would be architecturally constructed in keeping with the residential character of the neighborhood. He added that the width of the travel aisle was to allow people entering the site the flexibility of being able to turn their vehicles around rather than having to back out onto a main roadway.

Mrs. Thones pointed out to the other Board members that Mr. Easter was one of the architects involved in the proposed development adjacent to the subject property and could possibly address the density question.

Mr. Easter stated that the density was still being negotiated with the community and because of the community's concerns the developer had agreed to single-family houses along Fordson Road, therefore the traffic impact would not be significant. Mrs. Thones noted that she had seen the original plan and Mr. Easter stated that the plan Mrs. Thones had reviewed would be considerably scaled down.

Mr. Easter continued by addressing conditions 7 through 9 and stated that the church was aware that the Department of Environmental Management (DEM) would look at the stormwater management at the time of site plan and because of this the church would like to provide only the 25 feet of screening as required by the zoning Ordinance. He added that the church wanted to be a good neighbor.

Mrs. Thones noted that it was her understanding that the church agreed with condition 7 provided the parking lot width remains as proposed and Mr. Easter replied that was correct.

With respect to condition 10, Mr. Easter stated that he did not believe that the proposed parking lot would be in conflict with the PFM and noted that the applicant did not want to reduce the parking lot to 23 feet. He agreed with condition 12.

Chairman Smith called for speakers in support of the application and Sally Pulen, 3512 Bucknan Road, Alexandria, Virginia, President, Board of Directors, Gum Springs Community Development Corporation/Saunders B. Moon, came forward. She stated that the Board of Directors had voted to support the application and believed that the church would be an asset to the community.

There were no speakers in opposition to the request but Chairman Smith noted that one letter in opposition had been received by the Board and provided a copy to Mr. Easter.

During staff closing comments, Ms. Greenleaf stated that staff would rather see buffering and vegetation on the site as opposed to asphalt.

After reviewing a letter of opposition from James Minor, 8018 Fordson Road, Alexandria, Virginia, Mr. Easter stated that the traffic would not be greatly increased and believed that the property would be put to a better use as it was now a vacant lot and the development of the lot would enhance the neighborhood.

Mr. DiGiulian made a motion to grant the request with the development conditions modified by rewording Condition 6, first bullet, to read: "Transitional Screening 1 shall be provided along the northern and southern lot lines." Conditions 10 and 11 would be deleted.

Mrs. Thones stated that she would support the motion as Mr. Easter had convinced her that the church would fit in with the other proposed development in the area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-020 by HARVEST ASSEMBLY BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to allow church and related facilities, on property located at 8008 Fordson Road, Tax Map Reference 102-1((1))61, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.0213 acres of 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 Section 8-303 of the zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity in the main area of worship shall be limited to a total of 154 seats with a corresponding minimum of 39 parking spaces. There shall be a maximum of 40 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. The four parallel spaces shown across from the entrance to the church building shall be marked in the field as reserved for the pastor and church staff only.
6. Transitional Screening shall be provided as follows:
  - o Transitional Screening 1 shall be provided along the northern and southern lot lines. The plantings in these screening yards shall be type 1 Transitional Screening in addition to an evergreen hedge at least four feet in planted height, the purpose of which shall be to block headlight glare.
  - o Transitional Screening 1 (25 feet) shall be provided along the western lot line and the plantings in this area shall be modified at the direction of the County Arborist to include an evergreen hedge at least four feet in planted height.
  - o Transitional Screening 1 shall be provided along the front or eastern lot line. The existing sidewalk shall be allowed to remain in the transitional screening yard.

The plantings within the screening yard along the southern lot line can be modified at the direction of the County Arborist to allow for plantings which will survive in a vegetated drainage swale if a swale is required in accordance with condition number 7 below. The plantings within the swale, however, shall be of a material to provide the effectiveness of transitional screening. The Barrier requirement shall be waived.

7. It shall be demonstrated to the satisfaction of the Department of Environmental Management that the storm sewer inlet and pipe shown on the plat are adequate to handle all of the runoff from the property, that no adverse drainage impacts will be experienced by the adjacent properties to the southwest and that the existing storm sewer system into which the subject property will drain can handle the additional runoff. If it is deemed unacceptable in any of these aspects, a vegetated swale shall be provided instead adjacent to the southern side of the parking lot and church building to channel drainage from the parking lot into the existing storm sewer system. The size and design of the swale shall be subject to the approval of the Department of Environmental Management at the time of site plan review.
8. A soils study shall be submitted if determined necessary by the Department of Environmental Management at the time of site plan review.

Page 311, July 20, 1989, (Tape 1), (Harvest Assembly Baptist Church, SP 89-V-020, continued from Page 310)

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9. A tree preservation plan shall be submitted to the County Arborist for review and approval which proposes preservation of the maximum amount of trees possible on the site. In addition, the maximum number of trees shall be saved and utilized as screening within the transitional screening yards.
10. The maximum floor area ratio shall be 0.057.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

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

This decision was officially filed in the office of the Board of zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 311, July 20, 1989, (Tape 1), Scheduled case of:

9:45 A.M. JOHN L. JR AND MARY N. HAAS, VC 89-D-039, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 7 feet from each side lot line (15 ft. min. side yard required by Sect. 3-207), located at 1852 Massachusetts Avenue, on approximately 10,000 square feet of land, zoned R-2, Dranesville District, Tax Map 41-1((13))(2)16.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Michael Adams, attorney with the law firm of Walton and Adams, P.C., 6862 Elm Street, McLean, Virginia, came forward to represent the applicants.

Chairman Smith noted that Mr. Adams was not listed on the affidavit. It was the consensus of the Board to pass over this application until the affidavit could be amended.

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Page 311, July 20, 1989, (Tape 1), Scheduled case of:

10:00 A.M. PATRICK J. SINGLETARY, VC 89-A-040, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.4 feet from a side lot line (15 ft. min. side yard required by Sect. 3-207), located at 4031 Guinea Road, on approximately 41,473 square feet of land, zoned R-2, Annandale District, Tax Map 58-4((7))7E2.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Patrick J. Singletary, 4031 Guinea Road, Annandale, Virginia, came forward and referenced the statement of justification submitted the application.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

David Bambowic, 4104 Yerkes Place, Annandale, Virginia, stated that he would like to know what type of addition the applicant was requesting approval to construct. Mr. Ribble explained that the applicant would like to enlarge his kitchen. Mr. Bambowic noted that the applicant already had a deck.

Mr. Singletary stated that the deck would be removed in order to construct the addition if the variance was granted.

Chairman Smith stated that it did not appear that any part of the addition would impact the speaker's property.

Mr. Singletary noted that because of the large number of trees his house could not easily been seen by the neighbors.

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Mr. Ribble made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-040 by PATRICK J. SINGLETARY, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.4 feet from a side lot line, on property located at 4031 Guinea Road, Tax Map Reference 58-4((7))7E2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 41,473 square feet of land.
4. The applicant has met the nine standards for a variance in particular exceptional shape of the lot and extraordinary situation as to the way the house is situated on the property, as it is forward on the property set at an angle.
5. The applicant has given detailed justification in the application.
6. The applicant is simply trying to improve the quality of life and will not hurt the neighbor in any way, shape, or form.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.



- 2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
- 3. A Building Permit shall be obtained prior to any construction.

Mr. Kelley seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. ROBERT N. DENNIS AND LYNN M. MARRIETT, VC 89-D-044, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.0 feet from a side lot line (15 ft. min. side yard required by Sect. 3-207), located at 6253 N. Kensington Street, on approximately 9,000 square feet of land, zoned R-2, Bransville District, Tax Map 41-1((13))(9)39, 40, and part of 38.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The co-applicant, Robert N. Dennis, 6253 North Kensington Street, McLean, Virginia, came forward. He explained he would like to expand the house on the first floor by constructing a garage in the front and enclosing an existing carport to provide additional work space.

Mrs. Harris asked if the setback for a carport was now 11 feet and Mr. Dennis replied that was correct. Mr. Kelley questioned the applicant as to the location of the proposed garage and Mr. Dennis used the viewgraph to show the location.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Gilbert DeHuff, 6255 N. Kensington Street, McLean, Virginia, owner of Lot 41, the applicant's next door neighbor came forward to address the request. Mr. DeHuff stated that the applicant was proposing to almost double the size of the existing dwelling which he believed would spoil the character of the neighborhood. He added that he would rather have the addition 15 feet from the side lot line because a two story garage was a very large structure. He added that he had been reluctant to oppose the request but did believe that he deserved some consideration. Mr. DeHuff asked that if the Board chose to grant the request that certain requirements be enforced.

Chairman Smith asked the speaker what those requirements might be. Mr. DeHuff asked that the existing 6 foot fence be maintained at the same location, that there be no entrance into the addition on the wall facing his property, that the parking spur be removed, and that there no black top, paving, or vehicle parking within 10 feet of the shared property line.

Chairman Smith explained that the Board could not enforce the 10 foot parking restriction.

Joanne Marsh, President, Franklin Area Citizens Association, 1872 Rhode Island Avenue, McLean, Virginia, stated that the Citizens Association had reviewed the application but determined that it was not appropriate to take a stand as they had not heard the applicant's side of the story. She did point out that the house was already nonconforming on the southeast side and what the applicant proposed would not be in character with the neighborhood.

Mr. Kelley noted that the letter from the Association was very vague and Ms. Marsh noted that it was not the Association's position to oppose something until they had heard all the arguments.

Mrs. Harris asked what the Association's stand was in general with respect to nonconforming uses. Ms. Marsh stated that each request was considered on its merits and that there was no set policy.

Lavonne Warren, 7837 Old Dominion Drive, McLean, Virginia, stated that she owned property and had lived in the area of the subject property for many years. She stated that approximately 7 to 9 years ago a member of the civic Association took it upon

themselves to have the entire area zoned R-2 so that the large lots could not be subdivided, without any thought being given to the smaller lots. Ms. Warren added that many of the small lots have been granted variances and to deny this request she believed would be discrimination.

Mr. Kelley noted that staff had indicated that there had been no variances granted in the immediate area of the subject property. Ms. Warren argued that the side setbacks should not apply to the small lots because they could not be utilized without variances.

Chairman Smith stated that he believed that there had been variances granted in the area. Ms. Bettard noted that there had been variances granted in the area around Massachusetts Avenue but not in the area of the subject property.

Mr. Dennis waived rebuttal.

Mr. Hammack called Mr. Dennis back to the podium and questioned why there was a proposed 4 foot projection between the proposed garage and the existing carport. Mr. Dennis explained that would be used as an entry into the house. Mr. Hammack questioned why the entrance could not be redesigned and Mr. Dennis stated that the entrance could be designed along the side.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. Kelley made a motion to deny the request as he did not believe that the applicant had met the standards, that there was too much bulk on the property, and that the applicant was trying to put too much house on too small of a lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-044 by ROBERT N. DENNIS AND LYNNE M. HARRIETT, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.0 feet from a side lot line, on property located at 6253 N. Kensington Street, Tax Map Reference 41-1((13))(9)39, 40, and part of 38, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicants are the owners of the land
2. The present zoning is R-2.
3. The area of the lot is 9,000 square feet of land.

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

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

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

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

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

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

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen abstaining.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989.

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Page 315, July 20, 1989, (Tape 2), Scheduled case of:

10:30 A.M. RODNEY P. AND MARCIA R. LEDDY, VC 89-C-045, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.9 feet from side lot line such that side yards total 33.1 feet (12 ft min., 40 ft. total min. side yards required by 3-107), located at 2706 Clarkes Landing Drive, on approximately 21,275 square feet of land, zoned R-1(C), Centreville District, Tax Map 36-2((5))17.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The co-applicant, Rodney P. Leddy, 2706 Clarkes Landing, Oakton, Virginia, came forward and referenced his statement of justification submitted with his application.

Chairman Smith asked the applicant how long he had owned the house and Mr. Leddy replied he had purchased the house in January 1985 and that the house was approximately 12 to 15 years old. In response to questions from Mr. Ribble, Mr. Leddy explained that because of the way the house was situated on the lot and because of a severe slope in the rear of the property this was the only location to construct the addition. Mrs. Harris asked if there was an existing garage and Mr. Leddy stated that the existing garage would be converted into a family room.

There were no speakers to address the application and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant the request in part.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-045 by RODNEY P. AND MARCIA R. LEDDY, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.9 feet (THE BOARD GRANTED 12.0 FEET) from side lot line such that side yards total 33.1 feet, on property located at 2706 Clarkes Landing Drive, Tax Map Reference 36-2((5))17, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

- 1. That the applicants are the owners of the land.
- 2. The present zoning is R-1(C).

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3. The area of the lot is 21,275 square feet of land.
4. That the subject property has an exceptional topography.
5. There is an slope on the driveway.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay, Mr. Hammack not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 316, July 20, 1989, (Tape 2), Scheduled case of:

11:00 a.m. SRS PROPERTIES LIMITED PARTNERSHIP, A 89-C-008, to appeal zoning Administrator's determination that a strobe light affixed to appellant's building is a prohibited sign under Par. 7 of Sect. 12-104, located at 8661 Leesburg Pike, on approximately 9.00 acres of land, zoned I-5, Centreville District, Tax Map 29-1((1)) pt. of 10C.

William Shoup, Deputy Zoning Administrator, noted that staff had received a letter from the appellant requesting the withdrawal. He noted that the appellant now agrees with the FAA's request that four red lights be installed as opposed to the strobe light.

Chairman Smith questioned if this was a requirement of the FAA and Mr. Shoup explained that it was not but it had been a request of the FAA. Mr. Shoup assured the Board that staff would work with the appellant in this process.

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Mrs. Thones made a motion to allow the withdrawal with Mr. DiGiulian seconding the motion. The motion carried by a vote of 7-0.

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Page 317, July 20, 1989, (Tape 3), Scheduled case of:

John L. Jr. and Mary M. Haas, VC 89-D-039

This case was deferred earlier in the public hearing in order for the applicant to revise the affidavit. As the applicant had now returned, the Board proceeded with the case.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the County Attorney responsible for reviewing the affidavits was out of the office but that the applicant wished to proceed with a representative who was listed on the affidavit.

Sam Scoggin, 2361 Old Trail Drive, Reston, Virginia, one of the contract purchasers, came forward to address the Board. He stated that the contract purchasers were only seeking a variance that was similar to those already granted to owners of similar narrow lots. Mr. Scoggin noted that the lot was only 50 feet wide, thus exceptionally narrow and a house could not be constructed without a variance. He added that other variances have been granted in the area.

Mr. Hammack called the applicant's attention to the size of the house, which was 36 feet wide and 80 feet deep, and asked if that was what he really proposed to construct. Mr. Scoggin replied that was correct.

Mrs. Harris noted that she did not believe that the lot was exceptionally narrow as compared to the other lots in the neighborhood and did not believe that the applicants had met the standards. Mr. Scoggin explained that they were merely trying to construct a house similar to those existing houses which had been made larger by additions.

In response to comments from the Board members, Mr. Scoggin replied that to reduce the width of the proposed house would give a townhouse appearance.

Mr. Hammack asked whether the proposed house would be for resale or for a place of residence for a family. Mr. Scoggin replied that the contract purchaser was a widow. Mr. Hammack referenced the data submitted to the Board listing the variances granted in the area and noted that it did not indicate what the uses had been and stated that he believed that the applicants were trying to build too large a house for the lot.

Chairman Smith called for speakers in support of the request and the following came forward: Lavonne Warren, 7837 Old Dominion Drive, McLean, Virginia, owner of property at 1920 Kenmore Court; and Phyllis Sadie 1831 Massachusetts Avenue, McLean; and, John Haas, 1854 Massachusetts Avenue, McLean, Virginia.

The citizens asked the Board to grant the request because they believed that to construct a house without a variance would destroy the character of the neighborhood and produce an unattractive house.

As there were no additional speakers in support of the request, Chairman Smith called for speakers in opposition to the request and the following came forward: Tom Posarycki, 1728 Abbey Oak, Drive, Vienna, Virginia, property owner at 1854 Massachusetts Avenue; Jeann Marsh, 1872 Rhode Island Avenue, McLean, Virginia, represented the Franklin Homeowners Association; Herb Becker, 2009 Lorraine Avenue, McLean, Virginia.

The speakers believed that the granting of this application would change the character of the zoning district, that the request would not be in harmony with the Comprehensive Plan, and that the applicant had not met the standards. They asked the Board to deny the request.

During rebuttal, Mr. Scoggin stated that the applicants would be willing to accept an 8 to 10 foot setback.

As there was no further discussion, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny as she did not believe that the applicants had met the standards.

Mr. Ribble seconded the motion.

Mr. Hammack stated that he would support the motion and agreed with Mrs. Harris' comments.

Mr. Kelley supported the motion and noted that he could support a 10 foot variance. Chairman Smith agreed.

Following further discussion among the Board, Chairman Smith called for the vote. The motion failed by a vote of 3-4 with Mrs. Harris, Mr. Hammack, and Mr. Ribble voting aye; Chairman Smith, Mrs. Thonen, Mr. DiGiulian and Mr. Kelley voting nay.

Mrs. Thonen then made a substitute motion to grant-in-part the request and allow the applicants to construct within 10 feet of the side lot line.

Mr. DiGiulian seconded the motion with carried by a vote of 5-2 with Mrs. Harris and Mr. Hammack voting nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-039 by JOHN L. JR. AND MARY M. HAAS, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 10.0 (THE BOARD GRANTED 5.0) feet from each side lot line, on property located at 1852 Massachusetts Avenue, Tax Map Reference 41-1((13))(2)16, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,000 square feet of land.
4. The lot is substandard as it is long and narrow.
5. If the applicant built, it would be a very narrow house.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-2 with Mrs. Harris and Mr. Hammack voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this variance.

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11:30 A.M. ROBERT N. CAPLAN, VC 89-P-046, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 18.3 feet from a side lot line and 5.0 feet from edge of floodplain (20 ft. min. side yard required by Sect 3-107, 15 ft. min. yard from edge of floodplain required by Sect. 2-415), located at 3221 Highland Lane, on approximately 1.12 acres of land, zoned R-1, Providence District, Tax Map 59-1((2))44.

Denise James, Staff Coordinator, presented the staff report.

The applicant, Robert N. Caplan, 3221 Highland Lane, Fairfax, Virginia, came forward and referenced his statement of justification submitted with his application and added that he believed that he had met the standards.

In response to questions from the Board, Mr. Caplan replied that the materials would match the existing dwelling as closely as possible. With respect to the floodplain, he added that there was a drainage ditch across the middle of his property which prohibited construction elsewhere on the property.

There were no speakers to address this application, and no closing comments from staff, therefore Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In variance Application VC 89-P-046 by ROBERT N. CAPLAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 18.3 feet from a side lot line and 5.0 feet from edge of floodplain, on property located at 3221 Highland Lane, Tax Map Reference 59-1((2))44, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.12 acres of land.
4. The property has an unusual or extraordinary conditions as the property has a drainage ditch that empties across or comes across the north corner of the property and floods almost the entire rear of the property.

5. The applicant is simply adding onto the existing dwelling and taking it back.
6. The property has severe constraints which prohibits construction elsewhere on the property.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 320, July 20, 1989, (Tape 1), Scheduled case of:

11:45 A.M. DAVID R. MORGAN, SP 89-P-022, application under Sect. 8-901 of the Zoning Ordinance to allow modification to permitted extensions into minimum required yards to allow construction of roofed deck addition to dwelling to 29 feet from front, and 6.0 feet from side lot line (30 ft. min. front yard, 10 ft. min. side yard required by Sects. 3-407 and 2-412), located at 2912 Lawrence Drive, on approximately 9,604 square feet of land, zoned R-4, Providence District, Tax Map 50-3((15))141.



Denise James, Staff Coordinator, presented the staff report.

The applicant, David R. Morgan, 2912 Lawrence Drive, Falls Church, Virginia, came forward and referenced his statement of justification submitted with his application. He submitted a letter in support of the request from the adjacent neighbor into the record.

As there were no speakers to address the request and no further staff comments, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant-in-part the applicant's request by allowing only the construction of the roofed deck addition to 29 feet from the front lot line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-022 by DAVID R. MORGAN, under Section 8-901 of the Zoning Ordinance to allow modification to permitted extensions into minimum required yards to allow construction of roofed deck addition to dwelling to 29 feet from front, and 6.0 feet from side lot line (THE BOARD GRANTED ONLY THE 29 FEET FROM THE FRONT, THE 6.0 FEET FROM SIDE LOT LINE WAS NOT GRANTED), on property located at 2912 Lawrence Drive, Tax Map Reference 50-3((15))141, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicant is the owner of the land
2. The present zoning is R-4.
3. The area of the lot is 9,604 square feet of 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 Section 8-916 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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12:00 Noon GEORGE N. GREENE/PATRICIA A. BEATTIE, SP 89-M-021, application under Sect. 3-303 of the Zoning Ordinance to allow accessory dwelling unit, located at 3302 Peace Valley Lane, on approximately 12,930 square feet of land, zoned R-3, Mason District, Tax Map 61-1((7))33.

Denise James, Staff Coordinator, presented the staff report.

The co-applicant, Patricia Beattie, 3302 Peace Valley Lane, Falls Church, Virginia, came forward and referenced the statement of justification submitted with the application.

Mr. Hammack asked who would live in the accessory dwelling unit. Ms. Beattie replied that she and her husband would live in the accessory dwelling unit and her son and his wife would live in the main dwelling.

As there were no speakers to address the request and no additional staff comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-021 by GEORGE N. GREENE/PATRICIA A. BEATTIE, under Section 3-303 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 3302 Peace Valley Lane, Tax Map Reference 61-1((7))33, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,930 square feet of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the building and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit. However, this condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.
3. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, DEM, shall be submitted and approved by DEM pursuant to Par. 3 Sect. 8-903. Any plans submitted shall conform with the approved Special Permit plat and these conditions.
4. The accessory dwelling unit shall occupy no more than 35% of the principal dwelling.
5. The accessory dwelling unit shall contain no more than one (1) bedroom(s).

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6. 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.
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 regulations for building, safety, health and sanitation.
8. This special permit shall be approved for a period of five (5) years from the approval date and may be extended for succeeding five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Upon termination of the accessory dwelling unit as a permitted use on the site, the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.
10. Upon the approval of a special permit, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of the BZA's approval, including all accompanying conditions. Said resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.
11. The carport shall remain for the parking of vehicles and shall not be enclosed for living space.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Mibble seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 323, July 20, 1989, (Tape 4), Information Item:

Retirement of Michael Knowlton

Jane Kelsey, Chief, Special Permit and Variance Branch, announced that Michael Knowlton, with the zoning Administration Division, would retire from the County on July 28, 1989 after twenty-five years of service to the County. She added that a party would be held in his honor on that day and invited the Board members to attend if they wished.

Chairman Smith commended Mr. Knowlton on his contributions to the County over the years.

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Page 323, July 20, 1989, (Tape 4), Information Item:

Special Meeting Between Staff and the BZA

Jane Kelsey, Chief, Special Permit and Variance Branch, noted the meeting scheduled for July 25, 1989 between the Board and James P. Zook, Director, Office of Comprehensive Planning, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning. She stated that the BZA's policy with respect to operating hours for community swimming pools had been added to the agenda at the Board of Supervisors' request.

Some of the Board members stated that they had been contacted with respect to these restrictions. The Board requested that staff prepare as much information as possible.

Chairman Smith asked that staff include the invocation policy on the agenda.

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Meeting with Brian McCormack

Betsy S. Hurtt, Clerk to the Board of Zoning Appeals, informed the Board that the County Executive had approved the funds to retain Brian McCormack, with the law firm of Dunn and McCormack, to act as legal counsel for the Board with regard to the Calvary Memorial Park Appeal.

It was the consensus of the Board to schedule a meeting with Mr. McCormack for July 25, 1989 at 12:00 noon.

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As there was no other business to come before the Board, the meeting was adjourned at 1:25 p.m.



Betsy S. Hurtt, Clerk  
Board of Zoning Appeals



Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 9/7/89

APPROVED: 9/12/89

The Special Meeting of the Board of Zoning Appeals and Staff was held in the Board Room of the Massey Building on Thursday, July 25, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. John DiGiulian, Vice-Chairman, was absent from the meeting.

Staff Members Present: James Look, Director, Office of Comprehensive Planning; Barbara Byron, Director, Zoning Evaluation, Office of Comprehensive Planning; Jane C. Kelsey, Chief, Special Permit and Variance Branch; Lori Greenlief, Staff Coordinator; Greg Riegle, Staff Coordinator; Betsy S. Hutt, Clerk, Board of Zoning Appeals.

AGENDA

I. Issues of Staff/BZA

1. Request of Board of Supervisors for Review of Hours of Operations for Swimming Pools in Order to Accommodate Northern Virginia Swim League's Swim Meets
2. Amendment to Virginia Freedom of Information Act and How It Affects Executive Sessions
3. BZA Thursday Meetings and Staffing Conflicts
4. Staff's Position on Additional Time Requests

II. Status of Actions Assignments

III. Issues of BZA

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Amendment to Virginia Freedom of Information Act and How It Affects Executive Sessions

Barbara Byron began the meeting discussing the Virginia Freedom of Information Act and distributing the proper procedure for the Board to use when going into Executive Sessions and reconvening the public hearing following a Executive Session. (See attached)

BZA Thursday Meetings and Staffing Conflicts

The next item of business was the conflict on the part of staff with respect to Thursday meetings as that was the same day that staffing occurred. Because of this conflict, staff pointed out that only limited staff would be available in the Board room on those days. Following a discussion between staff and the Board, the Board requested staff to poll the members who were not present to determine if they would be agreeable to the third meeting of the month beginning at 1:00 p.m., depending on the availability of the Board room.

Staff's Position on Additional Time Requests

Ms. Byron explained that staff is now looking differently at additional times and will be recommending denial of more of those requests based on the "diligent effort" of applicants trying to pursue construction on the establishment of the use within the 18-month time limitation.

It was the consensus of the Board that perhaps the time limitation in which to commence construction should be raised to 24-months. Mr. Look stated that staff had no problem with this change.

Request of Board of Supervisors for Review of Hours of Operations for Swimming Pools in Order to Accommodate Northern Virginia Swim League's Swim Meets

Ms. Byron stated that the Board of Supervisors made the following motion on June 26, 1989 which directed staff and the Zoning Administrator to review current policies regarding the hours of operation for community swimming pools with a view towards developing an equitable approach to opening hours for those pools which do not have an adverse impact on the surrounding community.

\*Supervisor Hyland asked unanimous consent that the Board direct the Zoning Administrator and staff to review this issue with a view towards examining the present situation to try to establish a fairer policy Countywide, i.e., to permit swimming facilities that do not have an adverse impact on the surrounding community more flexibility in opening hours. Further, Supervisor Hyland asked that staff review this issue as expeditiously as possible because this season begins July 1.

Supervisor Hanley asked that the request be amended to direct staff, during its review, not to restrict swimming facilities that are currently permitted longer hours. Additionally, she called the Board's attention to the fact that the season commenced as of this past Saturday as opposed to July 1, 1989, and this was accepted.

Without objection, the amended request was so ordered."

Other Issues:

Trails

Mrs. Thonen stated that she was concerned about the way Calvary Memorial Appeal had been handled as it appeared at the public hearing that staff was working against the Board when she walked into the Board Room and was confronted by staff and its attorney. She added that she hoped that this would not happen again. Ms. Byron assured the Board that she would make the Zoning Administrator aware of their concerns and hopefully this would not happen again, and that if the County Attorney was going to be present to represent the staff, the Zoning Administrator, or the Director, that the Board be made aware of this in advance.

In response to further comments from Mrs. Thonen regarding trails, Ms. Byron explained that the BZA does not have the authority to waive a trail as that is a site plan requirement and if the trail is on the Comprehensive Plan, although the BZA can determine not to include the trail as a condition, it cannot waive the requirement. She explained the reason that staff addresses trails is if it is a tight site, the inclusion of a trail, along with the transitional screening, may not work because a trail cannot go within a transitional screening yard. It is better to know that up front rather than go all the way to site plan review and then find the design of the site will not work making an amendment to the special permit necessary before the site plan can be approved.

Invocation

Chairman Smith polled the other Board members to determine if anyone objected to the way the invocation was being presented and no one voiced any objections.

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As there was no other business to come before the Board, the meeting was adjourned.

*Betsy S. Hewitt*  
Betsy S. Hewitt, Clerk  
Board of Zoning Appeals

*Daniel Smith*  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 10/24/89

APPROVED: 11/14/89

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 25, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Robert Kelley; Paul Hammack; and John Ribble. Vice Chairman John DiGiulian was absent from the meeting.

Chairman Smith called the meeting to order at 9:10 a.m. and gave the invocation. He then asked if any Board member had any matters to discuss.

Mrs. Thonen made a motion to adjourn to the Board conference room in order to meet with James Zook, Director, Office of Comprehensive Planning, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, and announced that the meeting was open to the public. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

The Board returned to the Board Room at 10:20 a.m. and Mrs. Thonen made a motion to reconvene the public hearing. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

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Page 327, July 25, 1989, (Tape 1), Scheduled case of:

9:45 A.M. THE GULICK GROUP, VC 89-C-049, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into twelve (12) lots, proposed corner Lot 11 having a lot width of 135 feet (175 ft. min. lot width required by Sect. 3-106), located at 1177, 1187, 1197 Stuart Road, on approximately 13.39 acres of land, zoned R-1, Centreville District, Tax Map 11-2((1))8, 7A, and 7B.

Bernadette Bettard, Staff Coordinator, informed the Board that a request for a deferral had been received by staff.

Chairman Smith read the letter into the record, and as staff had no objections to the deferral, he polled the audience to determine if there was anyone present who wished to speak to the deferral. Hearing no reply, he asked staff for an available date and Ms. Bettard suggested September 26, 1989 at 9:00 a.m.

Mrs. Thonen made a motion to defer VC 89-C-049 to the date and time suggested by staff. Mrs. Harris seconded the motion which passed by a vote of 4-0 with Mr. Hammack and Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

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Page 327, July 25, 1989, (Tape 1), Scheduled case of:

10:00 A.M. ANDREW V. WITTNER, VC 89-D-047, application under Sect. 18-401 of the zoning Ordinance to allow construction of dwelling to 30 feet from a street line of a corner lot (40 ft. min. front yard req. by Sect. 3-107), located at 1650 Kirby Road, on approximately 7,807 square feet of land, zoned R-1, Dranesville District, Tax Map 31-3((1))123.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Lisa Dell, Staff Coordinator with the Rezoning and Special Exception Branch, Zoning Evaluation Division, and informed the Board that Ms. Dell would be assisting the BZA staff in presenting cases. Chairman Smith welcomed Ms. Dell.

Ms. Dell presented the staff report and stated that the application was for a reduction of the front yard by 10 feet below the 40 foot minimum required.

John R. Spring, attorney with the law firm of Rees, Broome & Diaz, P.C., 8133 Leesburg Pike, Suite 810, Vienna, Virginia, came forward. He stated that the applicant, Andrew Wittner, a resident of McLean, was present as well as Robert Morris, Jr., architect, and Steven C. Gunderson, owner of the property. Mr. Spring then stated that the subject property is zoned R-1 and is 7,800 square feet with several significant features which justify reduction of the front yard along Kirby Road by 10 feet. He stated that the most significant feature is the location of a 15 foot wide easement across the rear of the property.

At this point, Chairman Smith asked for a clarification as to the owner of the property. Mr. Spring explained that Mr. Wittner was the former property owner and that the affidavit had been revised to reflect the change in ownership which occurred about a month ago and that the affidavit had been approved by the County Attorney's office. He noted that he had a copy of the revised affidavit if the Board would like to see it.

Following further questions from the Board regarding the property owners, Mr. Spring explained that Mr. Wittner, Mr. Morris, Jr., and Mr. Morris, Sr. had been co-owners. He

added that approximately a month and a half ago Mr. Gunderson purchased the property and was added to the deed in place of Mr. Morris, Sr., Mr. Wittner was removed, but Mr. Morris, Jr., remains a co-owner.

As there was no further discussion with respect to ownership, Mr. Spring continued his presentation. He pointed out that there is a 15 foot sanitary sewer easement which runs across the western back half of the property which creates a lot that is of an odd shape and size and the applicant cannot build on that easement. In addition, he stated that the property is a corner lot which gives it two front yards and if the property was an interior lot, it would be easier to construct a house of a marketable size. Mr. Spring stated that the applicant is proposing to construct a 2,700 square foot single family residential house which will be of superior quality and consistent with the surrounding neighborhood. He called the Board's attention to photographs which had just been distributed and stated that the parked cars were there merely for visual purposes.

In response to questions from the Board about the driveway, Mr. Spring replied that was an architectural design consideration and that the applicant hoped to have a dual entrance on Kirby and Linway providing something like a circular drive. The applicant is hoping to park their cars in front of the house, which is considered a marketable feature for some people. The applicant will still need VDOT approval for an entrance off of Kirby that may be denied. If that is the case, the access will be off of Linway and will probably be a standard driveway.

Mr. Spring showed the Board photographs of Lot 124 located to the south of the application property which contained an older dwelling with a front porch and is 10 feet closer to the road than the applicant proposes to build his dwelling. He stated that the application property would have no negative effect on adjacent property. Mr. Spring submitted a letter from the owner of lot 124, Mr. Thomas Hemphill, in favor of this application wherein he states that he believes that the application will improve the neighborhood. Mr. Spring stated that he believes that the granting of a reasonable variance will not be contrary to the Zoning Ordinance and will result in substantial justice being done due to the special conditions of the easement and corner lots. He stated that the house would be difficult to built without the variance since the lot is narrow, small and of strange configuration. The relative value of the property, which is currently unimproved, without the variance is significantly less than if the variance were granted and this home were constructed. He also stated that this particular hardship is not shared similarly by other adjacent property owners.

In summary, Mr. Spring stated that he believed that the application met the test as stated in Virginia Code 15.1-496.1 and the Zoning Ordinance requirements with respect to demonstrating hardship and an unreasonable restriction on use of the property and asked consideration that the variance of 10 feet be granted.

Mr. Hammack asked what type of garage was proposed and Mr. Spring stated that the garage would be an attached one car garage as shown on the plat.

Chairman Smith asked if there was anyone else to speak in support of the application.

Chairman Smith then stated that the Board had a letter from Mr. Thomas Hemphill in support of the application and asked if there was anyone to speak in opposition to the application. He asked if staff had any additional comments. He then closed the hearing.

Mr. Hammack then stated that he had some real problems granting a variance where the front yard is taken up with a driveway and the side yard could not support the application unless ingress/egress is limited to Linway Terrace. He said Kirby was a busy road and should not have more curb cuts than necessary. Chairman Smith stated that the house fronts on Kirby Road.

Mr. Spring then stated that the applicant preferred to build and access the home as requested and that lot 24 and most of the homes along Kirby Road had access from Kirby Road. In light of the fact that this is a corner lot and there may be some sight distance problems, though he did not believe there would be, VDOT may deny access there which they were prepared to accept if necessary. The applicant prefers to build the structure and the access to the home as requested and asks that the variance be granted as proposed.

Mr. Steve Gunderson, 4416 N. 41st Street, Arlington, Virginia, then came forward to make comments. He stated that the driveway was put in Kirby for safety reasons because Kirby is a level road whereas coming up on Linway Terrace there is a knoll and it is more dangerous.

A discussion took place between the Board and Mr. Gunderson as to why the driveway could not go straight into the front of the house rather than curving around and taking up the entire front yard.



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Mrs. Thonen stated that she thought it was the consensus of two of the members to either have direct access into the garage from Linway or direct drive into the front door. She stated that she could not see taking a small lot and "black-topping" it.

Mr. Spring again stated that the applicant preferred to have the application approved as requested but would be willing to commit to an entrance from Linway Terrace if it meant the difference between approval and denial of the application.

In response to comments from the Board, Mr. Spring stated that the applicant would agree to the deletion of the driveway through the front yard and would submit new plans to reflect that change.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. Hammack then moved to grant-in-part.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-047 by ANDREW V. WITTNER, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 30 feet from a street line of a corner lot, on property located at 1650 Kirby Road, Tax Map Reference 31-3(1)123, 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 25, 1989; and

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

1. That the applicant is the co-owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 7,807 square feet of land.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in

practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1989. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. MR. & MRS. MARTYN V. CLARKE, SP 89-S-019, application for modification to minimum yard requirements for an R-C lot to allow construction of enclosed porch addition to dwelling to 8 feet from a side lot line such that side yards total 30.4 feet (20 ft. min. side yard req. by Sect. 3-C07), located at 15207 Elk Run Road, on approximately 15,207 square feet of land, zoned R-C, Springfield District, Tax Map 33-4(2)436.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Randy Baxter, a new Staff Coordinator with the Rezoning and Special Exception Branch, to the Board. She stated that Mr. Baxter was assisting the Special Permit and Variance Branch during the summer crunch.

Chairman Smith welcomed Mr. Baxter.

Mr. Baxter began his presentation and stated that the square footage in the staff report should be 15,207 rather than 12,300. He added that staff recommended approval of the request as staff believed that the application met the requirements.

The applicant, Martyn V. Clarke, 15207 Elk Run Road, Chantilly, Virginia, came forward and stated that the house was more than 20 feet from the lot line and that he agreed with the staff report.

As there were no speakers either in support or in opposition to the request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant the request as she believed that the applicant had met the standards.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

Mrs. Thonen made the following motion:

WHEREAS, Application Number SP 89-S-019 by MR. AND MRS. MARTYN V. CLARKE under Section 3-C07 of the Fairfax County Zoning Ordinance for modification of minimum yard requirements for an R-C lot to allow construction of enclosed porch addition to dwelling to 8 feet from a side lot line such that side yards total 30.4 feet, located at 15207 Elk Run Road, Tax Map Reference 33-4(2)436, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by th Board of Zoning Appeals held on July 25, 1989; and

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

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

AND WHEREAS, the Board has reached the conclusion that the applicant has met the provisions for the approval of modifications to the minimum yard requirement for certain R-C lots as contained in Section 8-913 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 8-015 of the zoning Ordinance, unless the BSA has specified otherwise, this special permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the special permit unless construction has started and is diligently pursued, or unless additional time is approved by the BSA because of the occurrence of conditions unforeseen at the time of the approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion.

The motion passed by a vote of 5-1 with Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of zoning Appeals and became final on July 25, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 331, July 25, 1989, (Tape 1), Scheduled case of:

10:30 A.M. DONALD J. GIACOMO SR. AND ARLENE G. GIACOMO, SP 89-M-029, application under Sect. 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow dwelling to remain 4.0 feet from a side lot line and 11.8 feet from a rear lot line on a corner lot (12 ft. min. side and rear yards required by Sect. 3-307), located at 4123 Braddock Road, on approximately 12,466 square feet of land, zoned R-3, Mason District, Tax Map 72-1((20))2. (OTH GRANTED)

Lori Greenleaf, Staff Coordinator, presented the staff report.

Mr. Ribble noted that the 1965 survey showed the house in a different location than the newer survey.

The applicant, Donald J. Giacomo, 3208 Juniper Lane, Falls Church, Virginia, explained that he had been unaware of the error until he had decided to sell the house and that the error had been detected during the survey.

There were no speakers to address the request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Harris made a motion to approve the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-029 by DONALD J. GIACOMO, SR. AND ARLENE G. GIACOMO, under Section 8-901 of the Zoning Ordinance to allow modification

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to minimum yard requirements based on error in building location to allow dwelling to remain 4.0 feet from a side lot line and 11.8 feet from a rear lot line on a corner lot (THE BOARD APPROVED ONLY THE MODIFICATION TO THE SIDE YARD OF 4.0 FEET, THE 11.8 FEET FROM A REAR LOT LINE WILL BE ADMINISTRATIVELY DECIDED BY THE ZONING ADMINISTRATOR), on property located at 4123 Braddock Road, Tax Map Reference 72-1((20))2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 1989; and

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

The Board has determined that:

- A. The error exceeds ten (10) percent of the measurement involved, and
- 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, and
- C. Such reduction will not impair the purpose and intent of this Ordinance, and
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- E. It will not create an unsafe condition with respect to both other property and public streets, and
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

Mr. Ribble seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

The Board of Zoning Appeals waived the eight day waiting period. This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 333, July 25, 1989, (Tape 1), Scheduled case of:

10:45 A.M. SAINT MARK CATHOLIC CHURCH, SPA 81-C-081-3, application under Sect. 3-103 of the zoning Ordinance to amend S-81-C-081 for church and related facilities to permit parking lot additions, located at 9970 Vale Road, on approximately 19.621694 acres of land, zoned R-1, Centreville District, Tax Map 37-4((1))42.

Chairman Smith stated that the applicant was requesting a deferral.

Lori Greenlief, Staff Coordinator, stated that a memo had been distributed to the Board wherein staff objected to the deferral. She explained that the applicant was concerned that two of the notices were not in order, but the Clerk had determined that the notices were correct and that staff was prepared to proceed with the hearing.

Patrick Via, attorney with Hazel, Thomas, Fiske, Beckhorn and Hanes, P. O. Box 547, Fairfax, Virginia, came forward to address the deferral. He stated that the notices may or may not be in order due to name changes in property owners in the Office of Assessments as of July 1, 1989.

Chairman Smith concurred and asked staff for a deferral date. Ms. Greenlief suggested September 26, 1989 at 9:20 a.m. Hearing no objection, the Chair so ordered.

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Page 333, July 25, 1989, (Tape 1), Scheduled case of:

11:00 A.M. LUCKSTONE CORPORATION ANNUAL REVIEW PURSUANT TO SECT. 8-104 OF THE ZONING ORDINANCE, on property located at 15950 Lee Highway, on approximately 200.2692 acres of land, zoned R-C, M-R, and WS, Springfield District, Tax Map 64-1((1))1, 4, 13, 14, 15, 17, 39 and 64-1((4))7A.

Lori Greenlief, Staff Coordinator, stated that a copy of the Luckstone annual review was forwarded to the Board last week and that on page 6 of that report staff had summarized the major issues. She stated that this review had been a bit awkward because the applicant was in between special permits, one having just been granted in May of this year for additional structures on the property. Some of those structures were allowed to be implemented without going through site plan and some were not, therefore they are in between permits. The first bullet notes that the berm along the northern lot line should be planted as soon as possible but at least by October 30, 1989. Staff suggested that it be planted by October 30, 1989. A revised landscape plan should be submitted to the County Arborist prior to the planting of the area along Route 29 and the western lot line. These areas will be planted in concert with buildings to be erected in the summer of 1990. Those were the recently approved buildings. DEK has noted that if the construction of these buildings involve the moving of more than 5,000 square feet of earth an erosion control plan is necessary. Ms. Greenlief stated that Randy Stouder, with the Planning Division, CCP, was present to respond to any specific questions about the water quality reports or any environmental issues. Staff will continue to pursue the need to monitor the dissolved oxygen aspects of the water quality. Water quality reports were submitted and reviewed and Luckstone is in compliance with the standards. Staff had a problem with the format of the water quality reports which needs to be submitted in a more readable format, possibly summarizing the quarterly reports which are provided to the State Water Control Board.

Mr. Hammack noted that this was not in staff's recommendation but was in the report and asked if staff would like to include that request. Ms. Greenlief stated that this was actually the last bullet on page 6 and that Luck Quarry should submit an annual summary of quarterly reports. Mr. Hammack asked if they could be submitted to staff at the same time they are submitted to the State. Ms. Greenlief said that this was a possibility although the Board, with their last approval, agreed that an annual report was adequate but noted that possibly part of that annual summary could be the inclusion of those quarterly reports. Mr. Hammack stated the idea behind this was that the review occurs on annual basis, but that staff should have the information that is collected quarterly. If this information has to be sent to the State Water Control Board, it could be sent to the County as well.

Mr. Stouder stated that he had reviewed some of the information and had spoken to members of Luck Quarry and believed that Luck Quarry would agree. The problem with quarterly monitoring is that a lot of the metals that they were being required to test for were above and beyond what the State Water Control Board was looking for and beyond what was required in their permit. He added that if that requirement is dropped then Luck Quarry would have no problem complying. They would simply send staff a copy of the materials that they send on a quarterly basis to the State. He added that staff is just looking for an annual summary and a comparison of what their findings are with the established state standards and using standard scientific report format.

Mr. Hammack stated that Luck Quarry was still under an obligation to test for these other metals that are not part of the State requirements. Mr. Stouder said that he believed that currently they are, according to what Ms. Greenlief had told him, as of their last special permit review.

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Mr. Hammack said that the BSA should get whatever information has been required. He stated that he had not gone back to compare the data with the earlier report, but believed that the tone of the report itself was stronger and that it should be monitored carefully. He stated that Luck had been very cooperative and he was not being critical, but this water is used for drinking water and the fact that the State might not require this does not mean that the County should not. There is a need to establish what the appropriate levels of the metals are and Mr. Stouder should continue to look into that.

Mr. Stouder stated that Luck has been doing this and noted that he had compared their data for this report against instream water quality standards, and drinking water standards for the metals, that the BSA had asked them to test for previously. According to the correspondence between the County and Luck, he thought that Luck assumed that testing initially for these metals for a certain time period and if they were meeting all of the criteria and standards that maybe they would be allowed to go to an annual monitoring format that could still include metals if desired. Luck's recommendation was that they were meeting the standards that they had to judge against so that any further testing would not be worth much.

Mr. Hammack stated that was fine and he complimented them on compliance, but said that an annual report is inadequate because Luck can do a lot of work in one quarter and by the time the annual monitoring was done, the pollutants have been introduced into the water system. He said that he thinks the monitoring should be done quarterly and thought it should be monitored as carefully as possible. He thought that standards should be developed and that he was intrigued by the fact that there are no oil or grease monitoring standards for what is done at service stations.

Mr. Stouder stated that there are standards for things such as temperature, nutrients and the dissolved oxygen, and that certain levels of requirements should be imposed like NSPOP nutrient removal to establish if they are meeting the Water Overlay Protection District requirements of 50% phosphorous, but that it seemed like the nature of the operation may not make sense to test for these things. Staff needs to do some more research on quarries and what typically is emitted with the rock types concerned. Maybe a lot of work needs to be done on the water monitoring program. He stated that he did not think the County has a very good program so far and maybe it could be refined by working with Luck. Mr. Hammack agreed.

Ms. Greenleaf continued with recommendations on page 7. The existing settling ponds on the site may fulfill the BMP requirement but should be coordinated with DEM. Staff will keep the BSA apprised of the progress of the installation of the air pollution control equipment. It was her understanding that a work order has gone out for the electrical hookups to the site and that the platform equipment has been constructed. The Health Department figures a one to two month time frame for the operation of the air quality control equipment and therefore next year's annual review should include some information. Staff recommends that the BSA accept this annual report.

Roy Spence, 7279F Lee Highway, came forward to address several issues. On pages 3 and 4 of the report staff deals with planting on the north side of the quarry. He stated that it was Luck's position that they have put in approximately 3,400 linear feet of berms in that area to be planted, of that 1,500 feet have already been planted and established. Last year, Luck put in an additional 1,100 feet of planting most of which died due to the weather conditions. Those will be replanted plus another 800 feet which was not timely done last year. The staff has suggested that the plantings be done in the fall which is ordinarily a good time for planting. Unfortunately, Luck uses seedlings which they get from the Forestry and Extension Service and those do not become available until the spring. Luck would like to do that planting in the spring of 1990 instead of the fall of this year. This is what has been done in the past, it has been successful and they would like to be allowed to continue. With regard to the water quality monitoring issue that Mr. Hammack raised, Luck would like to have the permit as it was granted, condition 39, remain as it is with annual testing for certain things. There was confusion on Luck's part last time in that they discussed this with Mr. Pammel and they have complied with what he wanted rather than what the Board wanted. This time Luck will do what the Board wants but needed some guidance as to what to test for in the way of nutrients. There is a large gamut of things and some may be relevant and some may not, and Luck does not know what the County wants. He suggested that at some point between now and the time the next annual report is due, Luck would hope that staff let them know what nutrients mean to the County and perhaps Luck can test for those. Luck intends to comply with the permit to test on an annual basis and supply reports for those things which are mentioned in condition 39. Luck will supply those at the same time they supply those to the Water Control Board. So that staff can be kept up to date on those, and if they want Luck to summarize them at the end of the year, there should be no problem with that either.

Chairman Smith asked Mr. Spence if he had requested the clarification on the nutrients from environmental. Mr. Spence replied that he had mentioned last week to Ms. Greenleaf

that Luck would like to have clarification of that and apparently there is no big hurry as the report is not due until next March. Chairman Smith stated that it would be a good idea to get it in while they were talking about it.

Chairman Smith also asked if there was a move to get the information which Mr. Spence was talking about. Mr. Stouder stated that he believed that he could clarify the nutrient question. He added that what the WSPOD requires in the way of BMPs for managing stormwater would require that the quarry meet 50% phosphorous removal from the waters leaving their property, 50% phosphorous is spelled out in the Public Facilities Manual in Chapter 6, Article 4 under Water Quality Standards with a corresponding section in the Zoning Ordinance for the WSPOD. Mr. Stouder pointed that 50% phosphorous removal is mandated under BMP requirements in both of those manuals. Chairman Smith asked Mr. Stouder if he would convey this information to Mr. Spence in the form of a memorandum and Mr. Stouder agreed.

Mr. Spence asked if phosphorous was the only nutrient that the County wanted tested. Chairman Smith also asked Mr. Stouder this question. Mr. Stouder replied that phosphorous is the only nutrient that is regulated and that it is used as an indicator nutrient. If your levels are below 50% then you should be fine as far as the other nutrients are concerned. That is the limiting nutrient we use to regulate these things.

Chairman Smith told Mr. Spence that he should get that information within the next 30 days.

Ms. Greenleaf replied that the Board did need to address Mr. Spence's request about the plantings along the berm.

Jane Helsey, Chief, Special Permit and Variance, stated that possibly staff could get some clarification from Mr. Spence to the size and height of the plantings he has been receiving from the Extension Service. She stated that if it is the same type as Homeowners Associations received in the spring, they are only about six inches high and 1/8 of an inch in diameter and take years to become a viable screening type of plant.

Chairman Smith replied that he hoped that Mr. Spence was talking about something more than seedlings. Mr. Spence noted that seedlings were the only things that had ever been planted on those berms on the north side because anything else would be prohibitively expensive. There is a great amount of planting that has to be done along there and noted that there is no development along there whatsoever as it is on the back of the property. That is all Luck has ever used in the past and it allows Luck to plant them much heavier than if larger trees were planted and why plant a big tree when there is nothing to screen.

In response to questions from the Board, Mr. Spence stated that there was approximately 4,000 seedlings planted at any given time. He stated that last year Luck had planted an area approximately 1,100 linear feet and due to the weather most of those died so Luck would be planting that 1,100 feet in addition to another 800 linear feet. Mr. Spence stated that it would be a waste of money to plant larger trees as it is open land which has been subdivided, but there is no sewer for the lots so there is no development the property and there is a little creek that runs across that is in the floodplain.

Mrs. Harris asked if Luck would simply be supplementing the existing stand of trees and Mr. Spence replied that was correct.

Chairman Smith stated that he had no problem with planting in the spring but that spring was a bad time to plant seedling pines.

There being no further discussion, nor any staff closing comments, chairman Smith closed the discussion on the annual review.

Mr. Ribble moved to approve the review subject to the following:

- o The berm along the northern lot line should be planted with plant seedlings by April 30, 1990.
- o A revised landscape plan should be submitted to the County Arborist prior to the planting of the area along Rt. 29 and the western lot line in the fall of 1990.
- o Should the construction of the storage buildings and office building approved in conjunction with SPA 81-2-064-2 involve the grading of more than 5,000 square feet, an erosion and sediment control plan must be submitted to DNM pursuant to Sect. 2-400 of the Zoning Ordinance.
- o Staff will pursue the need to monitor DO, temperature, nutrients and COD and report these findings to the BIA.

- o Luck quarry should submit an annual summary of the quarterly reports submitted to the State Water Control Board and the appropriate County staff. These reports should contain such information as sampling dates, sampling location and a summary of the quarry's compliance or noncompliance with the standards. This report format will allow the BZA to better understand the report and will allow staff to better analyze the results.
- o The applicant should coordinate with the Department of Environmental Management in order to fulfill Condition #38 pursuant to SPA 81-S-064-1 which is the same as Condition #40 of SPA 81-S-064-2 regarding the provision of BMP's on the site.
- o Staff will keep the BZA apprised of the progress of the installation of the air quality monitoring equipment.

Mr. Hammack seconded the motion. The motion carried by a vote of 6-0 with Mr. Digullian absent from the meeting.

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Page 336, July 25, 1989, (Tape 2), Scheduled case of:

11:30 A.M. SAINT MARK COPTIC ORTHODOX CHURCH, SP 89-s-013, application under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities, located at 11821 Braddock Road, on approximately 3.1142 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-1((4))34. (DEFERRED FROM 6/27/89 TO ALLOW APPLICANT TO MEET NOTICE REQUIREMENT)

Bernadette Bettard, Staff Coordinator, presented the staff report. She suggested that development condition number 18 be revised to read "interparcel access to lot 33 east shall be provided in order to obtain access at a median break." She stated that the application property is in a sensitive area located in an R-C District and the low density nature of the area should be preserved. Ms. Bettard submitted a report from Mr. Jenkins of the Department of Public Works wherein he had stated that he felt a sewer problem could be worked out, but that no additional facilities would be added in the future. In closing, Ms. Bettard stated that staff was concerned with the intensity of the request and recommended denial of the application.

Chairman Smith asked about sewer availability. Ms. Bettard stated that sewer facilities were available but were limited and noted that the Department of Public Works had recommended that the seating capacity be reduced to 185.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P. O. Box 547, Fairfax, Virginia came forward to represent the applicant. He stated that a previous application on a different piece of land had been denied. Mr. Via stated that the intensity was within R-C zoning requirements and transitional screening is required and stated that there is a church about 1 1/2 miles down the road so this area is not as rural as staff has suggested. He addressed the development conditions by stating that numbers 5 and 15 limit the number of seats to 185 people but the applicant believes that 300 seats are needed. He objected to condition 7 as it requires an inordinate amount of screening, condition number 18 requires interparcel access but the church next door may not agree. Mr. Via noted that condition number 14 mentions a building height of 35 feet but noted that the applicant is in compliance with the request of 45 feet.

Pete Supler, Licensed Engineer, 1422 Davis Ford Road, Woodbridge, Virginia came forward to address the sewer issues. He stated that he had worked with the Department of Public Works on this issue by giving information on water use per seat which would be .55 gallons per seat or 200 per day for this facility. The data was sent to Mr. Jenkins of the Department of Public Works who indicated that he was satisfied with the information, agreed with the analysis but needed two additional pieces of information because the system could not be oversized.

Wilson Barnes, Architect, 5429 Backlick Road, Springfield, Virginia, came forward to speak on this issue. He stated that the applicant had been trying for two and one-half years to get site plan approval. The application was designed in accordance with regulations and that the height of the church was below the 65 foot allowable and they would request approval of the application even if conditioned.

Fady Bassily, 8110 Cooper Street, Alexandria, Virginia came forward to support the church. He stated that the church had been seeking approval for a long time to construct a church.

There were no speakers in opposition to this application.

In response to the Board's question, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the height of the church next door was approximately 1 1/2 stories.



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Mr. Hammack stated that he was concerned about staff's comments on sewer standards as there was a difference between the applicant's statements and staff report. He stated that he would like more information on sewer capacity.

Mr. Supler then stated that it could be confusing for those not working with sewer requirements every day. He also stated that Mr. Jenkins indicated that he has a comfort level with the information he received but needed more data.

Mr. Hammack stated that he believed the Board should defer this case to sometime in September until the sewer capacity issue could be resolved. Mr. Ribble seconded the motion. Mrs. Thonen asked for more information in writing. Mrs. Harris stated that she was concerned with the intensity issue.

Staff suggested September 26, 1989 at 9:40 a.m. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 337, July 25, 1989, (Tape 1), scheduled case of:

Paul C. and Evelyn B. Hutton, VC 85-A-092, Additional Time  
4216 Holborn Avenue  
70-1((7))224

Mrs. Thonen moved to deny the request as the applicant had already been granted extensions.

Mr. Kelley agreed with the motion but suggested a sixty-day extension.

Mrs. Thonen again moved to deny the request because of this application being on the record for three and one-half years. Mr. Hammack seconded the motion.

There was additional discussion about some sort of extension due to the fact that the letter had not be acted upon as soon as it was received.

Mr. Hammack made a substitute motion to grant the applicant an additional thirty days from the date of the letter which was July 14, 1989 to August 14, 1989 and noted that would be the last extension. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mr. Kelly again expressed his concern about the timeframe in acting on the letter requesting an extension.

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As there was no other business to come before the Board, the meeting was adjourned at 12:31 p.m.

Jackie Pack / JLP  
Jackie Pack, substituting for the  
Clerk, Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 10/31/89

APPROVED: 11/14/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 27, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:25 a.m. and gave the invocation. There were no matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 339, July 27, 1989, (Tape 1), Scheduled case of:

9:00 a.m. HAZELTON LABORATORIES AMERICA, INC., A 89-D-003, Appeal of Zoning Administrator's decision that appellant's special exception application, SE 87-D-089, was improperly accepted and changes are necessary in order for the request to be a proper application, located at 9200 Leesburg Pike on approximately 123.84 acres of land, zoned R-1, Dranesville District, Tax Map 19-4((1))16, 16A, and 31. (DEFERRED FROM 4/11/89 AT APPLICANT'S REQUEST) (DEFERRED FROM 5/9/89 AT APPLICANT'S REQUEST)

Chairman Smith noted that a letter requesting a deferral had been received from the applicant's agent.

Richard R. G. Hobson, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, representative of the appellant came forward and explained that a special exception application had been filed by the applicant and they were awaiting a decision by the Zoning Administrator as to whether or not the application would be accepted. Mr. Hobson stated that if the special exception application was accepted the appeal would be moot. He requested a deferral to sometime in September.

In response to a question from the Chair, Jane Gwinn, Zoning Administrator, explained that she had just this morning been handed a copy of the letter wherein the appellant had requested the deferral. Since she had not had sufficient time to review its contents nor to make a determination to the special exception application, she agreed with the deferral.

Chairman Smith polled the audience to determine if there was anyone present interested in the case. Keith Wilkinson, 1134 Tollston Road, Great Falls, Virginia, President of the Rocky Run Homeowners Association, objected to the deferral. He believed that the appellant had merely filed the application as a ploy to prolong the process.

J. Patrick Taves, Assistant County Attorney, was present in the Board Room and Mrs. Thonen questioned him as to the legality of the Board ruling that this would be the last deferral. Mr. Taves stated that the Board could pass a Resolution with respect to the deferral which might not necessarily be binding but would give the citizens, appellant, and staff a firm idea of the Board's position. Chairman Smith stated that he did not believe the Board should pass such a Resolution but should allow the appellant and Zoning Administrator time to resolve the issues.

Mr. Wilkinson stated that this case had been ongoing for over 10 years and now the appellant wanted to change the "ground" rules. Mrs. Harris stated that she understood the citizens' frustrations but the Board could only address the issue that was before them.

Mrs. Thonen asked Mr. Hobson if he believed that the issue would be resolved if the Board granted another deferral. Mr. Hobson stated that perhaps this application would go away but another issue would be brought before the Planning Commission and Board of Supervisors in the form of a special exception. Mrs. Thonen requested that any additional information be forwarded to the staff in time for review. Mr. Hobson agreed.

Ms. Gwinn suggested that perhaps the case could be deferred to a night meeting so the citizens would not have to take time off from work. She explained that many times applicants file an appeal within the 30-day time limitation because they have to preserve their legal rights but then the issues were resolved prior to the public hearing. Chairman Smith objected to scheduling appeals to a night meeting because if the appeal was withdrawn or deferred then the Board accomplished nothing.

Mr. Wilkinson stated that he had contacted staff yesterday regarding the appeal and had been told that the case would proceed as scheduled. He believed that it was the appellant's responsibility to contact the concerned citizens. Mrs. Thonen explained that it was the Board's decision as to whether or not a case could be deferred. Mr. Wilkinson stated that he had been unaware of the Board's procedure as it differed from the Planning Commission and Board of Supervisors.

Chairman Smith asked staff for a deferral date and time. Ms. Gwinn suggested either September 26, 1989 or October 3, 1989. Chairman Smith asked Mr. Hobson to contact the citizens if another deferral was necessary. Mr. DiGiulian made a motion to defer this appeal to October 3, 1989 at 8:20 p.m. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Mr. Kelley absent from the meeting.

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9:30 A.M. EDWARD AND GERALDINE GRUNDLER, SR., VC 89-A-058, application under Section 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 3.8 feet from a side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412), located at 5521 Yorkshire Street, on approximately 10,728 square feet of land, zoned R-3, Annandale District, Tax Map 79-1((6))566.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The co-applicant, Edward Grundler, Sr., 5521 Yorkshire Street, Springfield, Virginia, came forward.

In response to Chairman Smith's questions, Mr. Grundler replied that the house was constructed in 1965 with the addition of the second story in 1970. He used the viewgraph to point out the location of the house in response to an inquiry from Mrs. Harris.

Mr. Grundler continued his presentation by stating that the carport could not be constructed on the other side of the house because of an easement.

Chairman Smith asked how wide the carport would be and Mr. Grundler replied 10 feet noting that the carport would not be enclosed.

There were no speakers to address the application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-058 by EDWARD AND GERALDINE GRUNDLER, SR., under Section 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 3.8 feet from a side lot line, on property located at 5521 Yorkshire Street, Tax Map Reference 79-1((6))566, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,728 square feet of land.
4. The property has an extraordinary condition with the placement of the house.
5. There is an easement on the other side of the house.
6. The request is for a minimal variance.

This application meets all of the following Required Standards for Variances in Section 18-494 of the Zoning Ordinance:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shows on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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9:45 A.M. PHILIP A. AND DOROTHY B. HARRIS, VC 89-A-052, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 1.9 feet from side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412), located at 7103 Leesville Boulevard, on approximately 11,501 square feet of land, zoned R-3, Annandale District, Tax Map 80-1((2))(3)17.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Philip A. Harris, 7103 Leesville Boulevard, North Springfield, Virginia, came forward and referenced the statement of justification submitted with the application.

Chairman Smith asked the applicant if the addition could be moved and Mr. Harris explained that they would like to line up the carport with the existing driveway which, unfortunately, is three feet away from the house because of a terrace in the front yard. He added that there was an enormous holly tree that he would not like to remove.

Mrs. Harris asked why the carport could not be constructed on the other side of the house and the applicant stated that there were two large maple trees and pointed out that there was no curb out in that location. Mr. Harris added that the lot from the driveway rised to the back of the house between three to five feet with large trees scattered throughout the lot. He stated that the developer had reduced the frontage on his lot in order to make the corner lot larger.

The co-applicant, Dorothy Harris, 7103 Leesville Boulevard, North Springfield, Virginia, came forward and asked the Board to grant the request.

There were no speakers to address the application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant-in-part the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-052 by PHILIP A. AND DOROTHY B. HARRIS, under Section 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 1.9 feet (THE BOARD GRANTED A 10 FOOT WIDE CARPORT TO 5.9 FEET) from side lot line, on property located at 7103 Leesville Boulevard, Tax Map Reference 80-1((2))(3)17, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,501 square feet of land.
4. The lot has an exceptional shape and topographic conditions.
5. The variance is required because of the placement of the house on the lot.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Mr. Kelley absent from the meeting.

Page 343, July 27, 1989, (Tape 1), (Philip A. and Dorothy B. Harris, VC 89-A-052, continued from Page 342)

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 343, July 27, 1989, (Tape 1), Scheduled case of:

10:00 A.M. PETER HOWES, VC 89-D-853, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing deck for a screened porch 16.6 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-107), located at 1023 Riva Ridge Drive, on approximately 20,425 square feet of land, zoned R-1(C), Dranesville District, Tax Map 12-1(7)76.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Peter Howes, 1023 Riva Ridge Drive, Great Falls, Virginia, came forward and referenced the statement of justification submitted with the application.

Chairman Smith asked how long he had owned the property and Mr. Howes replied since 1980.

Mrs. Thonen asked if the applicant had received a copy of the letter from the homeowners association and Mr. Howes replied that he had not. The Board gave him a copy to review. He stated that he was aware that he had to apply to the homeowners association but that he believed that there would be no need to do so if the variance was not granted. Chairman Smith questioned why he had not notified them and Mr. Howes replied that the homeowners association had been notified at the time he mailed certified letters to all abutting property owners. Mrs. Thonen noted that the letter from the homeowners association was not in opposition to the request.

Mrs. Harris asked why there were no railings on the deck. Mr. Howes stated that when he applied for the building permit for the deck he was told that he could not enclose the deck without a variance. He then decided to construct the deck without railings in hopes of being granted a variance, if the variance was not granted the railings would be added.

In response to a question from Chairman Smith, Jane Kelsey, Chief, Special Permit and Variance Branch, read the following from the Zoning Ordinance, "that an open deck with any part of its floor higher than 4 feet above the finished ground level, the open deck may extend into the rear 12 feet but not closer than 5 feet to any rear lot line." She added that if the deck was enclosed it would have to meet the 25 foot rear yard requirement.

Mrs. Thonen asked the size of the deck and Mr. Howes replied 12 feet by 24 feet. Mrs. Thonen commented that because the applicant's property backs up to open space she did not have a problem with the request.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-053 by PETER HOWES, under Section 18-401 of the zoning ordinance to allow enclosure of existing deck for a screened porch 16.6 feet from rear lot line, on property located at 1023 Riva Ridge Drive, Tax Map Reference 12-1(7)76, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1(C).
3. The area of the lot is 20,425 square feet of land.

4. There is an extraordinary situation on the property because the house is located to the extreme rear of the property in an obscure position and the applicant does not have the full use of the property.
5. The request is not really a minimal variance but it is small and there is a good deal of space between the deck and the rear property line.
6. There is open space to the rear of the property.
7. The character of the neighborhood will not change.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion.

The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote, Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. ALLEN E. AND ANN B. CROTTIS, VC 89-M-051, application under Sect. 18-401 of the zoning Ordinance to allow construction of a detached garage to 5.0 feet from side lot line and to allow existing frame shed to remain 5 feet from the lot line (12 ft. min. side yard required by Sects. 3-307 and 10-104), located at 3105 Dashiell Road, on approximately 12,992 square feet of land, zoned R-3, Mason District, Tax Map 50-4 ((20))226.

Denise James, Staff Coordinator, presented the staff report.

Mrs. Thonen asked staff if the Shed Amendment had been adopted and Ms. James replied that it had. Chairman Smith noted that the Amendment had not been intended to include a shed this size. Mrs. Thonen stated that the Amendment had not addressed size at all as that was addressed under accessory dwelling unit. Ms. James stated that the subject shed exceeded the height limitation by half a foot as it was 9 feet and the zoning Ordinance stipulated 8.5 feet. Following further comments from the Board as to exactly what the applicant was proposing to construct, Ms. James stated that perhaps the applicant could better explain the request to the Board.

The co-applicant, Allen Crotts, 3105 Dashiell Road, Falls Church, Virginia, came forward and explained the photographs to the Board by pointing out the location of the shed, the proposed garage, and similar garages in the neighborhood. He stated that it had been his understanding that the existing shed would be under the grandfather clause as it was constructed in 1960-1961, but because he wished to alter the shed that it had to be included in the application.

Chairman Smith asked if the garage could be moved over 2 feet to make it 7 feet from the property line. Mr. Crotts explained that he would prefer to keep it flush with the existing shed and be able to access the shed at the back of the garage. He stated that he would like to keep as much of the yard as possible. Mrs. Thonen agreed that this was the best location to construct the garage.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-051 by ALLEN E. AND ANN B. CROTTIS, under Section 18-401 of the zoning Ordinance to allow construction of a detached garage to 5.0 feet from side lot line and to allow existing frame shed to remain 5 feet from the lot line, on property located at 3105 Dashiell Road, Tax Map Reference 50-4((20))226, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,992 square feet of land.
4. The lot has exceptional narrowness.
5. The location of the proposed garage is the only practical location for construction.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mr. Hammack not present for the vote; Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 346, July 27, 1989, (Tape 1), Scheduled case of:

10:30 A.M. CARMEN J. MANDICH, VC 89-P-055, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 10.4 feet from side lot line and 18.9 feet from rear lot line (12 ft. min. side yard; 25 ft. min. rear yard required by Sect. 3-307), located at 9122 Maywood Lane, on approximately 11,455 square feet of land, zoned R-3, Providence District, Tax Map 58-2((10))76.

Denise James, Staff Coordinator, stated that the applicant's son had informed the Clerk that Mrs. Mandich was ill and would be unable to attend the public hearing, but that he would appear on her behalf and request a deferral. Ms. James added that staff had just been informed that he was on his way to the Board Room from the Centerpointe Building.

Chairman Smith stated that the Board would pass over the case until the applicant's son could be present.

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10:45 A.M. FRANK A. & DEBORAH M. HAYDON, VC 89-g-056, application under Sect. 18-401 of the Zoning Ordinance to allow construction of sunroom addition to dwelling to 10.0 ft. from side lot line and enclosed deck 15 feet from side lot line (20 ft. min. side yard required by Sect. 3-C07), located at 15302 Jordans Journey Drive, on approximately 16,074 square feet of land, zoned R-C, WSP0D, Springfield District, Tax Map 53-4((8)89.

Denise James, Staff Coordinator, presented the staff report.

Mrs. Thonen asked if the applicant could construct the deck by right and Ms. James stated that was correct and called the Board's attention to the letter from Michael Knowlton, with the zoning Administration Division. She stated that she had the original grading plan approved for the subdivision which showed the subject lot and distributed a copy to the Board.

The applicant, Deborah M. Haydon, 14302 Jordans Journey Drive, Centreville, Virginia, came forward.

Chairman Smith asked if the applicant was aware that she could build the deck by right. Ms. Haydon stated that this had been brought to her attention approximately a week ago.

Before continuing, she distributed copies of her presentation to the Board. In November 1987 when they purchased the property, they realized that they could not afford the screened-in deck or sunroom at that time and had been unaware of the zoning restrictions. She added that their house is one of the few houses without a deck. Mrs. Haydon stated that upon submitting an application for a modification for an R-C lot, they were advised that they would need to file a variance. After discussions between one of their friends, an architect, and Carolyn Blevins, with the Zoning Administration Division, they again submitted the application and were again told that they would need to file a variance. She stated that it was suggested that they include the request for the sunroom to possibly avoid having to file another application at a later date. When the neighbors built a deck 9 feet from the property line, they questioned their neighbors and were told that because it was on the original planting plan a building permit was not necessary. Following discussion with County staff, it was determined that they did not need to obtain a variance for the sunroom if it was constructed 15 feet from the lot line but she and her husband decided that a setback of 10 feet would best accommodate their needs. She stated that they had discussed an alternate location with their builder and architect and both believed that this is the most feasible location as the lot is exceptionally narrow and deep. (She called the Board's attention to the pictures which showed the design of the proposed additions.) She stated that this would not be detrimental to the abutting neighbors as the sunroom would be adjacent to the neighbor's garage and the only windows on that side of the neighbor's house is in the laundry room and a bedroom. In closing, Mrs. Haydon stated that there are many houses in the neighborhood with sunrooms, which the developer constructed, that are closer to the property line than theirs would be.

Mr. Ribble asked the applicant how she had arrived at the figures in her presentation and Mrs. Haydon replied that she had done quite a bit research in the County and sales office records. Mr. Ribble questioned her as to whether or not the developer had obtained variances. Mrs. Haydon stated that it was her understanding that the developer had constructed without variances and under R-2 zoning regulations.

Mr. Ribble asked staff to respond to the applicant's comments. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that what the applicant had stated was correct but since that time the zoning had changed, therefore the applicant must meet the current setbacks. Ms. Kelsey addressed Mr. Knowlton's letter which indicated that the sunroom was approved 15 feet from the lot line because it was shown on the grading plan by stating that staff discovered this during the review process of the application. She added that she had discussed this with the zoning Administrator who had been unaware that her staff was following that procedure and she indicated that it would cease.

Mr. Magiulian asked what the setback would be for the sunroom without a variance and Ms. Kelsey replied 20 feet.

Chairman Smith questioned how large a variance was needed for the sunroom and Ms. James replied 5 feet.

Mrs. Haydon stated that Mr. Knowlton had told her only last week that he would grant the sunroom 15 feet from the property line and asked if a covered deck and uncovered had to meet the same setbacks. The Board assured Mrs. Haydon that the setbacks were different.

Mrs. Thonen asked why the applicant did not want to construct in the rear yard. Mrs. Haydon explained that the homeowners association restricted them from cutting down any tree that was two inches in diameter.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request. The following came forward: Joseph J.

Corcoran, 15304 Jordans Journey Drive, Centreville, Virginia; Rosemary Corcoran, 15304 Jordans Journey Drive, Centreville, Virginia; and, Paulette Rinderknechi, 15306 Jordans Journey Drive, Centreville, Virginia.

The citizens stated that they believed that the granting of the request would be detrimental to the neighborhood, that it would set a bad precedent, that the applicant had not proven a hardship as their lot is the same size as the others in the neighborhood, and that the applicant had the option to have these additions constructed at time of purchase.

During rebuttal, Mrs. Haydon stated that she believed that the deck would be in harmony and in character with the surrounding properties. With respect to the sunroom, she stated that she believed that they did meet the hardship but asked the Board to at least grant the 15 feet for the sunroom.

In response to questions from the Board with respect to relocating the additions to the rear of the house, Mrs. Haydon stated that it would not be aesthetically pleasing and that to construct elsewhere would block the light from the house.

Chairman Smith asked staff for closing comments. Ms. James noted that in the past building permits may have been granted for structures shown on the grading plan but that was not the procedure the Zoning Administrator now followed.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to grant-in-part the request.

Mrs. Harris stated that she could not support the motion as she believed that the screened-in deck could be moved.

Mr. Ribble stated that he would support the motion because of the location of the bay which he believed prohibited the applicant from constructing at the rear of the house.

Mrs. Harris noted that she could not believe the applicant had met the standards.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-8-056 by FRANK A. AND DEBORAH M. HAYDON, under Section 18-401 of the Zoning Ordinance to allow construction of sunroom addition to dwelling to 10.0 feet from side lot line and enclosed deck 15 feet from side lot line (THE BOARD APPROVED ONLY THE DECK ADDITION, THE SUNROOM ADDITION WAS DENIED), on property located at 15302 Jordans Journey Drive, Tax Map Reference 53-4(8)89, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-C.
3. The area of the lot is 16,074 square feet of land.
4. The deck is noted on the grading plan.
5. Nine of the fourteen houses would have lesser side setbacks than this deck would have as shown on the grading plan.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BSA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 349, July 27, 1989, (Tape 2), scheduled case of:

Carmen J. Mandich, VC 89-P-055

The Board had passed over this case earlier in the public hearing and was now ready to proceed as the applicant's son was present in the Board Room.

Paul Mandich, 9122 Maywood Lane, Fairfax, Virginia, came forward. He explained that his mother had sprained her back and had been unable to mail out the notices to the abutting property owners.

Chairman Smith asked staff for a deferral date. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested October 10, 1989 at 9:30 a.m. Hearing no objection, the Chair so ordered.

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Page 349, July 27, 1989, (Tape 2), scheduled case of:

11:00 A.M. GARY R. HENDERSON, VC 89-V-057, application under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 18.0 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), located at 8401 Fort Hunt Road, on approximately 13,023 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 102-4((5))(15)28.

Denise James, Staff Coordinator, presented the staff report. She noted that there was a fence on the subject property which exceeded the height limitation and the applicant had been informed that the fence must be brought into compliance. Ms. James added that this was not a part of the application.

The applicant, Gary Henderson, 8401 Fort Hunt Road, Alexandria, Virginia, came forward and referenced the statement of justification submitted with the application. He added that to construct the garage on the south side of the property would require a larger variance than what was presently requested. Mr. Henderson displayed an architectural rendering showing the finished garage.

In response to questions from the Board, Mr. Henderson explained that after reviewing his options he determined this to be the best design and to square off the garage would require a variance of 5 feet from the property line as well as the removal of one large tree. He added that he was requesting the foot width in order to provide additional work space in the rear of the garage.

Mrs. Thonen noted that it was not generally the Board's policy to grant so large a structure.

Mr. Henderson added that he was requesting the additional footage to allow for the chimney that is located on that side of the house.

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Prior to closing the public hearing, the Board recessed at 11:50 a.m. and reconvened at 11:58 a.m.

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Mr. Ribble asked if there had been other variances granted in the area and Ms. James replied that there had not.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant-in-part the request to allow the construction of a 24 foot wide square garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-057 by GARY R. HENDERSON, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 18.0 feet from a street line (THE BOARD GRANTED A 24 FOOT WIDE SQUARE GARAGE), on property located at 8401 Fort Hunt Road, Tax Map Reference 102-4((5))(15)28, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,023 square feet of land.
4. The property has an extraordinary situation because of the way the house is situated on the lot.
5. The property has two front yards.
6. The granting of this variance will alleviate the hardship and is a minimal variance.
7. This granting is for a 24 foot wide garage and will not be any closer than 18 feet to the lot line which will allow for the chimney and two cars to park there.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. McGulian seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen made a motion that the Board go into Executive Session to discuss legal matters. The Board reconvened the public hearing at 1:20 p.m. and proceeded with the agenda.

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Page 351, July 27, 1989, (Tape 2), Scheduled case of:

11:15 A.M. DOUGLAS AND OLIVE EDWARDS, VC 89-M-054, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.0 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), located at 3707 Rose Lane, on approximately 14,188 square feet of land, zoned R-3, Mason District, Tax Map 60-4((3))174.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Douglas Edwards, 3707 Rose Lane, Annandale, Virginia, came forward and referenced the statement of justification submitted with the application.

Mr. Ribble asked what the addition would be used for and if the addition could be located elsewhere on the lot. Mr. Edwards explained that it would provide a recreational area for his family and this was the only feasible location for construction because on the other side of the house was a stairwell that led down to the basement and a screened porch.

There were no speakers to address the application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-054 by DOUGLAS AND OLIVE EDWARDS, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.0 feet from side lot line, on property located at 3707 Rose Lane, Tax Map Reference 60-4((3))174, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,188 square feet of land.
4. The applicant has met the standards for a variance in particular with the exceptional narrowness of the lot and exceptional shape.
5. This is the only location to construct the addition.

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

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

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



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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The materials used to construct the addition shall be architecturally compatible with the facade of the existing dwelling.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote, Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 353, July 27, 1989, (Tape 2), Scheduled case of:

11:30 A.M.      **KOREAN EVANGELICAL CHURCH OF WASHINGTON, SP 89-P-023**, application under Sect. 3-303 of the Zoning Ordinance to allow removal of a dwelling and shed, use of existing dwelling for church purposes, construction of parking and building additions to existing church and related facilities, located at 3460 Annandale Road, on approximately 1.3070 acres of land, zoned R-3, Providence District, Tax Map 60-1((1))36, 37, 46A.

Lori Greenleaf, Staff Coordinator, informed the Board that after the case had been advertised staff discovered that the proposed dedication along Masonville Drive places the existing structure on the property too close to the front property line. She stated that a variance would be necessary in order for the application to meet the bulk regulations for the zoning district, therefore she recommended that the special permit application be deferred in order that both applications could be heard simultaneously.

William Schmitt, 6564 Loisdale Court, Springfield, Virginia, attorney for the church, came forward and agreed with the deferral.

Ms. Greenleaf suggested September 21, 1989 at 9:00 a.m. Mr. Ribble made a motion to defer to the date and time suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote, Mr. Kelley absent from the meeting.

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Page 363, July 27, 1989, (Tapes 2 and 3), Scheduled case of:

11:45 A.M.      **JJ's CHILD DEVELOPMENT CENTER, SPA 84-L-061**, application under Sect. 4-603 of the Zoning Ordinance to amend SP 84-L-061 for a child care center within a shopping center to permit change of permittee, change in hours and increase in parking spaces, located at 7686 Richmond Highway, on approximately 23.65 acres of land, zoned C-6, Lee District, Tax Map 101-2((1))12A.

Lori Greenleaf, Staff Coordinator, stated that in 1984 the Board approved a special permit for the Beacon Bay Center which had now vacated the property. She added that this applicant was requesting approval to change the permittee, change the hours, and increase the number of parking spaces. Ms. Greenleaf stated that staff was concerned with children having to walk through a portion of the parking lot to access the play area which is a travel lane for the postal vehicles from the Post Office in the rear of the shopping center. She stated that staff believed that the length of the fence should be extended to include the door and that the height should be 6 feet in height rather than 4 feet because children up to age 7 would be accepted at the center.

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Mrs. Thonen asked staff to point out on the viewgraph the play area and the travel aisle and Ms. Greenlief did so. Mrs. Thonen asked how the children would get from the day care center to the play area. Ms. Greenlief stated that staff was recommending that the fence be extended so that the children actually exit directly onto the playground. Mrs. Thonen agreed that the area was very congested and that it was very important to keep the children from running out into the street.

Ms. Greenlief continued by stating that she believed that the development conditions addressed all of staff's concerns. She added that the use was subject to Article 17 which required the submission of a site plan or a site plan waiver request. With respect to landscaping, Ms. Greenlief stated that the applicant was proposing white pines 3 feet in height, 42 inch on center and staff was requesting 6 feet in height 15 feet on center to assure that the trees would survive. Mrs. Thonen asked staff where the trees would be planted and Ms. Greenlief replied on the outside of the fence.

In closing, Ms. Greenlief stated that staff believed that the implementation of the use can meet the standards for special permit approval with the implementation of the development conditions, thus staff recommended approval of the request.

Gillon Smith, Jr., 4319 Rock Creek Road, Alexandria, Virginia, came forward to address the board. He stated that there were heavy duty posts which prevented vehicles from coming into the area where the children would be exiting the building to go to the play area, thus saw no need for the additional fencing. He added that the children would be supervised going back and forth to the playground.

Mr. Ribble asked if the applicant was not willing to construct the fence. Mr. Smith stated that he was not objecting to the fence but wanted to call the Board's attention to the fact that the posts were there. Mrs. Thonen suggested that perhaps the fence could be installed on the existing posts.

Chairman Smith asked staff if they had made a site visit and Ms. Greenlief replied that she had visited the site. She added that staff would not object to a chain link fence but was requesting some sort of physical barrier between the door and the parking lot. Mrs. Thonen stated that she agreed with staff on the fence.

Mrs. Thonen asked staff why they were requesting the installation of trees if the fence was board on board. Ms. Greenlief stated that the installation of the trees would provide visual relief to the proposed residential dwellings on the adjoining lot. Chairman Smith asked if this was required under the prior approval and Ms. Greenlief replied that it was a part of the approval but apparently had not been done. Mrs. Thonen commented that it had become apparent to her that unless the County "rides herd" on the applicants many of the conditions are not met and hoped that with the addition of more personnel in the Zoning Enforcement Branch that this would be rectified.

Mrs. Thonen stated that one of the biggest complaints which resulted in the closing of the prior day care center at this location was because of the uncleanness of the facility and asked if the center had been painted. Mr. Smith replied that the walls would be painted halfway down. Mrs. Thonen stated that was not good enough.

Jackie Smith, 4319 Rock Creek Road, Alexandria, Virginia, director of the day care center, came forward. She told the board that they would be painting the walls halfway down in the main room of the center, would be adding additional lighting fixtures, and would be completely redoing the bathroom facilities. Ms. Smith added that they were presently in the process of thoroughly cleaning the entire center.

Mr. Ribble stated that it appeared that the applicants were on the right track.

A discussion took place between Mrs. Thonen and the applicant as to whether or not the entire wall should be painted. Mrs. Thonen stated that she would like to add a condition which stipulated that the walls would be painted at least 6 feet down and new ceiling tiles installed.

Ms. Smith stated that they would invite Mrs. Thonen to visit the center once they have completed the renovations. Mrs. Thonen stated that she would appreciate the invitation.

Mr. Hammack asked if the applicant agreed with the development conditions. Mr. Smith stated that he did not believe the trees were necessary. Mrs. Thonen stated that she agreed and added that she would prefer to see the monies used for the benefit of the children.

Following a discussion among the Board and staff as to whether or not the trees were necessary, it was the consensus of the Board that the planting of the trees would place an undue hardship on the applicant.

Mrs. Thonen stated that she believed that the Board should place a time limitation on the use because of the problems that the County had encountered with the prior applicant. She asked staff for their input. Ms. Greenlief stated that this could be implemented through either the Zoning Enforcement Branch or to place a time limitation

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in the conditions. It was the consensus of the Board to place a time limitation in the conditions with the Zoning Administrator being able to grant extensions if there had been no violations.

As there was no further discussion nor anyone to address the request, Chairman Smith asked staff for closing comments.

Ms. Greenlief stated the applicant had submitted the original plat which did not reflect the adequate number of parking spaces, thus the applicant submitted a second plat which showed the correct number. She stated that it was up to the Board whether or not to require a revised plat showing everything on one plat. The Board did not believe a new plat was required.

Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant the request subject to the revised development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-L-061 by JJ's CHILD DEVELOPMENT CENTER, under Section 4-503 of the Zoning Ordinance to amend SP 84-L-061 for a child care center within a shopping center to permit change of permittee, change in hours and increase in parking spaces, on property located at 7686 Richmond Highway, Tax Map Reference 101-2((1))12A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1989; and

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

1. That the applicant is the lessee.
2. The present zoning is C-6.
3. The area of the lot is 23.65 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. A revised parking tabulation for the shopping center which includes this special permit use shall be provided to the Department of Environmental Management for approval. The Non-Residential Use Permit for this use shall not be issued unless sufficient parking that meets the Zoning Ordinance requirements has been provided as determined by DEM.
5. The hours of operation shall be limited to 6:00 a.m. to 7:00 p.m., Monday through Friday. The play area shall not be used prior to 9:00 a.m. in the morning.

6. There shall be a minimum of nineteen (19) parking spaces for this special permit use designated on the special permit plat. Handicapped spaces shall be those closest to the building and shall be marked in accordance with zoning Ordinance and Public Facilities Manual standards. A revised special permit plat shall be submitted which shows nineteen parking spaces within the lease line for the special permit.
7. Patrons shall be directed through written correspondence that all drop-off of children prior to 9:00 a.m. shall occur at the front of the shopping center and that all pick-up of children in the evening shall occur at the rear of the shopping center by traveling around the back of Jayres and not around the back of Dart Drug or the supermarket.
8. The play area shall be approximately 9,000 square feet in size and shall be fenced with a solid wood, six (6) foot high fence. The fence shall be extended to include the rear door to the center so that children can exit the center directly onto the play area. The fence shall be constructed so as to not obstruct sight distance at the corner of the play area. Preferably, the six foot high fence shall be relocated so as to provide sight distance. However, if deemed necessary by DEH, in order to provide the 9,000 square feet of play area or to provide acceptable sight distance, the fence height may be reduced at the corner to ensure adequate sight distance. At least half of the play area shall be grass.
9. The number of children using the play area at any one time shall be in strict conformance with the provisions of Sect. 8-305 of the zoning Ordinance.
10. The number of employees at the child care center at any one time shall meet the state standards for child care centers.
11. Compliance with all applicable Fairfax County Health regulations shall be provided.
12. The maximum daily enrollment shall not exceed 99 children.
13. This permit is approved for a period of three (3) years and may be renewed for three one (1) year terms by the zoning Administrator if there have been no complaints and no violations.
14. The new ceiling tiles shall be installed and the walls shall be painted with a light color down to six feet below the ceiling.
15. The trees shown on the small plat shall not be required.

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

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion.

The motion carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote; Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1989. This date shall be deemed to be the final approval date of this special permit.

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Approval of July 25, 1989 Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the findings of facts for the Patrick Singletary, VC 89-A-040, Resolution.

Mr. Ribble, maker of the motion, accepted the suggested amendment.

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Mrs. Thonen made a motion to approve the Resolutions as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote; Mr. Kelley absent from the meeting.

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Page 357, July 27, 1989, (Tape 3), After Agenda Item:

South Run Regency Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the Board had deferred from the previous meeting the scheduling of the appeal. She stated that staff suggested that the public hearing be scheduled for October 3, 1989 at 8:15 p.m.

Mr. Hammack made a motion to defer to the date and time suggested by staff. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote; Mr. Kelley absent from the meeting.

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Page 357, July 27, 1989, (Tape 3), Information Item:

Change in Meeting Times

Mrs. Thonen that she discussed with Mr. DiGiulian the possibility of starting the third meeting of the month at 1:00 p.m. Mr. DiGiulian had indicated that he would prefer the meetings be held on Tuesdays as opposed to a Thursday meeting starting at 1:00 p.m.

Following a discussion among the Board, it was the consensus of the Board to table a decision until a later date.

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Page 357, July 27, 1989, (Tape 3), Information Item:

South Run Regency Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board if they would object to changing the deferral time for the appeal to 8:40 p.m. as another appeal was already scheduled for 8:20 p.m. on October 3, 1989.

Mrs. Thonen made a motion to accept the amended time. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. DiGiulian not present for the vote; Mr. Kelley absent from the meeting.

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Page 357, July 27, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 2:17 p.m.

  
Betsy S. Hoyt, Clerk  
Board of Zoning Appeals

  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 9/7/89

APPROVED: 9/12/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, August 1, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. John DiGiulian, Vice Chairman, was absent from the meeting.

Chairman Smith called the meeting to order at 9:11 a.m. and gave the invocation. There were no Board matters to bring before the Board.

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Page 359, August 1, 1989, (Tape 1), Scheduled case of:

9:00 A.M. SUZANNE AND MARK DALY, VC 89-C-042, application under Sect. 18-401 of the Zoning Ordinance to allow construction of enclosed porch addition to dwelling to 14 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-207), located at 2881 Franklin Oaks Drive, on approximately 13,007 square feet of land, zoned R-2, Centreville District, Tax Map 25-4((14))101.

Lori Greenlief, Staff Coordinator, introduced Greg Chase, Staff Coordinator with the Rezoning and Special Exception Branch, Office of Comprehensive Planning, and Helen Darby, the new Associate Clerk. Chairman Smith welcomed both Mr. Chase and Ms. Darby on behalf of the Board.

Mr. Chase then presented the staff report.

The applicant, Mark Daly, 2881 Franklin Oaks Drive, Herndon, Virginia, came forward and referenced the statement of justification submitted with his application. He added that he had discussed the request with the surrounding neighbors and they had voiced no objection.

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Thonen made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-042 by SUZANNE AND MARK DALY, under Section 18-401 of the Zoning Ordinance to allow construction of enclosed porch addition to dwelling to 14 feet from rear lot line, on property located at 2881 Franklin Oaks Drive, Tax Map Reference 25-4((14))101, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

- WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1989; and
- WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13,007 square feet of land.

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

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

Page 360, August 1, 1989, (Tape 1), (Suzanne and Mark Daly, VC 89-C-042, continued from Page 359 )

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 360, August 1, 1989, (Tape 1), Scheduled case of:

9:15 A.M. GEORGE STEVEN HAWKINS, VC 89-L-062, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling on proposed Lot 3 to 165 feet from railroad tracks (200 ft. min. distance required by Sect. 2-414), located at 5822 Tilbury Road, on approximately 10,638 square feet of land, zoned R-3, Lee District, Tax Map 81-1(2)pt. 12C. (CONCURRENT WITH VC 89-L-063)

Randy Baxter, Staff Coordinator, presented the staff report. He stated that staff is concerned with the noise impact from the highway and railroad.

In response to a question from Mrs. Thonen with respect to the location of the proposed metro rail, Noel Caplan, with the Environmental Branch of the Office of Comprehensive Planning, used the viewgraph to show the location.

Chairman Smith asked how far the highway was from the subject site and Mr. Baxter replied 400 feet. Chairman Smith noted that the applicant could build within 200 feet from the highway and could not understand why this was an issue. Mr. Caplan stated that staff believed that the most significant impact was from the highway and staff had to look at that also.

Chairman Smith noted that the only issue before the Board was the variance from the railroad and asked how many trains passed by the subject site per day. Mr. Baxter stated that the applicant had indicated 25. Mr. Caplan stated the applicant's consultant had proposed to construct a 6 foot berm and provide acoustical treatment in order to address the noise. Mrs. Thonen agreed that the noise impact had to be considered and that steps had to be taken to negate that impact.

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Mr. Hammack questioned staff as to how the applicant could reduce the rail noise and not reduce the highway noise at the same time. Mr. Caplan stated that the rail and highway were not parallel, thus measures to address the rail would not address the highway. Mr. Hammack stated that he believed staff was imposing higher standards on this applicant than they would ordinarily and noted that the applicant could build by right if it was not for the railroad. Mr. Caplan explained that if the applicant were to come in for any other reason and the railroad were not there the standard operating procedure is to recommend mitigation of any noise source. Mr. Hammack asked if the development conditions would address staff's concerns and Mr. Caplan replied that possibly they would, but without additional data, he was not sure.

In response to a question from Mrs. Harris, Mr. Caplan replied that the noise impact was from three directions and the proposed barrier would only mitigate noise from one direction.

Mrs. Thonen asked what was on the adjoining lots and Mr. Baxter stated that one lot was vacant, and several lots were developed with residences which were protected by berms and walls.

Mr. Hammack questioned staff as to why they were addressing the noise impact on only two of the four proposed lots. Mr. Baxter stated that staff could not address the other two lots as they did not require a variance. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it was staff's policy to review all applications for any noise impact and recommend measures for noise mitigation.

Donald Strickhouser, engineering consultant with Monaco and Strickhouser, P.C., 4248-B Chain Bridge Road, Fairfax, Virginia, came forward to represent the applicant. He stated that the applicant has owned the property since 1975 and at the time he purchased the property there was not a 200 foot setback from the railroad. Mr. Strickhouser stated that he believed that the applicant had met the standards for a variance and that strict compliance with the zoning Ordinance would create an undue hardship on the applicant. He added that the applicant is requesting the four lots because of the development costs involved in the extension of the sanitary sewer, the extension of the water line, and the construction of the roads to and on the property. Mr. Strickhouser stated that the surrounding neighbors were allowed to develop their property without providing road improvements and now the applicant has to provide those improvements in order to develop his property. The applicant is willing to treat the houses acoustically, which would address the noise level, and to construct a 6 foot berm. He asked that the applicant's consultant come forward to address the Board. Mr. Strickhouser submitted letters from the surrounding neighborhood in support of the request into the record.

Michael A. Staiano, Staiano Engineering, 1923 Stanley Avenue, Rockville, Maryland, came forward.

Mrs. Harris asked the speaker how much noise mitigation would be achieved by the proposed berm and wall. Mr. Staiano explained that the analysis showed that the existing topography in addition to the 6 foot berm and the wall would provide an additional 10 decibels of attenuation to the railroad noise.

There were no speakers to address the request, either in support or in opposition.

Mrs. Harris asked if additional plantings along the berm would provide additional noise attenuation. Mr. Caplan replied that the vegetation does not do much to mitigate noise and that the measurements proposed by the applicant would sufficiently address the existing noise, but that staff did not believe that the applicant's noise study had thoroughly addressed the future noise impacts.

Mr. Hammack asked what staff would possibly add to the development conditions to mitigate the noise impact as it appeared to him that everything had already been addressed. Mr. Caplan explained that staff would like the applicant to submit a study on the highway noise and perhaps a berm would need to be constructed along the eastern property boundary.

Mrs. Thonen questioned when staff had requested a highway noise study from the applicant and Mr. Baxter replied that he had not directly asked that the applicant submit the additional information but that the "writing was on the wall." Mrs. Thonen stated that she did not agree with leaving things unclear and asked when the telephone conversation took place. Mr. Baxter replied approximately two weeks. Mrs. Thonen stated that was not sufficient time for the applicant to comply with the request.

Mr. Hammack asked staff to tell the board what standards they believed that the applicant had not met. Mr. Baxter called the board's attention to page 6 of the staff report which addressed Standard 6. He noted that he did not believe that staff and the applicant were that far apart.

Mr. Hammack moved to grant VC 89-L-062.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-062 by GEORGE STEVEN HAWKINS, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling on proposed Lot 3 to 165 feet from railroad tracks, on property located at 5822 Tilbury Road, Tax Map Reference 81-1(2)pt. 12C, 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 1, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,638 square feet of land.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a

request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.

- 3. A Building Permit shall be obtained prior to any construction.
- 4. The subdivision of this property shall be in accordance the requirements of Chapter 101, Subdivision Provisions, of the Fairfax County Code.
- 5. Acoustical treatment shall be provided as follows:

Adhere to May 1, 1989 Staiano Engineering, Inc., Report L 89143, which called for the installation of a property-line noise barrier consisting of a 6-ft berm topped with a 6-ft wall so that the total height of the noise barrier is 12 feet above the ground.

The second floor of all dwellings shall be acoustically treated as follows:

Adhere to May 1, 1989 Staiano Engineering, Inc., Report L 89143 recommendations for achieving acceptable indoor sound levels for exterior walls, windows, doors and supplemental features.

Alternatively, exterior wall assemblies shall have a laboratory sound transmission class (STC) of at least 50; and doors and windows shall have a laboratory sound transmission class (STC) of at least 42. If windows function as walls, then they shall have the STC specified for exterior walls. Adequate measures to seal and caulk between surfaces shall be provided.

- 6. Prospective buyers of all the houses constructed in the proposed subdivision shall be advised of noise levels at the sites.

Mrs. Thonen seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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9:15 a.m. GEORGE STEVEN HAWKINS, VC 89-L-063, application under sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling on proposed Lot 4 to 165 feet from railroad tracks (200 ft. min. distance required by Sect. 2-414), located at 5822 Tilbury Road, on approximately 11,060 square feet of land, zoned R-3, Lee District, Tax Map 81-1((2))pt. 12C. (CONCURRENT WITH VC 89-L-062)

Randy Baxter, Staff Coordinator, asked that the Board allow his comments from the previous case, VC 89-L-062, to be entered into the record.

Donald Strickhouser, engineering consultant with Monaco and Strickhouser, P.C., 4248-B Chain Bridge Road, Fairfax, Virginia, came forward to represent the applicant asked that the Board allow his comments with respect to VC 89-L-062 be entered into the record.

As there were no speakers, and staff having no further comments, Chairman Smith closed the public meeting.

Mr. Hammack moved to grant VC 89-L-063.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-063 by GEORGE STEVEN HAWKINS, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling on proposed Lot 4 to 165 feet from railroad tracks, on property located at 5822 Tilbury Road, Tax Map Reference 81-1((2))pt. 12C, 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 1, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,060 square feet of land.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The subdivision of this property shall be in accordance the requirements of Chapter 101, Subdivision Provisions, of the Fairfax County Code.
5. Acoustical treatment shall be provided as follows:
 

Adhere to May 1, 1989 Staiano Engineering, Inc., Report L 89143, which called for the installation of a property-line noise barrier consisting of a 6-ft berm topped with a 6-ft wall so that the total height of the noise barrier is 12 feet above the ground.

The second floor of all dwellings shall be acoustically treated as follows:

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Adhere to May 1, 1989 Staiano Engineering, Inc., Report L 89143 recommendations for achieving acceptable indoor sound levels for exterior walls, windows, doors and supplemental features.

Alternatively, exterior wall assemblies shall have a laboratory sound transmission class (STC) of at least 50; and doors and windows shall have a laboratory sound transmission class (STC) of at least 42. If windows function as walls, then they shall have the STC specified for exterior walls. Adequate measures to seal and caulk between surfaces shall be provided.

6. Prospective buyers of all the houses constructed in the proposed subdivision shall be advised of noise levels at the sites.

Mrs. Thonen seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 365, August 1, 1989, (Tape 1), Scheduled case of:

9:30 A.M. FLORIS HILL DEVELOPMENT CORPORATION, VC 89-C-061, application under Sect. 18-401 of the Zoning Ordinance to allow removal of outlet designation to create a buildable lot having a lot width of 12.10 feet (100 ft. min. lot width req. by Sect. 3-206), located at 2725 Centreville Road, on approximately 21,653 square feet of land, zoned R-2, Centreville District, Tax Map 25-1((1))pt. 27.

Lori Greenleaf, Staff Coordinator, presented the staff report.

Mr. Hammack questioned why the Board of Supervisors had left this as an outlet during the rezoning process. Ms. Greenleaf stated perhaps the applicant could better respond to that question.

Cheryl Siskin, with Landmark Communities, 4609 Pinecrest Office Park Drive, Alexandria, Virginia, came forward and explained that at the time of rezoning the subject parcel was shown as a lot. She added that was done so that a service drive could be connected between the church and Floris Street to the serve the church so that when Centreville Road was widened and a median break was put in place the church would have access to the median break. Ms. Siskin explained that at the time of rezoning it was a last minute solution and the applicant did not realize that they were taking the frontage of Lot 21, making it a reverse frontage lot. She added that by conveying Outlot A to the church they took the public frontage, thus the pipestem lot became the street frontage for the subdivision lot.

Mr. Hammack asked if there was a street constructed on Outlot A and Ms. Siskin explained that a street would be constructed under the proffers of the rezoning. Mr. Hammack asked if that would provide street frontage and Ms. Siskin replied it would not, because it would be a private street only for the church.

Ms. Siskin stated that the applicant agreed with the development conditions and asked the Board to grant the request and waive the eight day time limitation.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request.

Mr. Hammack noted that he would support the motion but that he did not like developers agreeing to whatever they have to get their rezonings and then coming to the Board of Zoning Appeals after they have "messed up".

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-061 by FLORIS HILL DEVELOPMENT CORPORATION, under Section 18-401 of the Zoning Ordinance to allow removal of outlet designation to create a buildable lot having a lot width of 12.10 feet, on property located at 2725 Centreville Road, Tax Map Reference 25-1((1))pt. 27, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,653 square feet of land.
4. The subject property has an unusual shape and extraordinary condition due to the fact that Outlot A was conveyed to the Church of the Latter Day Saints in order to provide them adequate access.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the Lot shown on the variance plat submitted with the application as Outlot "H" and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless this lot has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BIA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-1 with Mrs. Thonen voting nay; Mr. DiGiulian absent from the meeting.

Mrs. Harris made a motion to waive the eight day time limitation. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 367, August 1, 1989, (Tape 1), Scheduled case of:

9:45 A.M. RESTON AREA CHILD CARE CENTER, INC./INOVA SERVICES, INC., SP 89-C-028, application under Sect. 6-303 to allow a child care center, located at 1800 Cameron Glen Drive, on approximately 21.51 acres of land, zoned PRC, Centreville District, Tax Map 17-1((1))14A. (OUT OF TURN HEARING GRANTED)

Lori Greenlief, Staff Coordinator, presented the staff report.

Van C. Hendry, Assistant Administrator with the Cameron Glen Care Center, 1800 Cameron Glen Drive, Reston, Virginia, represented the applicant. He stated that the request was for a child care center for 99 children to be located in a nursing home. He added that the play area would be fenced and landscaped with no external modifications proposed. Mr. Hendry asked that the Board grant the request and waive the eight day time limitation.

As there were no speakers to address the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant SP 89-C-028.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-C-028 by RESTON AREA CHILD CARE CENTER, INC./INOVA SERVICES, INC., under Section 6-303 of the Zoning Ordinance to allow a child care center, on property located at 1800 Cameron Drive, Tax Map Reference 17-1((1))14A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the sublessee of the land.
2. The present zoning is PRC.
3. The area of the lot is 21.51 acres of land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development

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conditions. A revised parking tabulation for the complex which includes this special permit use shall be provided to and approved by the Department of Environmental Management prior to the approval of a site plan or site plan waiver and the issuance of a Non-Residential Use Permit.

5. The hours of operation shall be limited to 6:30 a.m to 6:30 p.m., Monday through Friday.
6. There shall be a minimum of nineteen (19) parking spaces provided on site for this special permit use. Three out of the four spaces located on the circular driveway shall be marked as handicapped.
7. The play area shall be a minimum of 4,636 square feet in size and shall be fenced with a solid wood, board-on-board fence, a minimum of 3 feet 6 inches in height.
8. The number of children using the play area at any one time shall be in conformance with the provisions of Sect. 8-305 of the Zoning Ordinance.
9. The number of employees at the child care center at any one time shall meet the state standards for child care centers.
10. The maximum daily enrollment shall not exceed 99 children.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mr. Ribble made a motion to waive the eight day time limitation. Mrs. Harris seconded the motion which carried by a vote 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 368, August 1, 1989, (Tape 1), Scheduled case of:

10:00 A.M. DAVID P. LEWIS, VC 89-M-060, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 12.5 feet from a side lot line (15 ft. min. side yard req. by Sect. 3-207), located at 3513 Westworth Drive, on approximately 17,400 square feet of land, zoned R-2, Mason District, Tax Map 61-1(11)617.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

The applicant, David P. Lewis, 3513 Westworth Drive, Falls Church, Virginia, came forward. He stated that the existing carport was built with the house in 1955 and the carport was built in such a way that the corner extends beyond the 15 foot setback line. Mr. Lewis stated that he would simply like to enclose the carport, without altering the roof line, and added that the plans had been approved by the Lake Barcroft Architectural Review Committee. He then referenced the statement of justification submitted with the application.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-060 by DAVID P. LEWIS, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to 12.5 feet from a side lot line, on property located at 3513 Wentworth Drive, Tax Map Reference 61-1((11))617, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,400 square feet of land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack not present for the vote; Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 370, August 1, 1989, (Tape 1), Scheduled case of:

10:15 A.M. MR. OLIVE BAPTIST CHURCH, SPA 76-S-069, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend 8-69-76 for a church and related facilities to permit building addition and modification of dustless surface requirement, located at 6600 Old Centreville Road, on approximately 2.9066 acres of land, zoned R-1, WSP0D, Springfield District, Tax Map 65-3(1)8, 8A.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report in the absence of Denise James, Staff Coordinator. She stated that the applicant has closed an entrance on Old Mill Road, has changed the entrances on Old Centreville Road to two way entrances, and has agreed to improve the screening. In conclusion, Ms. Kelsey stated that staff recommended approval of SPA 76-S-069-1 subject to the development conditions being implemented.

Joy Ortiz, Designer with The Marshall Group, Ltd., 1583 Autumn Ridge Circle, Reston, Virginia, represented the church and agreed with the development conditions. Ms. Ortiz asked that the entrance indicated to be closed on the plat remain open for service trucks to the kitchen, and to service the dumpster.

Mrs. Harris asked if parishioners park in the gravel area and Ms. Ortiz replied that she was sure that they did but that was not the primary parking area.

Ms. Ortiz asked that the Board waive the eight day time limitation.

Chairman Smith called for speakers in support of the request and Mortimer Marshall, architect for the church, 590 Herndon Parkway, Herndon, Virginia, came forward. He spoke in support of the request that the entrance remain open.

Mrs. Harris asked if the road could be blocked off during church services and Mr. Marshall indicated that it was possible.

Mr. Hammack asked if new plats would be necessary if the Board allowed the entrance to remain open and Ms. Kelsey replied that new plats would be required. She commented that it was her understanding that the applicant had agreed to the closing of the entrance and added that because of the realignment of Old Mill Road staff could not support the request.

Mrs. Thonen asked how the trucks servicing the kitchen and dumpster would enter the site. Ms. Kelsey explained that the trucks would use the main entrance.

Chairman Smith explained that if the Board granted the applicant's request with the modification that the approval could not become final until new plats were submitted and signed off on by the BSA in September. Ms. Ortiz then stated that the applicant wished to withdraw the request to allow the entrance to remain open.

There were no speakers, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Hammack moved to grant SPA 76-S-069-1.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-S-069-1 by MR. OLIVE BAPTIST CHURCH, under Sections 3-103 and 8-901 of the Zoning Ordinance to amend 8-69-76 for a church and related facilities to permit building addition and modification of dustless surface requirement, on property located at 6600 Old Centreville Road, Tax Map Reference 65-3(1)8, 8A, 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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-1, WSPD.
3. The area of the lot is 2.9066 acres of land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for Mt. Olive Baptist Church shall be limited to a total of 275.
6. A minimum of 69 and a maximum of 71 parking spaces shall be provided. All parking shall be on site. Existing asphalt parking space shall remain. Any new additional parking shall be gravel.
7. Transitional Screening 1 (25') shall be provided around all lot lines as follows:
  - o The landscaping and plantings shown on the plat dated July 7, 1989 shall be implemented but shall also be supplemented with additional plantings as deemed necessary by the County Arborist, to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist.
  - o The Transitional Screening 1 requirement shall be modified along the site frontage along Old Centreville Road as shown on the plat dated July 7, 1989 with additional plantings to be provided along the property line directly in front of the proposed addition in order to soften the visual impact of the addition on adjacent residential properties and to screen the parking lot from view of the street system and properties across Old Centreville Road.

The landscaping and screening requirement shall be implemented along with the construction of the building addition and shall not be phased as indicated on the plat.
10. The barrier requirement shall be waived.
11. Right-of-way to 35 feet from existing centerline of Old Centreville Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements to 15 feet behind the 35 feet of right-of-way dedication shall be provided to facilitate these improvements.
12. Any proposed new lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

13. The gravel surfaces shall be maintained in accordance with Public facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.
- o Speed limits shall be kept low, generally 10 mph or less.
  - o The areas shall be constructed with clean stone with as little fines material as possible.
  - o The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.
  - o Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
  - o Runoff shall be channeled away from and around driveway and parking areas.
  - o The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.
14. Approval for the continuation and expansion of the church use within the utility easements shall be obtained from the Virginia Power, Washington Gas and Columbia Gas utility companies or this special permit use shall become null and void.
15. The trash dumpster shall be relocated out of the required transitional screening yard to a point behind the existing church. It shall be screened from view from all adjacent residential properties with plantings or wood fencing.

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.

Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mr. Hammack made a motion to waive the eight day time limitation. Mr. Ribble seconded the motion which carried by a vote 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 372, August 1, 1989, (Tape 2), Scheduled case of:

10:30 a.m. KAREN L. SPOON-PURDUM, VC 89-S-064, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 14.6 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-C07), located at 4423 Cub Run Road, on approximately 13,782 square feet of land, zoned R-C, WSP0D, Springfield District, Tax Map 33-4((2))324.

Lisa Dell, Staff Coordinator, with the Rezoning and Special Exception Branch, presented the staff report.

The applicant, Karen Spoon-Purdum, 4423 Cub Run Road, Chantilly, Virginia, came forward and stated that this was the only location to construct the sunroom because of a door leading to the basement.

Mr. Hammack asked if the deck would be removed and Ms. Spoon-Purdum explained that the deck would be moved over to accommodate the proposed sunroom.

As there were no speakers to address the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-064 by KAREN L. SPOON-PURDUM, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 14.6 feet from rear lot line, on property located at 4423 Cub Run Road, Tax Map Reference 33-4(2)324, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-C, WSPOD.
3. The area of the lot is 13,782 square feet of land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mr. Kelley not present for the vote; Mr. DiGiulian absent from the meeting.

Mrs. Thonen made a motion to waive the eight day time limitation. Mrs. Harris seconded the motion which carried by a vote 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 374, August 1, 1989, (Tape 2), Scheduled case of:

10:45 A.M. BREAD OF LIFE LUTHERAN CHURCH, SP 89-S-010, application under Sect. 3-103 of the Zoning Ordinance to allow a Church and related facilities and Nursery School, located in the 8400 block of Pohick Road on approximately 5.2 acres of land, zoned R-1, Springfield District, Tax Map 98-1((1))34.

Bernadette Bettard, Staff Coordinator, presented the staff report and noted corrections to development conditions numbers 10 and 11.

Mr. Ribble asked Ms. Bettard if she had copies of the changes for the Board. Chairman Smith questioned staff why these revisions were not provided to the Board prior to the public hearing and Ms. Bettard explained that she had just received the revisions. She added that the applicant had also submitted a revised plan and a copy of some proposed development conditions which staff had not yet reviewed. Chairman Smith expressed concern that the applicant had not presented these changes to staff prior to the public hearing.

The applicant's representative, seated in the audience, explained that the applicant had been awaiting input from the Office of Transportation with respect to access from Pohick Road.

Chairman Smith stated that it did not appear to him that the applicant was ready to proceed with the case. The Board members asked that the applicant come forward so his comments could be made a part of the record.

Steve Gleason, a planner with Greenhorne & O'Mara, 11211 Naples Mill Road, Fairfax, Virginia, came forward to represent the applicant.

In response to comments from the Board with respect to the proposed changes, Mr. Gleason explained that the nature of the change had to do with the access onto Pohick Road which staff had recommended be deleted. Since that time, the applicant had discussed staff's recommendation with the Office of Transportation, in conjunction with the Virginia Department of Highways (VDOT), and had arrived at a viable solution which would provide for a permanent right in/right out on Pohick Road with a raised median. He stated that prior to that staff had been concerned with left turn stacking on Pohick Road interfering with the intersection at Pohick Road and Gambrill Road. He apologized to the Board but noted that he had just received the transportation comments and the development conditions had been revised to address these changes.

It was the consensus of the Board members that staff needed to evaluate these changes as this was not a minor alteration.

Chairman Smith asked if staff had discussed this change with the applicant. Ms. Bettard suggested that perhaps Angela Rodeheaver, with the Office of Transportation, could answer that question.

Ms. Rodeheaver stated that meetings had been held with the applicant to discuss the right in/right out entrance and the proposed raised median. She stated VDOT had indicated that they needed to see a proposed design prior to signing off.

Mrs. Harris commended the staff and the applicant for trying to resolve this issue but added that staff needed time to thoroughly review this change. She then made a motion

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to defer this application in order for staff to have that time and in order for transportation to submit a full report on the proposal presented to them by the applicant. Mr. Hammack seconded the motion.

Chairman Smith polled the audience to determine if there was anyone present interested in the application. William Eng, 7900 Grambill Court, Springfield, Virginia, representing the homeowners association, came forward and agreed with the deferral. He added that he would like to review the proposed plans prior to their being submitted to staff.

Following a discussion between the Board and staff with respect to the Board's schedule, Jane Kelsey, Chief, Special Permit and Variance, suggested September 21, 1989 at 9:20 a.m. Ms. Kelsey noted that staff was still concerned with the intensity but staff would prepare new development conditions incorporating all revisions.

Chairman Smith called for the vote and the motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 375, August 1, 1989, (Tape 2), Scheduled case of:

11:00 A.M. CENTER FOR EARLY LEARNING & BETHLEHEM LUTHERAN CHURCH, SPA 82-M-031-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-82-M-031 for a nursery school to change hours of operation from "Tuesdays and Thursdays" to "Monday through Friday," located at 8922 Little River Turnpike, on approximately 3.64 acres of land, zoned R-1, Mason District, Tax Map 58-4-1-61. (CONCURRENT WITH SP 89-M-033)

As there were two issues involved in the application, Chairman Smith asked staff to address the child care center request first.

Heggie Stehman, Staff Coordinator with the Zoning Administration Division, presented the staff report. She stated that there have been no complaints about the child care center, thus staff recommended approval of the request for the change in the hours of the day care center.

Virgil Wimer, 5012 Mignonette Court, Annandale, Virginia, came forward and introduced his wife, Allison Wimer, director of the school. They agreed with staff's comments.

Mrs. Harris asked how the children get to the playground. Mrs. Wimer explained that the children exit through the main entrance of the church and that there are signs posted indicating "children at play" near the playground. Mrs. Harris noted that the church was now proposing additional parking in that area. Ms. Stehman interjected that the church was no longer requesting that parking.

As there were no speakers to address the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant SPA 82-M-031-1.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-M-031-1 by CENTER FOR EARLY LEARNING AND BETHLEHEM LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend S-82-M-031 for a nursery school to change hours of operation from "Tuesdays and Thursdays" to "Monday through Friday", on property located at 8922 Little River Turnpike, Tax Map Reference 58-4(1)61, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.64 acres of land.

Page 376, August 1, 1989, (Tape 2), (Center for Early Learning & Bethlehem Lutheran Church, SPA 82-M-031-1, continued from Page 375)

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AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 approved with this application, as qualified by these development conditions. The parking lot shown on the plat is not approved.
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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. A revised plat shall be submitted removing the proposed parking lot from the plat.
5. The maximum seating capacity for Bethlehem Lutheran Church shall be 175 as shown on the site plan.
6. The nursery school shall have a maximum daily enrollment of not more than 75 children. The nursery school is permitted to operate in two sessions, (morning and afternoon) Monday through Friday. The hours of operation are 9:15 AM to noon and 1:00 PM to 3:45 PM.
7. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 59 spaces.
8. The pavilion shall be used for church and child care uses only and shall not be rented to other non-profit organizations.
9. A revised plat shall be submitted showing the deletion of the proposed parking area and a revision of the light pole to show that it is a utility pole.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, eighteen (18) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 376, August 1, 1989, (Tape 2), Scheduled case of:

11:00 A.M. BETHLEHEM LUTHERAN CHURCH, SP 89-M-033, application under Sect. 3-103 of the Zoning Ordinance to allow addition of a pavilion, dumpster pad and parking spaces to existing church and related facilities, located at 8922 Little River Turnpike, on approximately 3.64 acres of land, zoned R-1, Mason District, Tax Map 58-4((1))61. (CONCURRENT WITH SPA 82-M-031-1)

The Board now proceeded with the public hearing with respect to the church's request.



Maggie Stehman, Staff Coordinator, with the Zoning Administration Division, presented the staff report. She stated that the applicant had just submitted a revised special permit plat which addressed staff's concerns with respect to the additional parking and the dumpster, thus the only remaining issue was the pavilion. The plat could also be used for the school approval in the previous application.

Mr. Ribble asked staff if the applicant was withdrawing the request for additional parking and the dumpster and Ms. Stehman replied that was correct. She explained that there was adequate parking on site now to accommodate both the church and the day care center.

Ms. Stehman stated that staff recommended approval of SP 89-M-033 subject to the implementation of the development conditions contained in the staff report.

Mrs. Harris questioned if the lighting for the pavilion would be directed onsite and if there would be any outdoor loudspeakers. Ms. Stehman replied that the development conditions addressed the lighting and that to her knowledge there would be no outdoor speakers.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted for the Board's information that the church had a separate agent who would address the Board. The Board was in agreement.

Cheryl Coloff, 4818 King Solomon Drive, Annandale, Virginia, came forward and asked that the Board waive the transitional screening requirement. She explained that the church had been on the subject property for 26 years and there had been more than adequate screening until the adjoining properties were developed and the existing vegetation was cut down. Ms. Coloff added that she did not believe that it would be appropriate for the church to have to provide screening when the developer who had developed the adjacent subdivision had removed the trees, not the church.

Several Board members questioned if the trees were removed from the applicant's property. Ms. Coloff explained that because of the enormous height of the trees the branches extended over onto the church property and provided a natural buffer that had been removed. She added that the church has discussed the screening with the neighbors and the neighbors have voiced no concern with the present screening.

Mrs. Harris asked if there would be any outdoor speakers in connection with the pavilion and Ms. Coloff replied there would be no speakers.

Chairman Smith asked if there would be any lighting associated with the pavilion. Ms. Coloff explained that the only lighting would be in the storage area but that the church would be willing to install security lighting if the Board wished. Mrs. Harris pointed out the "future light pole" noted on the plat. Ms. Coloff explained that there was a pole which would allow the church to hookup to the existing electrical poles to provide the lights for the storage facility of the pavilion.

Mr. Hammack called the applicant's attention to development condition number 9. Ms. Stehman stated that it appeared to be a miscommunication as the plat showed a future light pole. Ms. Coloff noted that perhaps it could be noted as an electrical pole. Mr. Ribble commented that it could be noted as a future light pole. Chairman Smith asked the height of the pole and Ms. Coloff replied that it would have to meet the VEPCC requirement. Chairman Smith asked if the electrical lines would be underground and Ms. Coloff replied that the lines would be run through the air. Mrs. Harris noted that she was only concerned as to whether or not there was going to be outside lighting.

Jane Kelsey, Chief, Special Permit and Variance, stated that staff had no problem with the Board deleting development condition number 9 and replacing it with something to the effect that there would be no outdoor lighting on the pavilion.

Chairman Smith pointed out that the plat showed all electrical lines underground. Ms. Coloff stated that the plans had already been approved by the County which included the pole. After consulting with Sheldon Hazelbarth, a member of the church's building committee, Ms. Coloff assured the Board that the electricity would be underground.

Chairman Smith called for speakers in support of the request and Sigrid Papademetriou, 3910 Lato Court, Fairfax, Virginia, owner of Lot 9, stated that she had been contacted by the church numerous times with respect to the pavilion and the homeowners had no objection to the request. She added that the neighbors did not believe that additional screening was necessary nor did they want any additional screening.

There were no more speakers in support of the request and Chairman Smith called for speakers in opposition to the request. Jerrold H. Budiansky, 3927 Bentwood Court, Fairfax, Virginia, owner of Lot 41, came forward. Mr. Budiansky stated that the church's request had not been posted, only the child care center. He added that he would like for the church to locate the pavilion further away from the western property

line, to provide the required 25 foot transitional screening with adequate plantings along the eastern, northern, and western property lines, and to construct a 6 foot high wooden fence along the western property line. Mr. Budiansky submitted a letter from another abutting property owner into the record.

Mr. Hammack asked how far the speaker's house was from the proposed pavilion. Mr. Budiansky used the viewgraph to show the location of his house and stated that his house was approximately 150 feet from the church property line. Mrs. Harris noted that there were evergreen trees along the property line which should adequately screen the property.

Mr. Hammack noted that if the pavilion was moved to the location suggested by the speaker that the play area would have to be moved closer to the residential area. He asked how long the speaker had lived in the area and Mr. Budiansky replied one year. Mr. Hammack pointed out to the speaker that the church was there when he purchased his property.

Ms. Kelsey stated that she had missed the name of the homeowners association that the speaker was representing. Chairman Smith stated that the Board was treating this speaker as an individual rather than a representative of a homeowners association. Mr. Budiansky stated that had the property been posted more citizens would have been present at the public hearing. Chairman Smith asked Ms. Kelsey if the property had been properly posted. Ms. Kelsey stated that, unfortunately, the person in charge was on vacation, therefore she could not respond. Chairman Smith polled the audience to determine if there was anyone present who could address the issue of posting.

Ms. Papademetriou, who spoke earlier, came back to the podium and stated that she could not address the posting issue but that the homeowners association was aware of the request because she had discussed the request with the president of the association.

Ms. Kelsey asked which homeowners association the speaker was referring to and Ms. Papademetriou stated Ridgelea Hills Homeowners Association.

In response to a comment from Mr. Hammack, Ms. Kelsey reviewed the notice package and noted that the letters to the abutting property owners had listed both requests. Mr. Hammack asked the Board to recess this case to allow staff time to research the posting issue. It was the consensus of the Board to do as Mr. Hammack suggested. Ms. Kelsey asked that the people interested in the child care center remain in the Board Room until the issue could be resolved as the development conditions for the two applications were tied together.

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Prior to the Board recessing, Mrs. Thonen stated that an applicant in an earlier case had indicated to staff that she would like to request a waiver of the eight day time limitation. Mrs. Thonen added that she had not seen the applicant in the Board Room until now. Mrs. Thonen then made a motion to reopen the public hearing for VC 89-S-064 in order to hear the applicant's request.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

The applicant, Karen Spoon-Purdum, came forward and requested that the Board waive the eight day time limitation.

Mrs. Thonen then made a motion to grant the applicant's request for a waiver of the eight day time limitation. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mrs. Thonen apologized to the applicant for having overlooked her presence in the Board Room.

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At this time the Board took a brief recess and reconvened at 12:13 p.m. and continued with the Bethlehem Lutheran Church application.

Following a discussion with the Zoning Administrator's Office, Ms. Kelsey informed the Board it was the Zoning Administrator's determination that because the posting had not included the church's request for the pavilion or any addition, it did not constitute correct posting as set forth in the Zoning Ordinance and the application must be deferred.

Mr. Hammack stated that he would like a ruling from the County Attorney's Office with respect to the posting issue as both application numbers had been posted, only the wording as to the church's request had been omitted. Chairman Smith stated that the Zoning Administrator was the proper person to rule in the situation and ruled that the posting was incorrect.

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Following a discussion among the Board, Ms. Kelsey read the requirement from the Zoning Ordinance with respect to posting which states "said notice shall contain the date, location, and time of public hearing, and nature of the proposed request, the property affected, other such information as may be necessary to provide adequate identification of the application, and additionally where further information on the application may be obtained."

Mrs. Harris asked if this would affect the child care center. Ms. Kelsey explained that the approval of the child care center had included development conditions which called for transitional screening. Mrs. Harris asked if the Board could extend the time period for complying with the transitional screening. Ms. Kelsey stated that the Board could reopen the public hearing for the child care center and modify the development conditions. Chairman Smith asked the Board as to what they would like to do.

Mr. Ribble made a motion to reopen SPA 82-M-031-1 to extend the time limitation for meeting the transitional screening requirement. Mr. Hammack seconded the motion.

Mr. Hammack noted that he would be willing to delete the transitional screening with respect to the child care center. Ms. Kelsey explained that the development conditions had been jointly prepared because it is an intensification of the use and the parking requirement would not be met if the church would perhaps one day increase the seating capacity.

Mrs. Thonen suggested that the Board vote on reopening the case before any further discussion. Chairman Smith called for the vote and the motion carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mr. Hammack stated that he would prefer to delete the conditions with respect to transitional screening because if the Board made a different determination in the church application then this application would have to be reopened. Mr. Ribble agreed. Chairman Smith asked for input from the Board.

Mr. Hammack made a motion to approve SPA 81-M-031-1 with the deletion of development conditions 8 and 9, renumber accordingly. Ms. Kelsey asked for a clarification regarding the light pole. It was the consensus of the Board to take that up at the time of the public hearing on the church's request. Prior to Chairman Smith calling for the vote, Mr. Hammack revised development condition number 11 to read "... and the revision of the light pole to reflect that it is a utility pole." Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

Mrs. Harris stated that she wanted to make sure that the transitional screening was not overlooked at the time the church's request was heard. She added that it was her understanding that the additional landscaping was being requested because of the intensification of the use which was generated by the additional hours of the child care as opposed to the pavilion. Mrs. Thonen agreed. Chairman Smith noted that they could be acted on jointly at the church's public hearing. Mrs. Harris stated that she just wanted to alleviate any problems at the next public hearing and would the Board legally be able to bring up the child care center application at that time.

Following further discussion regarding the transitional screening, Mrs. Thonen called for the question. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. DiGiulian absent from the meeting.

Mrs. Harris asked that the discussion relating to SPA 82-M-031-1 be incorporated into the church's application, SP 89-M-033. Chairman Smith stated that staff would need to prepare a verbatim. Mrs. Thonen added that this would be for the landscaping only. Mrs. Harris agreed.

Chairman Smith asked staff for a date and time for the deferral of SPA 89-M-033. Ms. Kelsey suggested October 10, 1989 at 9:20 a.m. Mr. Kelley made a motion to defer to the date and time suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 379, August 1, 1989, (Tapes 2 and 3), Scheduled case of:

11:15 A.M. BELLE HAVEN COUNTRY CLUB, INCORPORATED, SPA 82-V-093-3, application under Sect. 3-303 of the Zoning Ordinance to amend S-82-V-093 for country club to permit building additions to existing facilities, located at 6023 Fort Hunt Road, on approximately 156.7 acres of land, zoned R-3, Mt. Vernon District, Tax Map 83-4((1))5 and other lots (see file). (OUT OF TURN HEARING GRANTED)

Mr. Kelley stated for the record that he was President of Belle Haven Country Club and would abstain from participating in the public hearing but would be available to respond to questions.

Mr. Ribble stated that he also was on the Board of Directors at Belle Haven Country Club and would abstain from participating in the public hearing but would be available to respond to questions.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report and stated that there were no outstanding issues with this application. She added that staff recommended approval of the request subject to the development conditions being implemented. With respect to the easement on the property, Ms. Kelsey stated that subsequent to the publication of the staff report the applicant submitted a copy of a Hold Harmless Agreement with Fairfax County which states that if the country club has to go into that easement for any reason, it would be at the applicant's expense.

Mrs. Harris stated that it had been the Board's understanding that there was also supposed to be a ladies bathroom and asked where that would be located. Ms. Kelsey used the viewgraph to show the location.

William MacCauley Arnold, attorney with the law firm of Cowles, Rinaldi and Arnold, Ltd., 1052 Judicial Drive, Fairfax, Virginia, represented the applicant and agreed with the staff report. He corrected the number of parking spaces to 201 and asked the Board to extend the construction commencement date to "36 months" rather than "18 months."

As there were no speakers to address the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant the request subject to the revised development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-093-3 by BELLE HAVEN COUNTRY CLUB, INCORPORATED, under Section 3-303 of the Zoning Ordinance to amend S-82-V-093 for country club to permit building additions to existing facilities, on property located at 6023 Fort Hunt Road, Tax Map Reference 83-4((1))5 and other lots (see file), 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 1, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 156.7 acres of 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 Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit; shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The hours of operation shall be limited to 8:00 A.M. to 11:00 P.M. Tuesday through Sunday.
6. There shall be 201 paved and striped parking spaces. In addition the existing overflow parking area shall be retained. All parking shall be confined to the site.
7. All lighting and noise shall be confined to the site.
8. The total family membership shall not exceed 540 family members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.
9. Transitional Screening 1 shall be provided along Fott Hunt Road for 500 feet on either side of the entrance.
10. The barrier requirement shall be fulfilled by the six (6) foot chain link fence that presently exists on the property.
11. Construction of the deceleration/acceleration lanes and road improvements shall be provided at such time as determined necessary by the Director, Department of Environmental Management.
12. No fuel storage facilities shall be located within the floodplain.
13. If it is determined that there is an existing sanitary sewer easement running through the courts, the courts shall either be relocated out of the easement, or the easement relocated subject to the approval of Department of Environmental Management, or approval of a Holdharmless Agreement is executed between the applicant and the Easement Holder.

The above conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty-six (36) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble abstaining. Mr. DiGiulian was absent from the meeting.

Mrs. Bartis made a motion to waive the eight day time limitation. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble abstaining; Mr. DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 381, August 1, 1989, (Tape 3), Information Item:

Jane Kelley, Chief, Special Permit and Variance Branch, noted the new policy with respect to additional times for the Board members who had not been present at the meeting between the Board and staff. She explained that staff would be researching those requests more thoroughly to determine if it satisfies the Zoning Ordinance provision. Staff will also be notifying the applicant in the event of a denial so that the applicant can be present at the public hearing at the time the request is considered by the Board.

In response to questions from the Board, Ms. Kelsey replied that staff discussed the request with the applicant and then made a determination as to the amount of time needed to complete the process, for instance site plan or obtaining the necessary permits.

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Page 382, August 1, 1989, (Tape 3), Information Item:

Meeting with Brian McCormack

Chairman Smith called the Board's attention to a memorandum from Betsy S. Hurtt, Clerk to the Board of Zoning Appeals, with respect to a tentatively scheduled meeting with Brian McCormack, counsel for the Board, on September 14, 1989 at 12:00 noon. The Board agreed with the date and time.

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Page 382, August 1, 1989, (Tape 3), After Agenda Item:

Accotink Unitarian Universalist Church, SP 85-S-083, Additional Time  
10125 Pohick Road, Tax Map 87-2(1)26

Mrs. Thonen made a motion to grant the applicant an additional eighteen (18) months. Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that staff was recommending denial of the request for reasons set for in Action Item No. 1 with respect to a pending 456 review of the Burke Lake Sewer Shed. Chairman Smith noted that the applicant had been granted several extensions. Ms. Kelsey stated that a representative of the church was present.

Chairman Smith called the representative to the podium.

Edward R. Floyd, 6503 Carrebrook Court, Springfield, Virginia, came forward and stated that in June he was elected to the position of Chairman, Board of Trustees, of the church. He stated that he believed that the church is diligently trying to obtain the necessary permits in order to commence construction. Mr. Floyd added that the church has encountered funding difficulty, as the church has not grown as rapidly as anticipated, but the church is prepared to present a marketing plan to United Virginia Bank on August 9th.

Mr. Hammack asked how many members made up the church and Mr. Floyd replied 104.

Mr. Floyd continued by stating that the church has purchased the land and has selected an architect, who has drawn up plans.

Chairman Smith asked if plans had been submitted to the County and Mr. Floyd replied that it was his understanding that a proposed site plan had been submitted to the appropriate County agency. He outlined the church's timetable and Mrs. Harris stated that she did not believe four months was enough time to get through the County process.

In response to questions from the Board with respect to the 456 review, Ms. Kelsey explained this 456 was for a sewer pumping station and would go to the Board of Supervisors in September 1989, but noted that this review had not precluded the church from filing a site plan.

Regarding the sewer pumping station, Mr. Floyd stated that prior to his being on the Church Board private developers had negotiated with the church to install private sewer lines across the property. He added that it now appears that the pumping station will be constructed on an adjacent piece of land with the sewer lines running through the church's property.

As there was no further discussion, Mrs. Thonen made a motion to grant the applicant an additional eighteen (18) months as she believed that the church did need assistance.

Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting. The new expiration date will be December 3, 1990.

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Page 382, August 1, 1989, (Tape 3), After Agenda Item:

Fairfax Covenant Church, SP 89-S-075, Additional Time  
Ox Road, Tax Map 68-3(1)pt. 67

Mr. Hammack moved to grant the applicant in SP 89-S-075 an additional twelve (12) months in order to commence construction. The new expiration date will be July 27, 1990.

Page 383, August 1, 1989, (Tape 3), (Fairfax Covenant Church, SP 89-8-075, Additional Time, continued from Page 382 )

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 383, August 1, 1989, (Tape 3), After Agenda Item:

Raymond C. and Carol R. Schupp, VC 89-D-014, Additional Time  
North East Corner of I-495 and Old Dominion Drive, Tax Map 21-3((1))40A

Mrs. Harris made a motion to grant the applicant in VC 89-D-014 an additional six (6) months to record a subdivision and commence construction. The new expiration will be October 27, 1989.

Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 383, August 1, 1989, (Tape 3), After Agenda Item:

Patrick and Beth Nichols, VC 88-D-008, Additional Time  
9217 Weant Drive, Tax Map 8-4((3))14

The co-applicant, Patrick Nichols, 9217 Weant Drive, Great Falls, Virginia, came forward and told the Board that he worked for the State Department and had been assigned to Yugoslavia for a minimum of three years. He stated that he believed that it would be very difficult to have the construction take place while he and his wife were not here to oversee the work. They recently undertook a major renovation of their house which took longer and was more expensive than expected. Mr. Nichols asked the Board to grant them an extension until they returned. He added that they owned the property since 1981, the construction would enhance the property, and they would like to alleviate having to go through the variance process again due to the time and expense involved.

In response to questions from the Board, Mr. Nichols stated that the lot was approximately 24,000 square feet and he planned to construct a two car garage. He added that he and his wife were in the process of packing and would be leaving next week.

Chairman Smith commented that although he sympathized with the applicants that he personally could not support more than an eighteen month extension.

Mr. Ribble made a motion to grant the applicant an additional eighteen (18) months in order to commence construction. The new expiration date will be April 20, 1991. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 383, August 1, 1989, (Tape 3), After Agenda Item:

Faith Fellowship Assembly of God Church, SPA 85-L-069-1, Additional Time  
7800 Old Telegraph Road, Tax Map 100-1((6))2, B; 100-1((5))1

Mr. Hammack made a motion to grant the applicant an additional eighteen (18) months in order to commence construction. The new expiration date will be January 27, 1991.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 383, August 1, 1989, (Tape 3), After Agenda Item:

Living Saviour Lutheran Church, SPA 86-S-023-1, Additional Time  
5540 Ox Road, Tax Map 68-3((1))50, 50A

Mr. Hammack made a motion to grant the applicant an additional six (6) months in order to commence construction. The new expiration date will be November 17, 1989.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 384, August 1, 1989, (Tape 3), After Agenda Item:

Approval of Minutes for June 27, 1989

Mrs. Thonen made a motion to approve the Minutes for June 27, 1989 as submitted. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

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Page 384, August 1, 1989, (Tape 3), After Agenda Item:

Approval of Resolutions from July 25 and July 27, 1989

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to wording in the July 27, 1989 Resolution of Gary Henderson with respect to the shape of the garage.

Mrs. Harris, maker of the motion, indicated that the Clerk was correct and that it had been her intent to grant a square garage with all sides being 24 feet in length. Mrs. Thonen added that the Board had gone into great detail to explain this to the applicant. Ms. Kelsey noted that in that case the revised plats submitted by the applicant were incorrect.

As there was no further discussion, Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian absent from the meeting.

The Board asked staff to contact the applicant and inform him that another plat would have to be submitted before the Resolution could be released.

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Page 384, August 1, 1989, (Tape 3), Information Item:

Andrew V. Wittner, VC 89-D-047

Jane Kelsey, Chief, Special Permit and Variance Branch, asked Mr. Hammack, maker of the motion, to review the revised plat.

Mr. Hammack stated that he believed that the applicant could have designed the site better but that he would accept the plat. Mrs. Thonen noted that the plat met the intent of the motion but agreed that it was not a very good plan.

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Page 384, August 1, 1989, (Tape 3), Information Item:

BSA Pay Increase

Mr. Hammack asked Jane Kelsey, Chief, Special Permit and Variance Branch, if she knew the status of the Board's request for a pay increase.

Ms. Kelsey stated that she had made a request for an update to the appropriate source but had not yet received a response. She asked if she could telephone Mr. Hammack when she had received an answer and that was agreeable to him.

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Page 384, August 1, 1989, (Tape 3), Information Item:

Mrs. Thonen noted that the Board had not been experiencing as much difficulty with locating parking spaces on meeting days.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board owed thanks to the security guard, Officer Gary Westphal, for that as he had been working on the parking problem.

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Page 384, August 1, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 1:18 p.m.

*Betsy S. Witt*

Betsy S. Witt, Clerk  
Board of Zoning Appeals

*Daniel Smith*

Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 9/14/89

APPROVED: 9/21/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, September 7, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Robert Kelley; and John Ribble. John DiGiulian, Vice Chairman, and Paul Hammack were absent from the meeting.

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Chairman Smith called the meeting to order at 9:37 a.m. and gave the invocation. There were no matters to bring before the Board.

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Page 385 September 7, 1989, (Tape 1), Scheduled case of:

9:15 a.m. WEDNESDAY EARLY EDUCATION CENTER PARKWOOD BAPTIST CHURCH, SPA 84-A-048-1, application under Sect. 3-103 for a child care center and church to amend SP 84-A-048 for a child care center and S-80-A-008 for an existing church, to permit change in hours of operation, increase in maximum number of employees, and increase in parking, located at 8726 Braddock Road, on approximately 8.6782 acres of land, zoned R-1, Annandale District, Tax Map 70-3(1)6.

Lori Greenlief, Staff Coordinator, presented the staff report and recommended approval of the application. Because of the close proximity of the play area to Braddock Road, staff strongly recommended that the suggested acoustical treatment and transportation improvements be implemented.

Reverend Al Lawson, Minister of Education, referenced the statement of justification. He explained that this is a nursery school type child care program that meets during the hours of 10:00 a.m. to 2:00 p.m., Tuesday and Thursday and the school is seeking only to expand the number of days of the program. The same number of children will attend the school, and will not exceed 54 children on any given day. There will be an increase in the number of teachers because the former arrangement of a cooperative program was not satisfactory. Reverend Lawson took exception to development conditions numbers 7, 9, 10 and asked that they be deleted.

In response to questions from Chairman Smith, Rev. Lawson replied that the play area is 3,440 square feet in size and that there are 202 parking spaces.

Chairman Smith noted that the area is heavily wooded between the church site and Braddock Road and that the church had been denied access to Braddock Road in a previous application.

In closing, Rev. Lawson again asked that the Board delete conditions 7, 9, and 10. He requested that the eight day waiting period be waived.

In response to additional questions from the Board, Rev. Lawson explained he would prefer an open play area with natural noise barriers and that the children would only be in the play area for about 20 to 25 minutes each day.

He clarified that the request is only for an expansion of the use to Monday through Friday with additional teachers. Rev. Lawson added that there is a 150 foot wooded setback from the road on the Braddock Road side of the playground.

Chairman Smith asked staff about the noise factor in the play area. Ms. Greenlief explained that the test was done on a model using the average daily count for the road and that woods are not considered adequate noise barriers especially in the winter.

Mr. Kelley asked staff about conditions 9, and 10. Ms. Greenlief explained that the Office of Transportation (OT) is concerned that the Holy Spirit Church to the west does not have access to a median break at Braddock Road, which is now a "right turn in only and right turn out." Along minor arterials such as Braddock Road, OT likes to see some connections so that access at a median break can be obtained. The concern is a safety one because of "U" turns that might be caused by the people attending Holy Spirit Church.

It was the consensus of the Board that the problem is not the applicants and pointed out that Holy Spirit Church which has two entrances, one being on Woodland Road.

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Thonen made a motion to grant the request with the conditions contained in the staff report dated August 25, 1989, with the following changes:

"Delete Numbers 7, 9, and 10, and renumber accordingly."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-A-048-1 by WEEKDAY EARLY EDUCATION CENTER PARKWOOD BAPTIST CHURCH, under Sect. 3-103 for a child care center and church to amend SP 84-A-048 for a child care center and S-80-A-008 for an existing church, to permit change in hours of operation, increase in maximum number of employees, and increase operations, increase in maximum number of employees, and increase in parking, on property located at 8726 Braddock Road, Tax Map Reference 70-3(16)), Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. Parkwood Baptist Church is the owner of the land and Weekday Early Learning Center is the lessee.
2. The present zoning is R-1.
3. The area of the lot is 8.6782 acres of land.
4. The parking is adequate and has been restriped.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. A Non-Residential Use Permit shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.
5. The hours of operation for the child care center shall be limited to 10:00 a.m. to 2:00 p.m., Monday through Friday.
6. There shall be a minimum of seventeen (17) parking spaces provided on site for the child care center. There shall be a minimum of eighty-eight (88) parking spaces provided for the church use. The maximum number of spaces on the site shall be 202.
7. The maximum daily enrollment for the child care center shall not exceed 85 children.
8. There shall be a maximum of 350 seats in the main area of worship.
9. The existing vegetation along the southern and eastern lot lines shall be deemed to satisfy the Transitional Screening I requirement. The existing vegetation along the western lot line shall be deemed to satisfy the Barrier II requirement. The barrier requirement along the remaining lot lines shall be waived.

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.

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Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 7, 1989. This date shall be deemed to be the final approval date of this special permit.

Mrs. Thonen made a motion to grant a waiver of the eight day time limitation. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

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9:30 a.m. PROVIDENCE PRESBYTERIAN CHURCH AND TRINITY CHRISTIAN SCHOOL, SPA 82-A-039-3, application under Sect. 3-103 of the Zoning Ordinance to allow private school of general education in an existing church, located at 9019 Little River Turnpike, on approximately 5.65 acres of land, zoned R-1, Annandale District, Tax Map 58-4((1))1.

Lori Greenlief, Staff Coordinator, presented the staff report which recommended approval of the application with a modification to condition number 4. The applicant will have three special permits uses on this property; the church, the existing pre-school, and the new school of general education. The intensity of these three uses is of concern to the staff; while parking is adequate, staff recommends that shade and evergreens trees be planted within the parking island, and that the proposed play area be pulled back away from the western lot line. Ms. Greenlief noted that a non-residential use permit will also be required of the applicant.

Mary Ann Bundren, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, McLean, Virginia, represented Trinity Christian School. Ms. Bundren explained that the applicant would like to locate grades 3, 4, and 5, in the existing church building. The current lease is for 2 years, a permanent site for the school is actively being pursued, and the school will enroll a maximum of 58 students. The staff has been most cooperative in resolving outstanding issues, but the applicant believes the landscaping and parking island would be a great expense, and that the woods along the eastern lot line is adequate to screen the use. With respect to the noise level, the play area will be pulled in behind the building, reduced in size, and roped off with saw horses blocking the parking lot for safety reasons. Ms. Bundren requested that development condition number 12 be deleted and number 8 be revised to reflect the applicant's suggested wording. In closing she asked that the Board waive the eight day waiting period so that the school could be opened on schedule.

Mrs. Harris asked if the radon gas, asbestos, and the dBA level issues had been addressed. Ms. Bundren explained that the area that would be used is newly constructed, the asbestos and dBA level has been met, and that the site will be tested for radon levels.

Chairman Smith called for speakers in support of the applicant, there being none he called for speakers in opposition.

Robert Orr, 4835 Doveville Lane, Fairfax, Virginia, and William Hoyt, 4834 Doveville Lane, Fairfax, Virginia, stated that they were not opposed to the request but were concerned with the hours of access and the excessive use of the gate entrance located in the cul-de-sac where they live.

During rebuttal, Ms. Bundren explained the gate in question is only used for Sunday services and the school has no intention of using it as an entrance and will ensure that the gate will be locked during school hours.

In response to the Board's questions, Ms. Greenlief replied there is now a school on this site and if the Board approves the new play area, new plats will be needed and the play area will have to meet the 65 dBA noise level.

There being no further speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Ms. Harris moved to grant the request subject to the development conditions contained in the staff report with the following changes:

4. A Non-Residential Use Permit shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.
8. The outdoor play area (approximately 11,475 square feet) shall be enclosed with a combination of ropes and sawhorses so that the play area will attain a dBA Ldn level no higher than 65. The western edge of the play area shall be no closer than thirty-five feet (35') to the western lot line.

Delete number 12 and renumber accordingly.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-A-039-3 by PROVIDENCE PRESBYTERIAN CHURCH & TRINITY CHRISTIAN SCHOOL, to allow private school of general education in an existing church property located at 9019 Little River Turnpike, Tax Map Reference 58-4((1))1, Ms. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. Providence Presbyterian Church is the owner of the land and Trinity Christian School is the lessee.
2. The present zoning is R-1.
3. The area of the lot is 5.65 acres of land.
4. This is a further intensity of the site but the revision to the play area will address the noise level and will be a good place to play.
5. The landscaping should not be the responsibility of the church.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. A Non-Residential Use Permit shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.
5. The maximum daily enrollment for the school of general education shall not exceed 72 children.
6. The student hours shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.
7. There shall be a minimum of eight (8) parking spaces provided on site for this special permit use. Additional spaces shall be provided if deemed necessary by the Director, Department of Environmental Management. There shall be a minimum of 162 parking spaces total provided on site.

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8. The outdoor play area (approximately 11,475 square feet) shall be enclosed with a combination of ropes and sawhorses so that the play area will attain a dBA Ldn level no higher than 65. The western edge of the play area shall be no closer than thirty-five feet (35') to the western lot line.
9. That portion of the existing church building which will be used for the private school of general education shall be tested to ensure an interior noise level not to exceed 45 dBA Ldn. If the level exceeds this measurement, additional noise attenuation measures should be utilized to achieve this level.
10. The existing one-way entrance off of Little River Turnpike shall meet Virginia Department of Transportation requirements for width.
11. Ancillary easements, fifteen (15) feet in width shall be provided to facilitate future improvements to Little River Turnpike.
12. The existing vegetation along all lot lines shall be deemed to satisfy the Transitional Screening 1 requirement. The existing fencing along the southern, eastern and western lot lines shall be deemed to satisfy the barrier requirement. The barrier requirement along the northern lot line shall be waived.
13. The parents shall be encouraged to carpool and vanpool to the site.
14. Levels of radon gas shall be tested and shall be in accordance with established Federal guidelines. This shall be accomplished prior to the issuance of a Non-Residential Use Permit.
15. Tests shall be performed to determine whether asbestos is present in the area where the school will operate. If any asbestos sources are found, it shall be ensured that a management plan is developed by a certified asbestos management planner licensed in the State of Virginia prior to the issuance of a Non-Residential Use Permit. The management plan, if needed, shall address the inspection and mitigation of any insulation and fireproofing materials that emit hazardous fibers and shall also address the implementation schedule for any necessary clean up of such materials.
16. The seating capacity in the main worship area shall not exceed four hundred and fifty (450).
17. All garbage or trash shall be picked up at the entrance to the church on the access road parallel to Little River Turnpike or an appropriate location on the church property near the building.

These conditions carry forward those previously approved in conjunction with SP 82-A-039, SPA 82-A-039-1 and SPA 82-A-039-2. These conditions do not carry forward those conditions adopted in conjunction with the approval of S-133-74 although those conditions remain in full effect.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hamneck absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 7, 1989. This date shall be deemed to be the final approval date of this special permit.

Mrs. Harris made a motion to grant a waiver of the eight day time limitation. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hamneck absent from the meeting.

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Page 390, September 7, 1989, (Tape 1), Scheduled case of:

9:45 a.m. MARK P. & MAUREEN DUROCHER, VC 89-L-067, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 7.2 feet from side lot line (15 foot min. side yard req. by Sect. 3-207), located at 6635 Ridgeway Drive, on approximately 40,509 square feet of land, zoned R-2, Lee District, Tax Map 90-1((2))201A.

Greg Riegler, Staff Coordinator, presented the staff report.

The applicant, Mark Durocher, 6635 Ridgeway Drive, Springfield, Virginia addressed the Board and stated "the staff report generally indicated approval of the Variance." He explained although it is a large lot it is very narrow and the backyard cannot be used because of an old septic field located there. The side door kitchen entrance by the driveway is the only place to construct a garage without removing mature trees.

In response to Chairman Smith, Mr. Durocher stated most two car garages are 22 to 24 feet wide, and because of the outside entrance to the basement which is about 4 feet wide, and the entrance stairs to the kitchen, a 24 foot garage is needed. He asked that the eight day waiting period be waived so that the concrete work could be done before freezing weather.

There being no other speakers, Mr. Riegler explained that staff does not make recommendations for approval or denial in a yard Variance. Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request with the conditions contained in Appendix 1 of the staff report dated August 25, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-067 by MARK P. & MAUREEN DUROCHER, under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 7.2 feet from side lot line, on property located at 6635 Ridgeway Drive, Tax Map Reference 90-1((2))201A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 40,509 square feet of land.
4. The applicant meets the nine standards for exception.
5. The shape and narrowness of the lot justifies the application.
6. The request is reasonable use of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

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B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 7, 1989. This date shall be deemed to be the final approval date of this variance.

Mr. Ribble made a motion to grant a waiver of the eight day time limitation and Ms. Harris seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

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Page 391, September 7, 1989, (Tape 1), Scheduled case of:

10:00 a.m. LONNIE L. LANDERS/GREGORY L. APPLER, VC 89-V-070, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing porch and carport to 11.8 feet from side lot line (15 ft. min. side yard req. by Sect. 3-207), located at 1106 Arcturus Lane, on approximately 23,353 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 102-2((13))6.

Greg Riegle, Staff Coordinator, presented the staff report.

In response to questions from the Board, Mr. Riegle confirmed that the approval will be for an addition, and that the setback requirement mentioned in the Ordinance are those for an addition to the dwelling with an extension on a carport that will not be enclosed. He explained that the existing porch was enclosed by a previous owner without a building permit and a Notice of Violation had been issued. As significant renovation is planned and all that will remain is the roof line, Zoning Administration sees no need for a Special Permit for error in building location, but a new permit should be issued for new renovation.

The applicant, Lonnie L. Landers, 1106 Arcturus Lane, Alexandria, Virginia addressed the Board and explained that he would like to bring this structure up-to-code and complete it in such a way that it would blend in with the neighborhood. The applicant submitted a letter from owner of Lot 7 and a petition signed by the immediate neighbors into the record. He added that he had tried to remodel the existing dwelling to conform to current zoning regulations and had come up empty handed. Mr. Landers asked that the Board waive the eight day waiting period if the request was granted.

Chairman Smith called for speakers in support or in opposition and having no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. Kelley moved to grant the motion subject to the conditions contained in Appendix 1 of the staff report dated August 25, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-070 by LONNIE LANDERS/GREGORY L. APPLER, under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing porch and carport to 11.8 feet from side lot line, on property located at 1106 Arcturus Lane, Tax Map Reference 102-2((136)), Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

- 1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 23,353 square feet of land.
4. The narrowness of the lot justifies the variance.
5. The planned renovations are the most practical for the layout of the home.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

- 1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.



2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 7, 1989. This date shall be deemed to be the final approval date of this variance.

Mr. Ribble made a motion to grant a waiver of the eight day time limitation and Mr. Kelley seconded the motion which carried by a vote of 4-1 with Chairman Smith voting nay and Mr. DiGiulian and Mr. Hammack absent from the meeting.

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Page 393, September 7, 1989, (Tape 1), Scheduled case of:

10:30 a.m. EDLIN SCHOOL LTD. AND FAIR OAKS COMMUNITY CHURCH, SP 89-C-026, application under Sects. 3-103 and 8-901 to allow private school of general education and church and related facilities with waiver of the dustless surface requirement, located at 3309 West Ox Road, on approximately 1.0001 acres of land, zoned R-1, Centreville District, Tax Map 35-4((1))62.

Denise James, Staff Coordinator, presented the staff report and recommended approval in-part to allow the church use only subject to the conditions contained in Appendix 1 of the staff report. Staff has concerns about the compatibility of the school use with the surrounding residential uses, planned road improvements to West Ox Road, and required transportation improvements. A second plat and a revised statement has been submitted by the applicant wherein they changed the hours of operation so they are not during peak traffic periods, reduced the number of staff to three persons, and all students and staff will be transported in two vans and three vehicles. Staff believes that the issue of safety in this applicant is the main factor, both sight distance and the high traffic volume make turning into and out of this site hazardous. The applicant will not agree to provide turn-in lanes or the required dedication of right-of-way for planned improvements to West Ox Road.

In response to staff question, Ms. James stated the church has been in existence since 1968, thus is a use by right and does not need a special permit.

Angela Rodenhaver, Office of Transportation, responded to the Boards question about the West Ox Road planned improvements and explained it is now a VDOT six year project and only funded for design, plans are currently available.

Marie Travesky, 3900 Jermentown Road, represented the applicants. She stated that they are seeking a 40 student private school in a building rated to house 75 students and the church will limit themselves to 50 people although they can accommodate 173 people. The Health Department letter states the capacity of the septic field is acceptable. The intensity of land use allows for clustering in the area and the traffic generated by the school will not be substantial. The school has talked to the parents and they are committed to coming in two vans and three cars that will be driven by the teachers and make right hand turns only into and out of the school. There will be no more than 12 students in the play area at any one time. The Springfield by-pass is under construction and will provide relief from traffic on West Ox Road. The school hours will begin at 9:00 a.m. to avoid the peak traffic period. Approval of three neighbors will be needed in order to have a deceleration lane and would be financially prohibited so the applicant believes this is an unreasonable request. One of the reasons for refusing to give right of way is because of the concern for specifics, and if the VDOT hearing scheduled for September 7, 1989, adopts the center line specific, then the church will consider giving up their property. The applicant will endeavor to acquire the adjoining property, that may come up for sale in the next 18 months, to enable them to conform to County Codes in the future. The church, being grandfathered, could grow substantially and have programs which could generate traffic without County zoning approval. Having been rebuilt, after fire damage, to accommodate children they would like to get started with this project.

In response to Chairman Smith's question, Ms. Travesky stated that the applicant requests is for both the church and school, otherwise would withdraw the request.

Mr. Gary Burnham, 14419 Tutin Lane, Pastor of the Fair Oaks Church spoke in support of the application and asked the members of the church who were present and in support of the application to stand. Mr. Burnham stated the present membership is below 20 people due to the transit nature of the area and fire damage to the structure. The building is being rebuilt with consideration to bringing it up-to-code and to beautify it inside and outside in order to accommodate the school. The church is willing to cooperate with staff and the neighbors with any concerns.

In response to staff questions, Mr. Burnham said that he preferred not to give right of way until the amount of land was specified but would do so if it was a condition required by the Board. The Johnson's letter addressing the traffic was shown to Mr. Burnham who said the Johnson's home was number 53 and the church would not impact the traffic on Colewood Street which has a speed limit of 35 miles per hour. He assured the Board that the church would try to acquire adjoining land when it is put up for sale.

Elaine Mellman and Linda Scheribstein, the Directors for Edlin School, stated the school will have grades from kindergarten to grade 6, with an advance approach to math, science and computer technology. Presently the enrollment is 30 with no more than 12 students per class and have a 40 student maximum capacity to ensure individual attention and safety with adequate insurance coverage.

In response to Mrs. Harris question, Ms. Mellman said the school is small and plans to stay that way.

Charlotte Hirsch, 2970 Tredwell Lane, said Ms. Mellman and Ms. Scheribstein have both taught her children and believes they are expert teachers and the school would benefit the community but that her children would not be attending the school.

Robert Smith, 11104 Lanessa Drive, Fairfax, parent of two children who will attend the school believes the school is for gifted or talented children who's needs have not been met in Fairfax County Public Schools and that the school should have a central location.

Chairman Smith noted that Robert Smith was no relation to him.

Pat Velsch, 2779 Prince Harald Court, said Ms. Mellman taught her daughter a few years ago at another school and believes she is an excellent teacher. She also did volunteer work with both Ms. Mellman and Ms. Scheribstein and found them enthusiast teachers.

Chairman Smith called for any more speakers in support or in opposition to the request, hearing no reply he asked Ms. Travesky for any further comments. She elaborated that this is a transit area with high density zoning and the school will have a positive effect. She asked that the application for the church be withdrawn if the application for the school is not granted.

Ms. James stated the undated letter from Mrs. Campbell was received by staff on August 29, 1989. The letter from Mrs. Johnson was received this morning, September 7, 1989, and she intended to speak at this meeting but had to leave because of illness.

With regard to the right-of-way dedication, Ms. Rodehaver said that the request for dedication as indicated in the staff report is from the most recent set of design plans, however a condition requiring dedication of right-of-way to 45 feet from the design center line would solve the problem.

In response to Mrs. Thonen question, Ms. James confirmed that she had received the new proposed conditions and is concerned about the enforcement of these conditions, road safety and parking problems.

With staff having no further comments, Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant the motion subject to proposed development conditions in the Addendum of August 31, 1989 and the additional proposed development conditions presented by Ms. Travesky

Ms. Harris moved to amend 14 to state that all 5 vehicles make a right turn onto the property in the a.m. and tight turn leaving in the p.m. and a sign be posted on the property.

Mrs. Thonen accepted the amendment.

(THIS MOTION WAS AMENDED ON SEPTEMBER 12, 1989)

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-C-026 by EDLIN SCHOOL LTD. AND FAIR OAKS COMMUNITY CHURCH, under Sect. 3-103 and 8-901 of the Zoning Ordinance to allow a private school of general education and church and related facilities with a waiver of the dustless surface requirement, on property located at 3309 West Ox Road, Tax Map Reference 35-4(1)62, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. The Fair Oaks Community Church is the owner of the land and the Edlin School Ltd. is the lessee.
2. The present zoning is R-1.
3. The area of the lot is 1.0001 acres of land.
4. This is a small school.
5. The small amount of traffic generated by this school will have no impact on road congestion.
6. The church is nonconforming and could operate with no controls on it.
7. The applicant has addressed staff concerns with development conditions.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a minimum of 13 spaces. All parking shall be on site.
6. The number of seats for Fair Oaks Community Church shall be limited to 50.
7. Transitional Screening 1 (25') shall be provided around all lot lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. The screening requirement may be modified along the site frontage to allow building foundation landscape plantings in order to soften the visual impact of the building and parking lot area from surrounding residential properties. The landscape plan for the building foundation plantings shall be submitted to the County Arborist for review and approval.
8. The barrier requirement shall be waived.

9. Right-of-way to 45 feet from the design centerline of West Ox Road along the site frontage on West Ox Road necessary to implement future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary access easements shall be provided to 15 feet behind the right-of-way line in order to facilitate these improvements.

The entrances shown on the special permit plat dated April 14, 1989 shall be redesigned such that only one access point shall be permitted. The new entrance shall be designed and constructed to meet VDOT and Public Facilities Manual Standards.

10. Any proposed new lighting of the parking areas shall be in accordance with the following:

The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

11. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.

Speed limits shall be kept low, generally 10 mph or less.

The areas shall be constructed with clean stone with as little fines material as possible.

The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

Runoff shall be channeled away from and around driveway and parking areas.

The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

12. The school shall be limited to 40 students and five teachers. The full-time faculty shall consist of three teachers.
13. A maximum of twelve students shall be in the play area at any one time.
14. The students shall be transported to school by van or with three full-time teachers. The school shall make every effort to have a total of five vehicles entering the property each morning and leaving each evening. All five vehicles shall make a right turn onto the property in the a.m. and a right turn leaving the premises in the p.m. A sign shall be posted stating "right turn only".
15. Edlin school shall operate outside of the peak traffic period, and shall operate between the hours of 9 a.m. and 3:30 p.m.
16. The School and the Church shall share the parking spaces to minimize disturbance of the site and preserve the trees at the rear of the church building.
17. The School shall not conduct any after-school activities on site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has

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started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date. Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack being absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1989. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:38 a.m. and reconvened at 11:58 a.m.

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Page 397 September 7, 1989, (Tape 1), Scheduled case of:

10:45 a.m. BILLY J. & BARBARA H. ELLIS, VC 89-D-068, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 22.0 feet from a street line of a corner lot and 4.9 feet from side line (30 ft. min. front yard, 10 ft. min. side yard req. by Sect. 3-407), located at 2220 Casemont Drive, on approximately 12,147 square feet of land, zoned R-4, Dranesville District, Tax Map 40-4((8))16.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Billy J. Ellis of 2220 Casemont Drive, Falls Church, Virginia, presented his justifications as set forth in the staff report. Mr. Ellis said the garage would be on the side of the house that his immediate neighbor has the air conditioner and therefore has no objection to the garage. There are other garages in the neighborhood, and being a corner lot any other location would require extensive work, and his plans will leave all the trees on the property.

In response to the Board questions, Mr. Ellis said he had no objection to the garage being 22 x 22 feet.

There being no further speakers and staff having no further comments, Chairman Smith closed the public hearing.

Mrs. Harris moved to grant-in-part to limit the size of the garage to 22 x 22 feet and 24 feet off front and 6.9 feet off side. Chairman Smith informed the applicant that new plats are needed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-068 by BILLY J. & BARBARA H. ELLIS, under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 22.0 feet from a street line of a corner lot and 4.9 feet from side line (THE BOARD GRANTED A GARAGE ADDITION 24 FEET FROM A STREET LINE OF A CORNER LOT AND 6.9 FEET FROM SIDE LINE), on property located at 2220 Casemont Drive, Tax Map Reference 40-4((8))16, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 12,147 square feet of land.
4. The applicant has satisfied the nine standards for a Variance.
5. The request is reasonable and would create a hardship for the applicant if not granted.
6. The applicant must submit a revised plat limiting the garage dimensions to 22 feet by 22 feet.

This application meets all of the following Required Standards for Variances in Section 18-404 of the zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. A new plat will be required to show the dimensions of garage being 22 x 22 feet, 24 feet from front lot line and 6.9 feet from side lot line.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack being absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1989. This date shall be deemed to be the final approval date of this variance.

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Page <sup>398</sup> September 7, 1989, (Tape 1), scheduled case of:

11:00 a.m. MR. & MRS. KENNETH A. KISSELL, VC 89-L-069, application under Sect. 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 0.0 feet from the rear lot line and 2.8 feet from the side lot line (5 ft. min. rear yard and 10 ft. min. side yard req. by Sects. 3-507 and 2-412), located at 7111 Captains Cove Court, on approximately 3,143 square feet of land, zoned R-5, Lee District, Tax Map 92-3(3)182.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

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The applicant, Kenneth A. Kissell, 7111 Captains Cove Court, Alexandria, Virginia, addressed the Board and explained that 90 percent of the present deck would be taken down and a new deck constructed. In presenting his justification, he said that the property is exceptionally narrow and shallow and the summer sun makes the deck unusable. He explained that by lowering a portion of the deck into the side yard he can create shade.

In response to the Board questions, he explained that his plans are applicable to end unit homes only and has been designed to enhance the beauty of the community and the Lake d'Evereux Homeowners Association has approved the plans.

He continued by stating that the lake was behind his home, the upper deck would be 8.7 feet, and the lower deck would be 5.3 feet with a hot tub on the deck being 7x7 feet and 3 feet high. He said the neighbor on the east has many plants and trees and has no objection to an eight foot fence.

The architect, Glenn E. Bradley, 14828 Haymarket Lane, Centreville, Virginia, addressed the Board and stated the deck will have a secondary deck coming off to the side where the hot tub is located flush with that level with stairs leading down into the backyard.

In response to the Board's questions, he explained the side yard is a steep sloping yard with shade and the side deck will take advantage of this, and the stairs are designed with consideration to the view of the lake from the family room window.

Mr. Kissell came back to the podium. In response to questions from Mr. Kelley, Mr. Kissell said he had gone to the neighbors and had obtained their signatures which he then submitted to the architecture committee of Lake d'Evereux for approval.

There being no further speakers and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Ribble to moved deny the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-069 by KENNETH A. & LAURIE C. KISSELL, under Sect. 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 0.0 feet from rear lot line and 2.8 feet from the side lot line (5 ft. min. rear yard and 10 ft. min. side yard req. by Sects. 3-507 and 2-412), on property located at 7111 Captains Cove Court, Tax Map Reference 92-3((382, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-5.
3. The area of the lot is 3,143 square feet of land.
4. This is too much of a variance and the applicant could build without a Variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance.

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

Page 400 September 7, 1989, (Tape 1), (Mr. & Mrs. Kenneth A. Kissell, VC 89-L-069, continued from Page 399)

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelly voting no and with Mr. DiGiulian and Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1989.

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Page 400 September 7, 1989, (Tape 1), Scheduled case of:

11:15 a.m. STANLEY MARTIN COMMUNITIES, INC., VC 89-S-071, application under Sect. 18-401 to allow subdivision into four (4) lots, proposed Lot 4 having a lot width of 135 feet (150 ft. min. width req. by Sect. 3-106), located at 10137 Burke Lake Road, on approximately 4.43 acres of land, zoned R-1, Springfield District, Tax Map 87-2((1))14.

Chairman Smith noted that a request for deferral had been received from the applicant's attorney so that outstanding transportation issues could be resolved.

David O'Brien, with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, 3110 Fairview Park Drive, Falls Church, represented the applicant and explained that he has been trying to meet with the Office of Transportation to resolve some of the transportation issues.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested October 10, 1989 at 9:45 a.m. and requested that the staff coordinator be informed when the meeting would take place so that she could attend. The date and time being agreeable with Mr. O'Brien, the Chair so ordered.

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Page 400 September 7, 1989, (Tape 1), Scheduled case of:

11:30 a.m. SHARON BECKER DANE, VC 89-S-048, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport for an attached garage 10.3 feet from a side lot line, such that side yards total 22.8 feet (8 ft. min., 24 ft. total min. side yard required by Sect. 3-207), located at 7802 Spaniel Road, on approximately 12,248 square feet of land, zoned R-2(C), Springfield District, Tax Map 88-2((6))131.

Chairman Smith stated that the notices were not in order and asked staff for a date and time. Jane Kelsey, Special Permits and Variance Branch Chief, suggested October 31, 1989 at 9:00 a.m.

Hearing no objection, the Chair so ordered.

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11:45 a.m. H. L. MacPHERSON, III/CHERYL A. WAXTER, VC 89-A-059, application under Sect. 18-401 to allow construction of deck addition to dwelling to 0.1 feet from rear lot line (5 ft. min. rear yard req. by Sect. 2-412), located at 10208 Aspen Willow Drive, on approximately 2,208 square feet of land, zoned PDE-3, Annandale District, Tax Map 57-4((17))5A.

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Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

The applicant, H. L. MacPherson, 10208 Aspen Willow Drive, Fairfax, Virginia, explained the subdivision is new and most of the units have builder constructed decks. The plat is in error and the unit is about 2,800 square feet. The applicant has a 12 x 16 foot existing deck and would like to extend the deck to the property line with steps to the ground. Two deck contractors advised him that this could not be done without a Variance.

In response to the Board's questions, he stated that he did not receive a plat at settlement and assumed his yard included the 25 feet owned by the homeowners association. The builder had offered a deck option but he believed he could have a nicer more economical deck built himself. Mr. MacPherson stated that the neighbors and George Mason University had no objections to the deck.

Ms. Kelsey asked the applicant to clarify the plans for the proposed deck. He said the deck will be 12 x 16 feet with a landing one step down with steps wrapping around to land in two stages on the concrete slab at the back of the deck.

Upon questioning from the Board, the applicant stated that he had built his present deck without steps so that he could use the deck this summer while waiting for the variance hearing.

Mr. Kelley moved to deny the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-059 by H. L. MacPHERSON, III/CHERYL A. WAXTER, under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 0.1 feet from rear lot line, on property located at 10208 Aspen Willow Drive, Tax Map Reference 57-4((17))5A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 7, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is PDE-3.
3. The area of the lot is 2,208 square feet of land.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance.

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Page 402 September 7, 1989, (Tape 2 & 3), (H. L. MacPherson III/Cheryl A. Waxter, VC 89-A-059, continued from Page 401)

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6. That:
- A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1989.

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Page 402 September 7, 1989, (Tape 3), After Agenda Item:

Full Gospel First Korean Church, SP 89-M-041  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the application has been scheduled within ninety days. Ms. Kelsey further stated that substantial changes in the application will require a new plat, and a complete review of the case and that staff cannot support this request.

Mark Mitterader, 4300 Evergreen Lane, Annandale, Virginia, the applicant's architect, explained that although the new application has incorporated Phase II of the building plan, the plans are basically the same.

In response to Chairman Smith's remarks about the amount of activity at the site, Ms. Kelsey stated that there is no Special Permit to allow church services in the existing building.

Mrs. Harris made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 402 September 7, 1989, (Tape 3), After Agenda Item:

Lively-Diebold, VC 89-D-092  
Out of Turn Hearing

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 402 September 7, 1989, (Tape 3), After Agenda Item:

Fellowship Baptist Church, SP 85-S-017, Additional Time  
5936 Rolling Road  
79-3((6))1

Mrs. Harris made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date is March 24, 1990

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

South Run Baptist Church, SP 87-S-078, Additional Time  
8708 and 8712 Selgar Drive  
89-3(3)2 and 3

Mrs. Hattis made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date is May 4, 1991.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Vulcan Materials Company, SPA 82-V-091-1, Additional Time  
9800 Ox Road  
112-2(1)8,9,11,12,13 and 106-4(1)54

Mr. Kelley made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting. The new expiration date is March 23, 1990.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Robert Arledge Appeal

Mrs. Hattis made a motion to accept the appeal and scheduled the public hearing for October 31, 1989 at 11:00 a.m. The motion was seconded by Mr. Kelley and carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Approval of May 23, 1989; June 6, 1989; June 22, 1989;  
and July 11, 1989 Minutes

Mrs. Hattis moved to approved the Minutes as submitted by staff. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Woodland Associates Appeal

Mr. Kelley made a motion to schedule the public hearing for October 31, 1989 at 11:30 a.m. The motion was seconded by Mrs. Hattis and carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Donald Jaget, VC 89-V-105  
Out of Turn Hearing

In response to questions from the Board, Greg Riegler, Staff Coordinator, stated that Mr. Jaget indicated in his application that his living quarters are on the second floor and that he needs a ramp to access a deck at the rear of the house in order to be able to enter his home on his own.

Mr. Kelley made a motion to schedule the public hearing for October 19, 1989 at 9:00 a.m. The motion was seconded by Mrs. Hattis and carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 403 September 7, 1989, (Tape 3), After Agenda Item:

Runter Development Appeal, A 89-S-009  
Intent to Defeat

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board to express their intent to defer the public hearing from September 14, 1989 to September 26, 1989 at 11:45 a.m. so that the proper posting could be done.

Page 404 September 7, 1989, (Tape 3), (Hunter Development Appeal, A 89-S-009, Intent to Defeat, continued from Page 403)

Mr. Thonen moved to declare the Board's intent to defer the public hearing. The motion was seconded by Mrs. Harris and carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 404 September 7, 1989, (Tape 3), After Agenda Item:

Mrs. Harris asked staff to forward a letter to the Zoning Administrator requesting that the Board of Zoning Appeals be apprised of any proposed Zoning Ordinance changes that will affect the Board. She stated that it was her understanding that members of the Planning Commission are on a committee to review these changes and felt that the BZA should also have that option.

Jane Kelsey, Chief, Special Permit and Variance Branch, agreed to prepare a letter to Jane Gwinn, Zoning Administrator, requesting this notification.

Mrs. Thonen moved to request that the Board be informed of any proposed Zoning Ordinance changes. The motion was seconded by Mrs. Harris and carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Page 404 September 7, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 1:40 p.m.

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Jane Kelsey, Chief, Special Permit and Variance Branch, requested that the Board act on a letter requesting the November 7, 1989 meeting be cancelled.

Chairman Smith reopened the public hearing.

Ms. Kelsey requested the November 7, 1989 meeting be cancelled, and the cases moved to the night meeting on November 14, 1989 because of election day.

Mrs. Harris moved to approve the request. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:45 p.m.

Heleen C. Darby  
Heleen C. Darby, Associate Clerk  
Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED

11/16/89

APPROVED

11/28/89

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, September 12, 1989. The following Board Members were present: Chairman Daniel Smith; Vice-Chairman John DiGiulian; Martha Harris; Mary Thonen; and Paul Hammack. Robert Kelley and John Ribble were absent from the meeting.

Chairman Smith called the meeting to order at 8:05 p.m. and gave the invocation. There were no matters to bring before the Board.

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Page 405 September 12, 1989, (Tape 1), Scheduled case of:

8:00 p.m. WILLIAM WILLIAMS, JR., VC 89-M-072, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 8.0 feet from a side lot line (12 ft. min. side yard required by Sect. 3-307), located at 4110 Sleepy Hollow Road, on approximately 11,272 square feet of land, zoned R-3, Mason District, Tax Map 60-4(22)42.

Greg Riegle, Staff Coordinator, presented the staff report.

William Williams, Jr., 4110 Sleepy Hollow Road, Annandale, Virginia, stated that he intends to extend his existing carport and to enclose it to make a two car garage. Mr. Williams stated that the garage being 15 feet wide will allow him to park both of his cars in the garage.

Chairman Smith called for speakers in support of the application.

The co-applicant, Laura Donna Williams, 4110 Sleepy Hollow Road, would really like to have the garage for safety as well as keeping the cars out of the weather.

Chairman Smith called for speakers in opposition and for staff closing comments.

In response to questions from Mr. Hammack, Mr. Williams replied that he had approached all of his neighbors to discuss the request and none had offered any opposition to it. He added that had there been any opposition he would not have continued with the request. Mr. Williams assured the Board that the materials would match as closely as possible.

Chairman Smith asked how long he had owned the house and Mr Williams replied about 5 years.

There being no further questions, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant the request subject to the development conditions contained in the staff with the following addition, "The materials used shall be in harmony with and compatible with the existing structure."

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-072 by WILLIAM WILLIAMS, JR., under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 8.0 feet from a side lot line, on property located at 4110 Sleepy Hollow Road, Tax Map Reference 60-4(22)42, 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 12, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,272 square feet of land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;

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- D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. The building materials used in the construction of the addition shall be compatible with the existing structure.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 12, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 406 September 12, 1989, (Tape 1), Scheduled case of:

8:15 p.m. CHARLES & SUSAN BEVELACQUA, VC 89-S-073, application under Sect. 18-401 of the zoning Ordinance to allow construction of garage addition to dwelling to 19.1 feet from front lot line and 4.5 feet from side lot line (30 ft. min. front yard and 8 ft. min. side yard required by sect. 3-307), located at 5902 Hall Street, on approximately 9,298 square feet of land, zoned R-3(C), Springfield District, Tax Map 79-3((16))53.

Greg Riegle, Staff Coordinator, presented the staff report.

Charles Bevelacqua, 5902 Hall Street, stated that he and his wife, Susan, are the applicants. Although there is a lot of open space on the property there is no other place to put a garage that will not be an encroachment on lot lines. Lot 54 is the only adjacent property that has a residence on it at present.

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In answer to Mr. Hammack's question regarding the steepness of the grade, Mr. Bevelacqua informed him the front of the lot was fairly level then it drops at the back of the house to about a 45° angle. The house on Lot 54 is approximately 5 to 10 feet forward of Mr. Bevelacqua's house.

Chairman Smith called for speakers in support of the application.

Joseph Blaze, 5903 Hall Street, who lives directly across the street from Mr. Bevelacqua, stated he had no objections whatsoever to this application. He believes it would enhance Mr. Bevelacqua's property and his, too.

Chairman Smith called for speakers in opposition. Hearing no reply, he called for staff closing comments. Staff had no further comments and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant the request subject to the development conditions contained in the staff report dated September 5, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-s-073 by CHARLES AND SUSAN BEVELACQUA, under Section 18-441 of the Zoning Ordinance to allow construction of garage addition to dwelling to 19.1 feet from front lot line and 4.5 feet from side lot line, on property located at 5902 Hall Street, Tax Map Reference 79-3((16))53, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owner of the land.
2. The present zoning is R-3(C).
3. The area of the lot is 9,298 square feet of land.

This application meets all of the following Required Standards for Variances in Section 18-444 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BEA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A building permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 408 September 12, 1989, (Tape 1), Scheduled case of:

8:30 p.m. UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, SPA 73-P-007-2, application under Sects. 3-103 and 8-901 of the zoning Ordinance to amend 8-7-73 for a church and related facilities to permit additional land area with existing structures, a building addition to the church addition of two (2) temporary buildings and additional parking with modification of the dustless surface requirement, located at 2854 Hunter Mill Road, on approximately 5.3145 acres of land, zoned R-1, Providence District, Tax Map 47-2((1))17C and 18.

Denise James, Staff Coordinator, presented the staff report. She suggested that development condition number 6 be revised by changing the word minimum to "maximum" so that the condition would read "shall be a maximum of 152 spaces." She stated that staff recommended approval of the application subject to the development conditions contained in the staff report.

Marie Travesky, attorney for the applicant, 3900 Jermantown Road, Fairfax, Virginia, came forward. She stated that the parcel of land with an existing house is being added and the church would like to construct an addition to be used as a multipurpose/fellowship hall and Sunday school facility. She stated that the church is also requesting approval for two temporary parkos, one to be located behind the existing church and one behind Unity House. Ms. Travesky stated that the church does not know the exact size of the parkos, but they will not exceed the footprint shown on the revised plat. The church is asking that the BEA approve the plat that was submitted on August 28, 1989 showing an additional 2,000 square feet. Mrs. Travesky stated the applicant has spoken with both neighbors and submitted a letter from Mr. Roth requesting that if the existing vegetation is removed in order to construct the addition, that a natural barrier, something like a hedge, be installed. Mrs. Travesky stated that the applicant would be willing to work with Mr. Roth. The property owners on the south side have no objection but they would like some additional trees between their property and that of the applicant and the placement of the addition will retain some very significant trees in the front of the property. The front of the building is located 60 feet from the boundary line, three projections of the addition intrude into the 25 foot buffer, the rest of the building is significantly removed from the buffer, has much less visual impact and with this design will be able to screen the service areas from the neighbors and the street. The applicant requested that condition number 2 be revised to include "revision dated August 28, 1989."

Chairman Smith informed the applicant that the revision was noted on the plat that had been submitted at the public hearing, so the addition to number 2 was not necessary.

Mrs. Travesky stated the applicant is also requesting condition number 15 be deleted since the revised plat has been submitted.



Chairman Smith asked for any speakers in support of the application.

Hope Price, 3605 Leedl Place, Fairfax, Virginia, spoke in support of this application stating that this is just the first phase of development for the church and that they hope to come back within a short time with the expansion plans of their long range planning, but for now this addition needs to be done to take care of their current and future needs. She added that they are willing to put in abundant screening as needed on both sides of the property for the neighbors' privacy.

Charles Sneider, 1519 Parkland Court, Reston, Virginia, treasurer of the church and Chairman of the Building Committee, stated that the church is encroaching in the 25 foot screening buffer requirements but is not over the 20 foot property line ordinance requirement. The church is willing to put in hedging and do what is requested by the County Arborist and asked the BZA to approve this application.

There were no speakers in opposition to the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris prior to making the motion stated that this is a very good land use as she had visited the site and the site is heavily wooded. She added that she would like to grant in part with the changes to the development conditions as suggested by staff; however, she stated that she believed that the applicant should adhere to the required buffer as the area is zoned R-1 and will be developed with houses at some time in the future. Mrs. Harris then moved to approve the application with the addition of condition number 15 which stipulated that the addition be moved back 25 feet from the property line.

Mr. DiGiulian stated that he would agree with that except the Board has received a letter from the adjacent property owner stating no objection to the proposal as it has been submitted. Because the land is not yet developed, people planning to buy the new houses will see what is there.

Mr. Hammack seconded the motion for discussion purposes. He further stated that he agreed with Mrs. Harris' position since the applicant has a large parcel of land and basically it is a good land use. He stated that he did not understand why the architect feels he has to configure the addition that close to the property line. Concerning the adjacent property, he stated that property is not always developed the way the County thinks it will be and the Board should protect the residential character. He stated that this is not the best planning. Staff has been very consistent in requiring screening for institutional uses and it is not just one corner of the building within the screening yard, but three. He said that if the applicant wants to expand later, they should think about providing adequate screening now.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 73-P-007-2 by UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, under Section 3-103 and 8-901 of the Zoning Ordinance to amend 8-7-73 for a church and related facilities to permit additional land area with existing structures, a building addition to the church addition of two (2) temporary buildings and additional parking with modification of the dustless surface requirement, on property located at 2854 Hunter Mill Road, Tax Map Reference 47-2(1)17C and 18, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.3145 acres of land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-915 of the Zoning Ordinance.

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NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity for Unity of Fairfax Church of the Daily Word shall be limited to a total of 295.
6. The number of parking spaces provided shall satisfy the maximum requirement set forth in Article 11 and shall be a minimum of 152 spaces. All parking shall be on site. Handicapped parking spaces shall be located in accordance with the County Code.
7. Transitional Screening 1 (25') shall be provided around northern, western and southern lot lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. Screening along the site frontage on Hunter Mill Road shall be modified to allow the existing landscaping and natural vegetation to be maintained with no additional plantings required. Vegetation and trees which are located outside of the limits of clearing and grading or which are specifically designated to be preserved by the County Arborist and which are removed or damaged during construction shall be replaced with equivalent plantings as determined by the County Arborist. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance.
9. The barrier requirement shall be waived.
10. Right-of-way to 45 feet from existing centerline of Hunter Mill Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary access easements to 15 feet behind the 45 feet of right-of-way dedication shall be provided to facilitate these improvements.  
  
The existing entrances to Hill House from Hunter Mill Road shall be closed.
11. Any proposed new lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
12. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site.
13. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.

Speed limits shall be kept low, generally 10 mph or less.

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The areas shall be constructed with clean stone with as little fines material as possible.

The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

Runoff shall be channeled away from and around driveway and parking areas.

The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

- 14. At the request of the Director, Department of Environmental Management, a pro-rata participation shall be provided for the implementation of proposed regional pond D-31.
- 15. A revised plat shall be submitted which relocates the proposed building addition out of the required transitional screening yard and which denotes the height, dimensions, and square footage for all structures and the overall Floor Area Ratio for the site.
- 16. The use of the temporary parco buildings is approved for a period of five (5) years beginning from the date of final approval of this special permit or until the building addition is completed, whichever occurs first. With appropriate approvals from DEM, the temporary parco buildings may be placed on site prior to final site plan approval for the building addition.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 411, September 12, 1989, (Tape 1), After Agenda Item:

Approval of the Minutes from July 20, and July 27, 1989 BZA Meeting

Mr. Hammack made the motion to approve the minutes as presented. The motion was seconded by Mr. DiGiulian and carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble being absent.

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Page 411, September 12, 1989, (Tape 1), After Agenda Item:

Robert Bee Appeal

Mrs. Thoresen made the motion to accept the appeal as being complete and timely filed and scheduled the hearing date for November 28, 1989 at 11:00 a.m. The motion was seconded by Mrs. Harris and carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble being absent.

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Page 412, September 12, 1989, (Tape 1), After Agenda Item:

Dr. Thomas Roehr Appeal

Mrs. Thonen made the motion to schedule the hearing date for November 28, 1989 at 11:30 a.m. The motion was seconded by Mrs. Harris and carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble being absent.

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Page 412, September 12, 1989, (Tape 1), After Agenda Item:

Edlin School SP 89-C-026

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that Marie Travasky, the applicants representative, has written a letter requesting a change in development condition number 9 which pertains to the right-of-way dedication. She has asked that the 45 feet from the design centerline be changed to 30 feet from center line.

Mrs. Thonen made the motion to reopen the public hearing for the purpose of reconsidering a change to condition number 9. The motion was seconded by Mr. Hammack and carried unanimously.

Ms. Kelsey then suggested that there be an additional change to number 14 to read: "The students shall be transported to school by van or with three full time teachers. The school shall make every effort to have a maximum total of five vehicles and all five shall make a right turn into the property in the a.m. and a right turn leaving the premises in the p.m. A sign shall be posted stating right-turn only to be put on the property."

Prior to the vote, Mrs. Thonen moved to adopt the revision to condition number 9. The Board did not accept staff's recommendation to revise condition number 14. The motion was seconded by Mrs. Harris and the motion carried by a vote of 4-0-1 with Mr. Hammack abstaining, Mr. Kelley and Mr. Ribble being absent.

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Page 412, September 12, 1989, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing for the Mormon Church

Mrs. Thonen made the motion to deny the out-of-turn public hearing. The motion was seconded by Mrs. Harris and carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble being absent.

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As there was no other business to come before the Board, the meeting was adjourned at 9:45 p.m.

Alicia Caperton  
Alicia Caperton, substituting for the  
Clerk to the Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 12/5/89

APPROVED: 12/12/89

The regular meeting of the Board of zoning Appeals was held in the Board Room of the Massey Building on Thursday, September 14, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

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Chairman Smith opened the meeting at 9:15 a.m. with the invocation.

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Page 43 September 14, 1989, (Tape 1), scheduled case of:

9:00 A.M. MOUNT VERNON HEALTH AND RACQUET CLUB, INC., SPA 80-L-085-2, application under Sects. 4-803 and 3-303 of the Zoning Ordinance to amend S-80-L-085 for commercial tennis courts, similar courts, to permit building addition, addition of a commercial swimming pool, and increase in number of employees, located at 7952 Audubon Avenue on approximately 5.32 acres of land, zoned C-8 and R-3, Lee District, Tax Maps 101-2((1))14 and 15. (DEFERRED FROM 6/22/89 FOR ADDITIONAL INFORMATION. DEFERRED FROM 7/6/89 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She stated that staff had originally recommended denial; however, the applicant had submitted revised plans reducing the size of the building and addressing other staff concerns. Therefore, staff now recommended approval of the application subject to the development conditions in the Addendum.

Chuck Almqvist, with the Office of Transportation, appeared before the Board to explain the distances required for the travel lane, curb/gutter, and pedestrian walkway.

Lynn H. Townsend, 8280 Greensboro Drive, McLean, Virginia, attorney for the applicant, presented the applicant's revised request as outlined in the statement of justification submitted with the application.

Irene Ritchy, 7828 Flamingo Drive, Alexandria, Virginia, President of the Homeowners Association, Audubon Trailer Park, appeared before the Board in support of the request.

Scott Mitchler, 7922 Flamingo Drive, Alexandria, Virginia, owner of a trailer contiguous to the subject property, also spoke in support of the request.

There were no speakers in opposition to the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Thonen moved to grant SPA 80-L-085-2 subject to the development conditions contained in the addendum to the staff report dated September 7, 1989, as modified by the Board. She complimented the applicant for working with the citizens and stated that recreational uses are needed in that area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-L-085-2 by MOUNT VERNON HEALTH AND RACQUET CLUB, INC., under Section 4-803 and 3-303 of the Zoning Ordinance to amend S-80-L-085 for commercial tennis courts, similar courts to permit building addition, addition of a commercial swimming pool and a school of special education (aerobics), and increase in number of employees, on property located at 7952 Audubon Avenue, Tax Map Reference 101-2((1))14 and 15, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 5.32 acres of land.
4. The applicant has worked with the people in the area to work out the problems and come up with the plan that all seem to be in agreement.
5. A recreation facility is being enlarged in the area where there is a need for any recreation.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-307, and 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 116. All parking shall be on site.
7. Transitional Screening 1 (25') shall be provided on all boundaries of the property except along a portion of the eastern lot line from the existing parking lot to the front lot line where the transitional screening requirement shall be modified to allow the existing vegetation to satisfy this requirement. The applicant shall replace the existing chicken wire fence along the northeastern property line with a wooden fence and repair the existing fence where needed.

If a fence is installed along the western lot line, it shall be a six foot (6') chain link fence and shall be placed on the outside of the Transitional Screening yard. The fence along the eastern lot line shall be as shown on the approved plat. The barrier requirement shall be waived along the front lot line.

8. Use of the tennis courts shall be between 9:00 A.M. and 10:00 P.M. and they be lighted in accordance with the standard conditions as follows:

The combined height of the light standards and fixtures shall not exceed twenty-two (22) feet.

The lights shall be a design which focuses the light directly onto the subject property. The tennis courts shall be lighted.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

9. Any proposed lighting of the parking areas shall be in accordance with the following:

The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall be a design which focuses the light directly onto the subject property. The tennis courts shall be lighted.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

10. The use of any outside loudspeakers, shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and the provisions of this Chapter shall not be waived. Any noises made shall not be loud enough as to be disruptive to the adjacent properties.
11. During semi-annual or annual cleaning or draining, pool water shall be treated to achieve a pH of 7 and a minimum dissolved oxygen content of 4.0 milligrams per liter prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.

12. A soil survey shall be completed if determined necessary by the Director, Department of Environmental Management (DEM), prior to site plan approval.
13. The geotechnical study shall be prepared by or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan and implemented as determined by DEM.
14. The hours of operation shall be limited to 6:00 a.m to 12:00 p.m., for (7) seven days a week. There shall be no outside activities before 9:00 a.m.
15. The size of the aerobic classes shall be limited to no more than 35 persons at a time.
16. On site trash collection shall be provided in such a manner that will allow proper turnaround capability so trash trucks do not have to back onto Audubon Avenue.  
  
The details of this maneuvering area shall be as determined by DEM (Department Of Environmental Management). The trash collection area shall be relocated from its present location in order to provide the required travel aisle and pedestrian walkway from the parking lot to the entrance to the building.
17. The building height shall be limited to that shown on the elevations submitted as part of this application.
18. The number of employees shall be limited to 10 at any time.
19. The applicant shall submit a tree preservation plan for the review and approval of the County Arborist, so that the potential for incorporating existing high quality vegetation into the development plan can be determined.
20. The required width of the travel aisle shall be twenty (20) feet exclusive of curb and gutter if required and the pedestrian walkway around the northeast corner of the existing building on Parcel 14 shall be as approved by the Department of Environmental Management (DEM) at the time of site plan review.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the construction of the first phase of the building has started and been diligently pursued, and the last phase begun within five (5) years of the final approval date, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Bigulian seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mr. Hammack not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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9:15 A.M. NARIR A. BHAGAT, VC 89-M-074, application under Sect. 18-401 of the Zoning Ordinance to allow construction of second story addition to existing attached garage 8.8 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), located at 3411 Fiddlers Green, on approximately 15,107 square feet of land, zoned R-2, Mason District, Tax Map 61-1((11))647.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Narir A. Bhagat, 3411 Fiddlers Green, Falls Church, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application. He stated that the addition would not extend any farther out than the existing structure.

There being no further speakers to address this application, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to approve VC 89-M-074 in accordance with the development conditions contained in Appendix 1 of the staff report dated September 7, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-074 by NAZIR A. BHAGAT, under Section 18-401 of the Zoning Ordinance to allow construction of second story addition to existing attached garage 8.8 feet from side lot line, on property located at 3411 Fiddlers Green, Tax Map Reference 61-1(11)647, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,107 square feet of land.
4. The application meets all nine standards, specifically under No. 2, F. and G, extenuating circumstances of the subject property. The way the house is placed on the lot doesn't leave the applicant any other place to build.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:



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1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, eighteen (18) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mr. Hammack not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 47 September 14, 1989, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. JULIE CAMPAGNA APPEAL, A 89-D-010, application under Sect. 18-300 of the zoning Ordinance to appeal Zoning Administrator's revocation of special permit for private school of general education with summer day camp, located at 1616 Hunter Mill Road, on approximately 5 acres of land, zoned R-E, Dranesville District, Tax Map 18-3((3))1.

Chairman Smith asked if the appellant was ready to proceed with the public hearing.

Harold O. Miller, Esquire, 11715 Bowman Green Drive, Reston, Virginia, attorney for the appellant appeared before the Board and explained that the appellant had filed a special permit application and asked that the Board defer the appeal so that both cases could be heard simultaneously.

In response to the Board's questions, Mr. Miller replied that the appellant had made a mistake by expanding the number of students and the parking lot without prior approval of the BZA but that most of the violations had been corrected.

Mr. Kelley asked if staff agreed with the deferral.

William E. Shoup, Deputy Zoning Administrator, stated that staff did not agree with the deferral due to the amount of time that has elapsed since the appellant first agreed to file the special permit as well as correct the deficiencies. He noted that the appellant had recently filed a special permit amendment but if the BZA upholds the Zoning Administrator's decision then there would be no special permit to amend and it would have to be converted to a new special permit. Mr. Shoup added that staff would be willing to work with the appellant to expedite the process if she filed a new special permit.

In response to questions from the Board, Mr. Shoup replied that if the BZA proceeded with the public hearing and upheld the Zoning Administrator then the school would be closed. He again stated that staff could not support the request for a deferral.

The Board and Mr. Miller discussed the number of violations which staff indicates still exists.

Mrs. Thonen moved that the request of the appellant to defer A 89-D-010 be denied.

Mrs. Harris seconded the motion which was defeated by a vote of 2-4 with Mrs. Harris and Mrs. Thonen voting aye; Chairman Smith, Mr. Kelley, Mr. Ribble and Mr. DiGiulian voting nay. Mr. Hammack was not present for the vote.

Mr. Kelley then moved that the hearing for A 89-D-010 be scheduled on the same date as the special permit.

Mr. DiGiulian seconded the motion.

The Board asked staff to work with the applicant to resolve the special permit issue so that both cases could be heard on the same day.

Following a discussion between the Board and Mr. Shoup as to whether or not the appellant had a valid special permit, Mrs. Thonen asked if staff could come back within

Page 418 September 14, 1989, (Tapes 1 and 2), (Julie Campagna Appeal, A 89-D-010, continued from Page 417)

a week to the Board with an answer. Mr. Shoup replied that he would be discussing this with the Zoning Administrator and the County Attorney's office to determine whether or not the special permit is valid.

The motion passed by a vote of 6-0 with Mr. Hammack not present for the vote.

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Page 418 September 14, 1989, (Tape 2), Scheduled case of:

10:00 A.M. MICHAEL T. AND REBECCA T. WHITE, SP 89-P-030, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow attached garage to remain 0.6 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), located at 6802 Jackson Avenue, on approximately 7,320 square feet of land, zoned R-4, Providence District, Tax Map 50-4((15))105.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

H. Kendrick Sanders, Esquire, 3905 Railroad Avenue, Suite 200N, Fairfax, Virginia, attorney for the applicants, appeared before the Board and explained the applicant's position as outlined in the statement of justification submitted with the application. He submitted a letter from someone in the neighborhood who had no objection to the garage.

The Board members discussed two letters contained in the file from two other property owners in the area who objected to the garage remaining in its present location.

Michael T. White, 6802 Jackson Avenue, Falls Church, Virginia, the applicant, appeared before the Board and further explained his position on the application.

Mr. Sanders stated that the applicants bought the property with the garage and when they went to settlement, the survey showed the correct location of the garage to be 0.6 feet from the lot line.

Chairman Smith stated that was not what the letter of opposition indicated. The Board discussed the letter with Mr. Sanders.

There being no further speakers either in support or in opposition to the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons stated in the Resolution.

Mr. Hammack stated that Mr. White had an adjustment in the mortgage amount because of the violation. He added that he would never go along with allowing a garage six inches from a lot line. He believed that the realtor had misled the Whites even more if she had indicated that it was even a valid carport, when it is not.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-030 by MICHAEL T. AND REBECCA T. WHITE, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow attached garage to remain 0.6 feet from side lot line, on property located at 6802 Jackson Avenue, Tax Map Reference 50-4((15))105, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1989; and

WHEREAS, the Board has made the following findings of fact:

THAT Mr. Yong, the person who built the addition is not present to present the facts that surrounded his building the addition. Mr. Yong did the building and it is not in compliance with the original building permit application obtained from the County. A survey should have been done to locate the property line accurately. People who wish to build must realize that they must know where their property line is. It is obvious that this building is detrimental to the adjacent property and it should have the required setback as opposed to seven inches.

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If this Special Permit were approved, the BEA would be changing the character of the area by allowing garages to be that close to the property line.

The current owners, Mr. and Mrs. White, did acknowledge that they had knowledge of this, that it was in violation, and this problem should have been addressed before it was sold.

The Board has determined that the application does not meet all of the following required standards:

- A. The error exceeds ten (10) percent of the measurement involved, and
- 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, and
- C. Such reduction will not impair the purpose and intent of this Ordinance, and
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- E. It will not create an unsafe condition with respect to both other property and public streets, and
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
- 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 impair the intent and purpose of the Zoning Ordinance, and 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 create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would not cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Hammack seconded the motion which carried by a vote of 4-3 with Chairman Smith, Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting aye; Mr. DiGiulian, Mr. Kelley, and Mr. Ribble voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 419 September 14, 1989, (Tape 2), Scheduled case of:

10:15 A.M. FAIRFAX UNITARIAN CHURCH, SPR 84-P-029-1, application under Sect. 8-901 of the Zoning Ordinance to amend SP 84-P-029 for renewal of waiver of dustless surface requirement for church and preschool, located at 2709 Hunter Hill Road, on approximately 10.575 acres of land, zoned R-1, Providence District, Tax Map 37-4((1))23.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which recommended approval of the application subject to the development conditions set forth in Appendix 1 being implemented.

Sue Price, 7601 Lyle Avenue, Falls Church, Virginia, appeared before the Board on behalf of the applicant and explained the request as outlined in the statement of justification.

There being no further speakers to address this application, nor any staff closing comments, Chairman Smith closed the public hearing.

Mr. Ribble moved to grant SPR 84-P-029-1 subject to the development conditions contained in Appendix 1 of the staff report dated September 7, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 84-P-029-1 by FAIRFAX UNITARIAN CHURCH, under Section 8-901 of the Zoning Ordinance to amend SP 84-P-029 for renewal of waiver of dustless surface requirement for church and preschool, on property located at 2709 Hunter Mill Road, Tax Map Reference 37-4((1))23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 10.575 acres of land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.\*
2. This approval is granted for the gravel surfaces indicated on the plat submitted with this application, except as qualified below.\*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.\*
4. A Non-Residential Use Permit for the use shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.\* No new Non-Residential Use Permit is necessary for the continuation of the gravel parking lot.
5. Seating capacity in the principal area of worship shall be three hundred (300).\*
6. Seventy-six (76) parking spaces shall be provided, four (4) of which shall be designated as handicapped parking spaces. The location of the handicapped parking spaces shall be along the circular driveway leading to the proposed sanctuary. The exact location shall be determined by the Director, Department of Environmental Management (DEM) in accordance with Sect. 11-102 of the Zoning Ordinance.\*
7. Interior parking lot landscaping shall be provided in accordance with the provisions of Article 13.\*
8. The transitional screening and barrier requirement may be modified to recognize existing vegetation provided supplemental screening is provided if deemed necessary by the Director, DEM.\*
9. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.
10. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines.\* The waiver of the dustless surface shall expire five (5) years from the date of the final approval date.
  - o Speed limits shall be kept low, generally 10 mph or less.
  - o The areas shall be maintained with clean stone with as little fine material as possible.

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- o The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring.
- o Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
- o During dry seasons, water shall be applied to control dust.
- o Runoff shall be channeled away from and around driveway and parking areas.
- o The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

The above conditions incorporate all applicable conditions of the previous special permit approvals for the church. The asterisk designates 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.

Mrs. Harris seconded the motion. The motion carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 421 September 14, 1989, (Tape 2), Scheduled case of:

11:00 A.M. HUNTER DEVELOPMENT APPEAL, A 89-S-009, application under Sect. 18-103 of the Zoning Ordinance to appeal Zoning Administrator's determination regarding development potential of appellant's property, on approximately 10.7 acres of land, zoned RC, Springfield District, Tax Map 66-3((1))39 and 65-2((1))pt. 24.

The board unanimously agreed to defer A 89-S-009 to September 26, 1989 at 11:45 a.m.

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Mrs. Thonen moved that the Board go into Executive Session to consult with attorney, Brian M. McCormack regarding the case of Calvary Memorial Park Appeal. Mrs. Harris seconded the motion which passed by a vote of 7-0. The Board reconvened following the Executive Session and made a disclosure that the Board had only discussed matters relating to Calvary Memorial Park.

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Page 421 September 14, 1989, (Tape 2), Scheduled case of:

11:30 A.M. J. OSCAR HINSHAW, VC 89-P-075, application under Sect. 18-401 of the Zoning Ordinance to allow construction of two additions to dwelling, one to 19.8 feet and the other to 19.9 feet from rear lot line and to allow enclosure of existing carport for a garage to 10.3 feet from the side lot line (25 ft. min. rear and 12 ft. min. side yards required by Sect. 3-307), located at 9712 Bunchberry Place, on approximately 10,676 square feet of land, zoned R-3, Providence District, Tax Map 48-1((9))60A.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

J. Oscar Hinshaw, 9712 Bunchberry Place, Vienna, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application.

There being no further speakers to address this application, not any staff closing comments, Chairman Smith closed the public hearing.

Mr. Hammack moved to grant VC 89-P-075 in accordance with the development conditions contained in Appendix 1 of the staff report dated September 7, 1989, as modified by the Board.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-075 by J. OSCAR HINSHAW, under Section 18-401 of the Zoning Ordinance to allow construction of two additions to dwelling, one to 19.8 feet and the other to 19.9 feet from rear lot line and to allow enclosure of existing carport for a garage to 10.3 feet from the side lot line, on property located at 9712 Bunchberry Place, Tax Map Reference 48-1((9))60A, 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 14, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,676 square feet of land.
4. The applicant's lot is irregularly shaped at the end of the cul-de-sac and is 10 feet further back than the minimum required front yard requirement.
5. There is no other location on the property where the improvements could be constructed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

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2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.
4. Materials which are compatible and in harmony with the existing dwelling shall be used.

Mr. McGiulian seconded the motion. The motion carried by a vote of 5-0 with Mr. Ribble and Mr. Kelley not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this variance.

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11:45 A.M. CHARLES AND WENDY HARDY, VC 89-S-076, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07), located at 15160 Wetherburn Drive, on approximately 13,034 square feet of land, zoned R-C, WSP0D, Springfield District, Tax Map 53-4((8))231.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Charles and Wendy Hardy, 15160 Wetherburn Drive, Centreville, Virginia, the applicants, appeared before the Board and explained their request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Thonon moved that the Board approve VC 89-S-076 subject to the development conditions contained in Appendix 1 of the staff report dated September 7, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-076 by CHARLES AND WENDY HARDY, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16 feet from side lot line, on property located at 15160 Wetherburn Drive, Tax Map Reference 53-4((8))231, Mrs Thonon moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1989; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,034 square feet of land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.
2. Under Sect. 18-407 of the zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the zoning Administrator prior to the expiration date.
3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 to 0 with Mr. Ribble and Mr. Kelley not present for the vote.

Mrs. Thonen made a motion to grant the applicant a waiver of the eight day waiting period. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1989. This date shall be deemed to be the final approval date of this variance.

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Page <sup>424</sup> September 14, 1989, (Tape 2), Scheduled case of:

12:00 Noon BOWL AMERICA, INCORPORATED, SP 89-S-031, application under Sect. 5-503 of the zoning Ordinance to allow bowling alleys, located on Willard Road, on approximately 3.0906 acres of land, zoned I-5 and WS, Springfield District, Tax Map 33-4((1))pt. 12A.

Denise James, Staff Coordinator, presented the staff report which recommended approval subject to the development conditions contained in Appendix 1 being implemented.

Richard Hobson, Esquire, 8280 Greensboro Drive, McLean, Virginia, appeared before the Board on behalf of the applicant and explained the request as outlined in the statement of justification submitted with the application.

There being no speakers either in support or in opposition to the request, nor any staff closing comments, Chairman Smith closed the public hearing.



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Mr. DiGiulian moved to grant SP 89-S-031 subject to the revised development conditions contained in Appendix I of the staff report dated September 7, 1989, as modified by the Board.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-031 by BOWL AMERICA, INCORPORATED, under Sect. 5-503 of the zoning Ordinance to allow bowling alleys, on property located on Willard Road, Tax Map Reference 33-4((1))pt. 12A, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1989; and

WHEREAS, the board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is I-5.
3. The area of the lot is 3.0906 acres of 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 Section 8-503 of the zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 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. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. These development conditions shall be in addition to and shall not supercede the proffers adopted by the Board of Supervisors in conjunction with the approval of PCA 81 S-079-1 which remain in full force and effect.
6. For purposes of calculating required parking, the number of employees shall be limited to a total of 24 employees with a maximum of 6 employees on site at any one time.
7. The number of parking spaces provided shall not exceed 199 spaces including 3 handicapped spaces. All parking shall be on site.
8. Interparcel access with a public access easement shall be provided on the eastern boundary of the subject property for future access to the adjacent parcel to the east and Upper Cub Run Drive.
9. A soils study shall be conducted to determine if asbestos material is present on the subject property. If DEM, in coordination with the Soil Science Office, determines that a potential health risk exists, appropriate measures shall be taken to (1) ensure that all construction personnel are alerted to this potential health risk, and (2) utilize appropriate construction techniques, as determined by DEM, to minimize this risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities, covered transport of removed materials and appropriate disposal of removed materials.

10. In accordance with the proffers governing this site, stormwater management may be located on or off site. However, in order to address the environmental concerns specifically associated with the proposed use, the following guidelines shall be implemented when designing stormwater management systems which will serve the proposed use:

For any stormwater management pond located on or off site, the stormwater inlets and associated stormwater drainage systems shall be designed to direct the surface water flows from the entire parking lot and entrance road area to the detention pond or ponds. To protect surface and groundwater resources from oil, petroleum, hydrocarbons and grease, all runoff from the impervious surfaces on the subject property shall be conveyed through an oil skimmer or an oil/grit separator provided by the applicant as part of the stormwater management pond or ponds. It shall be proven to the satisfaction of DEM that the grading designs and gravity flows are sufficient to address the distribution of all surface water runoff from the parking lot and entrance road area of this property into the stormwater management pond or ponds.

OR, in the alternative, runoff from the impervious surfaces on the subject property shall be conveyed through an oil/grit separator to be located on the property prior to the discharge of all runoff from impervious surfaces into Schneider Branch. The oil/grit separator shall also include a level spreader to minimize erosion at the outflow.

Where oil/grit separators are provided, they shall be designed in substantial conformance with the methods recommended in Chapter 8 of the Metropolitan Washington Council of Governments (COG) document entitled Controlling Urban Runoff or with other methods approved by DEM. The oil/grit separators shall be cleaned via vacuum pumping at least four times per year. The qualifications of the maintenance operator shall be reviewed and approved by the appropriate Fairfax County Agency as determined by DEM. Oil/grit separator maintenance records shall be kept on-site and shall be made available to County officials upon request.

11. A minimum buffer of 10 feet of undisturbed land area shall be provided between the building and the rear property line in order to minimize impact on the drip lines of existing trees and vegetation within the EQC except within the area up to 40 feet west of the entrance to Willard Road. The applicant shall provide tree replacement to the satisfaction of the County Arborist within the disturbance area at the entrance at Willard Road. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site, particularly in the buffer area along the northern property boundary line. A revised plat shall be submitted to the BZA for final approval showing the requested undisturbed buffer area and the subsequent relocation of the building and parking spaces.
12. In order to protect nearby streams and storm sewers from excessive erosion and sedimentation, sediment detention basins or redundant and/or 100% oversized siltation fencing shall be provided during grading and construction activities. Such measures shall achieve sediment trapping efficiencies of at least 80% and shall be designed in substantial accordance with the methods recommended by the Virginia Erosion and Sediment Control Handbook. All such activities shall be coordinated with DEM.
13. All signs shall conform to Article 12 of the Zoning Ordinance.
14. In order to achieve a maximum interior noise level of 50 dBA Ldn, the proposed building shall be constructed in accordance with the following Guidelines for the Acoustical Treatment of Commercial Building Structures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.  
Doors and windows shall have a laboratory STC rating of at least 28. If windows function as walls (as determined by DEM), they shall have the same laboratory rating as walls.  
Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

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.

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Under Sect. 8-015 of the zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. Ribble and Mr. Kelley not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 427 September 14, 1989, (Tape 2), Scheduled case of:

12:15 P.M. JEFFREY AND PAULA KAISER, VC 89-M-029, application under Sect. 18-401 of the zoning Ordinance to allow construction of a detached garage to 5.6 feet from a side lot line (15 ft. min. side yard required by Sect. 3-207), located at 3503 Beta Place on approximately 24,985 square feet of land, zoned R-2, Mason District, Tax Map 59-4(9)71. (DEFERRED FROM 6/22/89 FOR REVISION OF APPLICATION)

Denise James, Staff Coordinator, informed the Board that notices for this application were not in order.

Mrs. Thonen made a motion that the Board continue VC 89-M-029 to October 24, 1989 at 9:00 a.m. Mr. Hammack seconded the motion which passed by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 427 September 14, 1989, (Tape 2), After Agenda Item:

Cedar Crest Country Club, SP 87-S-049 Additional Time

Mrs. Thonen moved to grant the request for additional time making the expiration date at June 15, 1990. Mr. Hammack seconded the motion which passed by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 427 September 14, 1989, (Tape 2), After Agenda Item:

Friends of Fairfax Station, SP 89-S-040  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that in staff's opinion the public hearing could not be expedited.

It was the consensus of the Board not to grant an out-of-turn hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 1:50 p.m.

Judy Finney  
Judy Finney, substituting for the  
Clerk to the Board of Zoning Appeals

Daniel Smith  
Daniel Smith, Chairman  
Board of Zoning Appeals

SUBMITTED: 1/9/90

APPROVED: 1/18/90