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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 11, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and Robert Kelley. Chairman Daniel Smith and John Ribble were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:18 a.m. and Mrs. Thonen gave the invocation. He asked if there were any Board Matters to bring before the Board and Mrs. Thonen replied that there was.

Mrs. Thonen made a motion of intent to defer the Dorothy V. Beach Appeal, A 90-C-018, scheduled for 11:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Vice Chairman DiGiulian called for the first scheduled case.

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Page 1, December 11, 1990, (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. & BEVERLEY A. BOHRER, VC 90-P-103, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 18.4 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 8,879 s.f. located at 13127 Point Pleasant Dr., zoned R-3, Providence District, Tax Map 45-3(2)(5)5.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bohrer replied that it was. Vice chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegler, Staff Coordinator, presented the staff report and stated that the property is zoned R-3 and is located in an area south of Route 50 and generally east of Stringfellow Road. The surrounding properties in the subdivision are also zoned R-3 and are developed with single family detached dwellings in a manner similar to the subject property. The variance application stems from the applicants' proposal to construct a sunroom addition. The addition is proposed to be located at a portion of the site 18.4 feet from the rear lot line and the zoning Ordinance in the R-3 District requires a rear yard of 25.0 feet. Accordingly, the applicants are requesting a variance of 6.6 feet to the minimum rear yard requirement. Mr. Riegler stated that the dwellings on adjacent Lots 22 and 23 are located approximately 30.0 feet from the shared rear lot line.

The applicant, James C. Bohrer, 13127 Point Pleasant Drive, Fairfax, Virginia, addressed the Board and stated that he was requesting the variance in order to construct a season room on the rear of the existing house. He expressed his belief that the addition would compliment the existing structure and add aesthetic value to the neighborhood. He explained that most of the houses in the area are large and many have added additions to the rear of their structures. Mr. Bohrer noted that the depth of the yard has caused the need for the variance. He stated that his house is located on a small curve and that the lot is narrow. He stated that the four immediate neighbors have added rooms to the rear of their houses but did not require a variance because of the location of their structures and the depth of their lots.

In conclusion, Mr. Bohrer stated that the addition would be in character with the neighborhood, would not lower the standards or value of the property, and that he would like the addition to improve his standard of living.

Mrs. Harris' stated that the Board must address the hardship requirement. She referred to the statement of justification and asked if the applicants' hardship justification was the resale value of the property. Mr. Bohrer stated that the resale issue was the basic hardship justification. He explained that the house is small and the afternoon sun shines into the backyard. He stated because of these two factors, he would like to construct a sunroom.

Mrs. Thonen noted that the shallow lot is 27.0 feet deep and with the 25.0 foot setback, the applicants have only 2.0 feet to build without obtaining a variance. She expressed her belief that the curve and the placement of the house on the lot had caused the narrow width of the rear yard.

In response to Mr. Kelley's question as to whether the dwellings on the lots behind the applicants' property were 30.0 feet from the shared lot lines, Mr. Riegler stated that he was correct. Mr. Kelley that noted that there was only a 1.5 foot difference to the neighbors' lots.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 90-P-103 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-103 by JAMES C. AND BEVERLEY A. BOHRER, under Section 18-401 of the Zoning Ordinance to allow addition 18.4 feet from rear lot line, on property located at 13127 Point Pleasant Drive, Tax Map Reference 45-3(2)(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 December 11, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 8,879 square feet.
4. The other lots in the neighborhood have narrow backyards.
5. The granting of a variance for an addition could constitute a rezoning because other lots in the area are also shallow.
6. The application has not met the standards necessary for the granting of a variance.

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

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

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

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

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

Mrs. Harris seconded the motion which failed by a vote of 2-2 with Mrs. Thonen and Mrs. Harris voting aye; and Vice Chairman DiGiuliano and Mr. Kelley voting nay. Mr. Hammack was not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting. The application was denied for the lack of four affirmative votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1990.

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9:15 A.M. GARY L. MANUSE, SP 90-S-069, appl. under Sect. 3-C03 to allow construction of 2 additions 19.0 ft. from one side lot line and 14.0 ft. from the other side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 11,729 s.f. located at 4355 Silas Hutchinson Dr., zoned R-C and WS, Springfield District, Tax Map 33-4((2))186.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Manuse replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, addressed the Board and stated that the property is zoned R-C and is generally located south of Route 50 and west of Route 28. Surrounding parcels in the subdivision are also zoned R-C and are developed similar to the subject property with single family detached dwellings. The applicant was requesting special permit approval for modification to the minimum yard requirements in the R-C District to allow the construction of two building additions. A two story addition is proposed to be constructed on the south side of the dwelling 19.0 feet from the side lot line. The Ordinance in the R-C District requires a minimum side yard of 20.0 feet. Accordingly, a modification of 1.0 feet to the minimum side yard requirement was requested. The second addition is for a screen porch and deck to be located on the east side of the existing dwelling at a location 14.0 feet from the side lot line. Again, 20.0 feet is required; therefore, a modification of 6.0 feet was requested.

Mr. Riegle stated that it was staff's belief that the application is in harmony with the provision in the Zoning Ordinance for modification of yards in the R-C District. Specifically, the property was previously zoned R-2 and was developed under the cluster provisions of the Zoning Ordinance and each of the additions could have been built by-right with that zoning designation. Perhaps most importantly, based on staff's research analysis, the proposed 14.0 and 19.0 foot side yards are consistent with the existing development surrounding the site. Many of the houses in the area have similar garages and additions put on at the time of construction. Mr. Riegle noted that the property was rezoned subsequent to the construction of most of the dwellings and the side yard requirements have increased commensurate with the R-C zoning.

The applicant, Gary L. Manuse, 4355 Silas Hutchinson Road, Chantilly, Virginia, addressed the Board and presented pictures of the existing structure and drawings of the design for the proposed addition to the Board.

In response to Mrs. Harris' question as to whether the addition would have the same type of siding as the original structure, Mr. Manuse said that it would.

Mr. Manuse explained that the garage foundation was installed when the house was built but he was unable to construct the garage at that time. He said that over the years, he had decided to build the garage and add a second story addition. He noted that proposed addition and garage would not extend further into the yard than the original foundation. Mr. Manuse explained that the same materials would be used so that the addition would blend in with the existing structure. He expressed his belief that the renovations would add aesthetic value and be compatible with the surrounding area.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 90-S-069 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated December 4, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-069 by GARY L. MANUSE, under Section 3-C03 of the Zoning Ordinance to allow construction of 2 additions 19.0 feet from one side lot line and 14.0 feet from the other side lot line, on property located at 4355 Silas Hutchinson Drive, Tax Map Reference 33-4((2))186, 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 December 11, 1990; and

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

1. The applicant is the owner of the land.

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2. The present zoning is R-C.
3. The area of the lot is 11,729 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.
8. The application has met the standards necessary for the granting of a special permit.
9. The applicant could have previously constructed the additions by-right.
10. The proposed additions will be consistent with the neighborhood.

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

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

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

1. This special permit is approved for the location of the specific additions (two floors on south, screened porch and deck on east) 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.

Under Sect. 18-407 of the Zoning Ordinance, this special permit 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.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith 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 December 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 4, December 11, 1990, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL J. DALTON III, VC 90-D-104, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.3 ft. from side lot line (12 ft. min. side yard required by Sect. 3-107) on approx. 20,040 s.f. located at 12184 Holly Knoll Circle, zoned R-1 (developed cluster), Dunesville District, Tax Map 6-1((7))61.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Dalton replied that it was except for two corrections. He stated that his lot is approximately 90.0 feet wide and the neighboring house is approximately 115.0 feet from the road. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, stated that the subject property is located north of Leesburg Pike (Rt. 7) and southeast of the Loudoun County/Fairfax County Corporate Line at 12184 Holly Knoll Circle. The applicants are the co-owners of Lot 61 (totaling 20,040 square feet and zoned R-1) which is developed under the cluster provisions of the Zoning Ordinance. The property is presently developed with a two-story, single-family detached dwelling with a one-car garage.

He stated that the applicant was requesting a variance to allow a one-car garage addition to be built on the existing dwelling which also lies 29.2 feet from the western side lot line, at a location 3.3 feet from the eastern side lot line. This proposed one-car garage would be constructed directly adjacent to the dwelling's existing one-car garage, resulting in a two-car garage. The existing driveway would be expanded and widened to access the proposed addition.

Mr. Jaskiewicz further stated that the zoning Ordinance requires a minimum side yard of 12.0 feet and a total minimum of 40.0 feet. Therefore, the applicant was requesting a variance of 8.7 feet to the minimum side yard requirement and, given the unmodified distance to the western side lot line, a variance of 7.5 feet to the total minimum side yard requirement.

The applicant, Michael J. Dalton III, 12184 Holly Knoll Circle, Great Falls, Virginia, addressed the Board and stated that he would like to add a second bay to the existing one car

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garage. He presented a petition and a letter of support from the neighbors. He referred to the sketch which depicted the proposed garage addition and noted that material similar to the existing structure would be used. Mr. Dalton said that he had been Chairman of the Architectural Review Committee of his association since 1983, and therefore, assured the Board that the garage would be in conformance with the integrity of the community.

Mr. Dalton used the viewgraph to show the exceptionally narrow lot. He noted that the width of the lot varied from approximately 93.0 feet at the street to 100.0 feet at the house line, and was 200.0 feet deep. He stated that while the shape of his lot is rectangular, most of the lots in the area are more pie shaped and wider. Mr. Dalton said that the house on the adjacent property is located approximately 115.0 feet from the street and a good distance from the applicant's house. In addition, two groves of mature tree shield the properties. He noted that two neighbors have received variances, one for a garage and one for a room addition.

He expressed his belief that the application satisfied all nine requirements necessary for the granting of a variance. Mr. Dalton noted that most of the houses in the Holly Knoll Subdivision have two car garages. He stated that he was requesting the variance because of vandalism, exposure to the elements, storage, the disorderly appearance of the cars parked on the street, and the market value of the property. In closing, Mr. Dalton said that the garage addition would add aesthetic value to the community and asked the Board to grant the request.

In response to Mr. Kelley's question about the variances grant in the neighborhood, Mr. Dalton stated he had no information regarding the room addition setback.

Mr. Jaskiewicz stated that a room addition variance was granted on Lot 48 and the two car garage variance was granted on Lot 58, but he did not have the particulars.

Mr. Kelley asked Mr. Dalton if he had any information regarding the setback on Lot 58 and noted the easement adjoining it. Mr. Dalton said that the easement belonged to the homeowners association, but he did not know how close the garage was to the property line. Mr. Kelley stated that he was concerned with the addition being 3.3 feet from the lot line. Mr. Dalton explained that the house on the abutting lot was built 65.0 feet further back on the lot; therefore, would have no detrimental impact on the property.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 90-D-104.

The motion died for lack of a second.

Mr. Dalton asked the Board why two other variance in his neighborhood were approved and his was denied. He stated that it did not make sense to deny the variance. He noted that he had worked hard and could not understand why the request was denied for lack of a second.

Mr. Hammack made a motion to deny VC 90-D-104 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 4, 1990.

Mrs. Harris seconded the motion which carried by a vote of 3-1 with Vice Chairman DiGiulian, Mrs. Harris, and Mr. Hammack voting aye; and Mr. Kelley voting nay. Mrs. Thonen was not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Mr. Dalton stated that the decision was unfair and asked if there was an appeal process. Vice Chairman DiGiulian said that he could appeal the decision to the Circuit Court.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-104 by MICHAEL J. DALTON III, under Section 18-401 of the Zoning Ordinance to allow addition 3.3 feet from side lot line such that side yards total 32.5 feet, on property located at 12184 Holly Knoll Circle, Tax Map Reference 6-1(7)61, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 20,040 square feet.
4. An addition 3.3 feet from the side lot is too close.

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5. The applicant has reasonable use of the property and has an existing garage.
6. It is unfortunate that the house was built off-center. The lot may be narrow but it is also 20,040 square feet.
7. There may be other sites on the property where the garage could be located.
8. The application has not satisfied the standards necessary for the granting of a variance.

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

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

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 3-1 with Vice Chairman DiGiulian, Mrs. Harris and Mr. Hammack voting aye and Mr. Kelley voting nay. Mrs. Thonen was not present for the vote. Chairman Smith 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 December 21, 1991.

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Page 6, December 11, 1990, (Tape 1), Scheduled case of:

9:45 A.M. MANSION HOUSE YACHT CLUB INC., SPA 80-V-112-2, appl. under Sects. 3-203 and 8-915 of the Zoning Ordinance to amend SPA 80-V-112-1 for community marina to allow increase in parking and modification of waiver of dustless surface requirement on approx. 2.9 acres located at 9321 Old Mount Vernon Rd., zoned R-2, Mt. Vernon District, Tax Map 110-4((8))3.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Nixon replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members. Mr. Kelley stated for the record that previously his family may have been a member of the club, but are no longer affiliated with it. Vice Chairman DiGiulian called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and said that the Mansion House Yacht Club is located on the Potomac River south of the Mount Vernon Historical Monument, north of Dogue Creek and east of Old Mt. Vernon Road. The subject 2.9 acre property, zoned R-2, and lying in floodplain bottomland, is accessed through the Mansion House Swim Club property via a one-lane gravel drive. Surrounding properties are also zoned R-2, and with the exception of the Mansion House Swim Club, are developed or approved to be developed with single family detached dwellings. The applicant, Mansion House Yacht Club, Inc., is the owner of Lot 3, which was developed with a community marina including a gravel vehicular parking area and boat storage facilities.

Page 1, December 11, 1990, (Tape 1), (MANSION HOUSE YACHT CLUB INC., SPA 80-V-112-2, continued from Page 6 )

The applicant was requesting approval of a Special Permit Amendment to modify existing Special Permit, S-80-V-112, to waive the dustless surface requirement to allow the existing driveway and parking area to remain gravel. The Special Permit Amendment, SPA 80-V-112-1, granted in-part on November 8, 1984, conditioned the maximum number of parking and boat storage spaces to 104 spaces and allowed a gravel-surface for a five (5) year term. A modification of the dustless surface is a Group 9 special permit use in the R-2 District. Such uses must comply with the Zoning Ordinance's General Standards, Standards for All Group 9 Uses, and the Provisions for Modifying or Waiving the Dustless Surface Requirements.

Mr. Jaskiewicz stated that in staff's judgment the applicant's use is an appropriate one for the subject property and is in harmony with the purposes and intent of the Comprehensive Plan. He noted that with the Development Conditions contained in Appendix 1 of the staff report, the use will meet the applicable standards for approval of a use.

Consequently, staff recommended approval of SP 80-V-112-2, subject to the conditions set forth in Appendix 1, Development Conditions.

In response to Mr. Hammack's question on whether there were any complaints regarding the dustless surface, Mr. Jaskiewicz stated there were none.

The applicant's agent, Robert C. Nixon, 6805 Gouthier Road, Falls Church, Virginia, addressed the Board and stated that the facility, a non-profit organization, has been in operation since the early 1970's. He explained that it is basically a community marina which provided inexpensive boating recreation and relaxation facilities for the community.

Mr. Nixon said that the Yacht Club has stressed a low community and environmental impact. He explained that there are no permanent structures on the site, that it is in the flood plain, the road is gravel, there are no plans to increase the use, and the applicant agreed to the proposed developments conditions contained in the staff report.

There were no speakers to the request, therefore, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SPA 80-V-112-2 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 4, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-V-112-2 by MANSION HOUSE YACHT CLUB INC., under Section 3-203 and 8-915 of the Zoning Ordinance to amend SPA 80-V-112-1 for community marina to waive dustless surface requirement, on property located at 9321 Old Mount Vernon Road, Tax Map Reference 110-4(8)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 December 11, 1990; 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 2.9 acres.
4. The application meets all the requirements necessary for the granting of a special permit amendment.
5. It is a beautiful piece of property and in order to protect the environment and to keep the aesthetic value, the property should be maintained in its present condition.

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, 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.

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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 number of family members shall be ninety (90).
6. The hours of operation shall not begin earlier than 7:00 a.m. or extend beyond 10:00 p.m. daily.
7. The minimum and maximum number of vehicular parking spaces shall be 30 and the maximum number of boat storage spaces shall be 56. All parking shall be on site.
8. Transitional Screening 1 (25') shall be provided. 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 limits of clearing shall be preserved. The Barrier requirement shall be waived provided the fence and gate east of the tennis courts are kept closed when the applicant's use is closed.
9. Interior parking lot landscaping shall be provided in accordance with Article 13.
10. Conditions of all State and Federal permits shall be met.
11. There shall be no lighting of the parking lot without an amendment to this Special Permit.
12. 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.

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. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith 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 December 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 9, December 11, 1990, (Tape 1), Scheduled case of:

10:00 A.M. ARTHUR & DOROTHY EPPERSON, VC 90-P-101, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition and enclosure of existing porch 23.9 ft. from street line of corner lot (30 ft. min. front yard required by Sect. 3-407) on approx. 10,866 s.f. located at 2944 Fairmont St., zoned R-4, Providence District, Tax Map 50-3((17))64.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bachar replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the subject property is located north of Arlington Boulevard and east of Pine Spring Road. Surrounding parcels in the Tremont Gardens subdivisions are also zoned R-4 and developed with single family detached housing as is the subject property.

Ms. Bettard stated that the applicant was requesting a variance to the minimum front yard requirement to allow an addition at the rear of the house and an enclosure of the front porch. This construction would place the structures 23.9 feet from the southern lot line. Section 3-407 of the Zoning Ordinance requires a 30 foot minimum front yard setback for the R-4 District. Therefore, the applicants were requesting a variance of 6.1 feet.

Ms. Bettard said that staff would like to note that the 5.7 foot high fence located in the front yard of the subject property exceeds the 3.5 feet allowed by the Zoning Ordinance.

In response to Vice Chairman DiGiulian's question as to whether the addition would extend any further towards Woodberry Lane than the existing dwelling, Ms. Bettard confirmed that it would not.

Mr. Hammack stated that the porch is already in existence and the variance to the front yard setback was only required because of the enclosure. Mr. Bachar said that was correct. Mr. Hammack noted that judging from the photograph presented to the Board by the applicant, there are other fences in the immediate vicinity which exceed the height requirement.

The applicant's agent, Monty Bachar, 4215 San Juan Drive, Fairfax, Virginia, addressed the Board and stated that the addition would not be any closer to the lot line than the existing structure. He said that the applicant would like to enclose the porch in order to conserve energy and to accommodate the family's needs.

Mrs. Harris asked the location of back door of the house, and Mr. Bachar used the viewgraph to point out the exact location. He noted that if the restriction was enforced, this access would be eliminated. Mr. Bachar stated that the hip roof line would be continued for conformity.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 90-P-101 for the reasons stated in the Resolution and subject to the development condition contained in the staff report dated December 4, 1990.

Vice Chairman DiGiulian called for discussion.

Mrs. Harris stated that the addition would be no closer to Woodberry Lane than the existing structure.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-101 by ARTHUR AND DOROTHY EPPERSON, under Section 18-401 of the Zoning Ordinance to allow addition and enclosure of existing porch 23.9 feet from street line of corner lot, on property located at 2944 Fairmont Street, Tax Map Reference 50-3((17))64, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,866 square feet.

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4. The applicant has satisfied the standards necessary for the granting of a variance.
5. There is an extraordinary situation or condition on the use and development of the property.
6. The setback line of the existing structure does not create any problems or result in any defacto rezoning.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building permit shall be obtained prior to any construction.

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.

Mrs. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith 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 December 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 10, December 11, 1990, (Tape 1), After Agenda Item:

Request for Reconsideration  
Alice Chessnoe, SP 90-S-066,  
December 4, 1990

Mr. Hammack made a motion to deny the request for reconsideration. Mrs. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 11, December 11, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions from December 4, 1990 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 11, December 11, 1990, (Tape 1), After Agenda Item:

Approval of Minutes from October 9, 1990 and October 18, 1990 Hearings

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 11, December 11, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing  
Centreville Preschool, SP 90-S-088

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the applicant's agent, Don Smith, had verbally indicated to staff that he is withdrawing the request for the Out-of-Turn Hearing. She noted that she did not have a written request and asked the Board to defer decision until the next public hearing.

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 11, December 11, 1990, (Tape 1), After Agenda Item:

Approval of Resolution  
Wilson Woods, VC 90-L-042

Mrs. Thonen stated that the Board would have to approve the development conditions mandated on the variance. She noted that she had discussed this issue with Denise James, Staff Coordinator, and asked if she were present.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that one of Ms. James' children was sick and she could not be present at the public hearing. Ms. Kelsey referred to the memo from Ms. James which indicated that the applicant had submitted a geotechnical report. She stated that this report had been approved with specific recommendations which must be incorporated into the grading and site plans as requirements which must be performed during construction. Ms. Kelsey said that the Board had been presented with a letter of approval of the geotechnical report dated November 30, 1990. She noted that Olawale A. Ayodeji, Branch Chief, Geotechnical Section, Special Projects Branch, could be available to answer questions if the Board desired.

After a brief discussion it was the consensus of the Board that the applicant had geotechnical approval.

Mrs. Thonen made a motion to grant approval of the Resolution from the June 26, 1990, meeting for Variance Application VC 90-L-042, Wilson Woods, Inc. Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 11, December 11, 1990, (Tape 1), After Agenda Item:

10:15 A.M. FAIRFAX CHURCH OF CHRIST BY ITS TRUSTEES, SPA 86-C-022-1, appl. under Sect. 3-103 to amend SP 86-C-022 for church and related facilities to allow 3 temporary structures and addition of land area on approx. 5.507 acres located at 3901 Rugby Rd., zoned R-1, Centreville District, Tax Map 45-2((2))32, 33, and 34.

Vice Chairman DiGiulian stated that he had been advised that the notices were not in order. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that the Clerk had indicated that one of the notices was not sent to the last known address as listed in the Real Estate Assessment Record as required by the Code. The agent for the applicant have indicated that they had sent the notice to the property owners' new address and the green receipt had been signed by someone other than the owners of the property. Ms. Kelsey stated that after the 20 day time limitation, the applicant had taken the green receipt back to the property owners and had it signed. It was the consensus of the Board that the notices were in order.

Vice Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smith replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, asked Mr. Smith to speak to the notice issue. Mr. Smith stated that the notification letter had been sent to the property owners' new address and that the signature was obtained on the green card when it was hand carried back to them. He said that the property owner had submitted a letter in support of the request.

Vice Chairman DiGiulian ruled that the notices were in order and called for the staff report.

Bernadette Bettard, Staff Coordinator, stated that the property is located on the east side of Rugby Road, approximately 1,000 feet from its intersection with Lee Jackson Memorial Highway. The surrounding properties to the north, west, and south are zoned R-1 and developed with single family detached dwellings. The property to the east is zoned PDH-5 and developed with single family dwellings.

She noted that the applicant was requesting approval of an amendment to an existing special permit for a church and related facilities for the addition of three (3) temporary classroom trailers, the addition of 1.827 acres of land area, an increase in the amount of parking provided by eighteen (18) spaces, and a waiver of dustless surface requirement for a gravel parking area on the southern portion of the site. Ms. Bettard said that the applicant were also requesting modifications of the transitional screening requirement, waivers of the barrier requirement, interior parking lot landscaping, and any additional transitional screening width which may be recommended. The temporary portable classroom units would provide eight classrooms for Bible classes in conjunction with the worship services of the congregation. She stated that staff's major concern with the application was the effect any development on the subject property would have on the surrounding residential area. She referred to the staff report and noted that supplemental landscaping would be needed on the north and east, where the existing vegetation has died or is not adequate to fulfill the requirement as addressed in the proposed development conditions. She noted that the applicants were in agreement with the proposed development conditions which had addressed this requirement.

Ms. Bettard stated that based on the preceding analysis, it was staff's conclusion that the application met the standards for special permit approval. She stated staff recommended approval of SPA 86-C-022-1, subject to the proposed development conditions.

The applicant's Trustee, Ernest L. Smith, Jr., 5135 Portsmouth Road, Fairfax, Virginia, addressed the Board and stated that he had concerns with two proposed development conditions. Mr. Smith explained that an expansion program was in the planning stages and asked that the modification of the internal parking lot as required in proposed Condition 11 be deferred or deleted. He stated that the requirement would be addressed in the architectural plans for the new building program which would be submitted within the coming year. He referred to Condition 9 which addressed the 45.0 foot right-of-way approval on Rugby Road and asked that this condition be deferred or deleted. He explained that the applicant was negotiating a trade-off with the County for the residual lot adjacent to the subject property.

In response to Mrs. Harris' question regarding the location of the existing gravel parking spaces, Mr. Smith stated that the area was behind the house. He explained that the parking spaces would not be increased until the new building proposal was submitted. Mr. Smith explained that at this time, the applicant was only asking for the additional classrooms which were needed because of the rapid growth of the church.

In response to Vice Chairman DiGiulian's question as to whether the applicant was adding new parking at this time, Mr. Smith said they were not.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that staff had not talked to Mr. Smith but had conferred with the authorized agent, Donald L. Gustafson, regarding the application. Mr. Smith stated that Mr. Gustafson was ill. Ms. Kelsey stated that Mr. Gustafson had amended the application to include additional parking so the area that is currently gravel could be used. She explained that the applicant did not want to pave the area, therefore, asked for the modification to the dustless surface requirement. In response to Mr. Smith's remark that the gravel was already there, Ms. Kelsey stated that since it was additional parking the modification waiver would be required.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 86-C-022-1 subject to the development conditions contained in the staff report dated December 4, 1990, with the deletion of Condition 9 and the revisions to Condition 11 as reflected in the Resolution. The conditions were renumbered accordingly.

Mrs. Harris asked if proposed Condition 13 could be revised to read, "The trailers shall be approved for a period of five (5) years from the final approval date of this special permit or until such time as the addition is completed."

Mr. Hammack accepted Mrs. Harris' revision to Condition 13.

Page 13, December 11, 1990, (Tape 1), (FAIRFAX CHURCH OF CHRIST BY ITS TRUSTEES, SPA 86-C-022-1, continued from Page 12)

Mrs. Harris explained that the condition would insure that when the addition is completed, the trailers would no longer be used.

Mrs. Thonen informed the applicant that the Board would not keep renewing the temporary trailers.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 86-C-022-1 by FAIRFAX CHURCH OF CHRIST BY ITS TRUSTEES, under Sections 3-103 and 8-915 of the Zoning Ordinance to amend SP 86-C-022 for church and related facilities to allow 3 temporary structures, addition of land area, increase in parking, and modification of dustless surface requirement, on property located at 3901 Rugby Road, Tax Map Reference 45-2((2))32, 33, and 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 December 11, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 5.507 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (dated November 8, 1990), by LeMay Associates and approved with this application, as qualified with 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 the church use shall be to 400 seats with a corresponding minimum of 100 parking spaces and a maximum of 207 parking spaces. All parking shall be on-site.
6. Transitional Screening 1, consisting of a 25 foot screening yard, shall be provided on all boundaries of the property, except where modified as follows: The existing vegetation may be used to satisfy this requirement with the supplementation of evergreen plantings to obtain the equivalent effectiveness of Transitional Screening 1 as determined by the County Arborist and the requirement may be modified on the north and east in areas where the full 25 feet of width is not available. Along the front lot line, plantings within the transitional screening yard shall be modified to allow landscaped plantings the purpose of which is to soften the visual impact of the building from the adjacent residential properties and streets. The size, type and location of the supplemental plantings shall be approved by the County Arborist to assure the equivalent of Transitional Screening 1. The barrier requirement shall be fulfilled by these plantings. Foundation plantings, the purpose of which shall be to soften the visual impact of the three temporary trailers, shall be provided around the perimeter of the trailers. The type, size and location of these plantings, shall be approved by the County Arborist.

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7. A Special Exception shall be sought for the nursery school which currently exists on site, as determined by the Zoning Administrator.
8. Best Management Practices (BMP's) shall be provided on site to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection District (WSPD) of the Zoning Ordinance.
9. Any additional 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.

10. Interior parking lot landscaping shall be provided in the parking lot in accordance with Sect. 13-106 of the Zoning Ordinance and the provisions of the Public Facilities Manual in connection with the approval by Fairfax County of plans and permits for construction of additional facilities on this site which are presently under consideration and review.
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 trailers shall be approved for a period of five (5) years from the final approval date of this special permit or until such time as the addition is completed.
13. The play area shall be shifted away from the Northern lot line in order to provide the required amount of Transitional Screening, if the purchase of the residue of Lot 35 is not successful.

This 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 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. Thonen and Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman Smith 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 December 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:30 a.m. and recessed at 10:45 a.m.

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Page 15, December 11, 1990, (Tape 1), After Agenda Item:

10:30 A.M. HELENE I. BROWN, SP 90-M-070, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction in minimum side yard requirement based on error in building location to allow carport to remain 0.1 ft. from side lot line (25 ft. min. side yard required by Sect. 3-307) on approx. 10,066 s.f. located at 3039 Crane Dr., zoned R-3 and HC, Mason District, Tax Map 50-4((24))2.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Brown replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the lot is located in the Sleepy Hollow Subdivision, at the intersection of Crane Drive and South Street. The property is abutted on the east, west, and south by property developed with single family dwellings that are also zoned R-3. The property to the north is zoned C-3 and developed with office buildings of the Computer Sciences Corporation.

Ms. Bettard said that the applicant was requesting approval of a reduction to the minimum side yard requirement to allow a carport to remain 0.1 feet from a side lot line and to allow the eave of the carport to remain 0.75 feet from the side lot line. Section 3-307 requires a minimum side yard of 12.0 feet in the R-3 District. Therefore, the applicant was seeking a modification of 11.9 feet for the carport and a modification of 11.25 feet for the eave.

Ms. Bettard noted that Section 8-914 of the Zoning Ordinance states that the Board of Zoning Appeals may require landscaping and screening measures to mitigate the impact of a building in error. Since both the carport and the eave are so close to the side, no additional screening can be accommodated within the area between the structure and the lot line. She stated that staff had researched the files in the Zoning Administration Division which revealed that the adjacent dwelling on Lot 3 is located approximately 31.0 feet from the shared lot line. Ms. Bettard noted that a variance for a carport 2.0 feet from the side lot line had been approved on Lot 7 under the previous Zoning Ordinance. She said that other variances have also been approved in the area.

The applicant, Helene I. Brown, 3039 Crane Drive, Falls Church, Virginia, addressed the Board and stated that she had purchased the property in July 1988. She stated that a complaint to the County regarding the closeness of the utility shed to the property line in the backyard had prompted the inspection of the property and it was at that time that she was told the carport was in violation.

Ms. Brown said that the inspector informed her that the County records reflected that no building permit had been issued for the carport and suggested she contact the previous owner. Ms. Brown stated that she had received a response from her letter on October 30, 1989. She said that in the letter the previous owner stated that the carport had been built in 1971, by Mr. J. B. Longerbee, Custom Building and Repair, 2909 M Street, Washington, D.C. The letter also informed her that although Mr. Longerbee was no longer in business, he had been responsible for obtaining the building permit and that the previous owner did not know if a waiver to the Zoning Ordinance had been obtained.

Ms. Brown expressed her belief that the proposed use of the carport would be harmonious with and not adversely affect neighboring properties. She noted the brick wall and the additional buffering provided by neighbor's trees would screen the carport. Ms. Brown stated that there had been no complaint regarding the carport which has been in existence since 1971 and that the non-compliance had been done in good faith by the previous owner. She asked the Board to grant the request and permit the existing carport to remain.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-P-070 for the reasons stated in the Resolution and subject to the development conditions contained in the staff report dated December 4, 1990.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Thonen made a motion to waive the 10 day time limitation. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. 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 90-M-070 by HELENE I. BROWN, under Section 8-914 of the Zoning Ordinance to allow reduction in minimum side yard requirement based on error in building location to allow carport to remain 0.1 feet from eave to remain 0.75 feet from side lot line, on property located at 3039 Crane Drive, Tax Map Reference 50-4((24))2, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

Page 16, December 11, 1990, (Tape 1), (HELENE I. BROWN, SP 90-M-070, continued from Page 15)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 and EC.
3. The area of the lot is 10,066 square feet.
4. The carport was constructed 20 years ago by the previous owner and somehow fell through the crack when the applicant purchased the house.
5. The next door neighbor has submitted written approval of the request and has also expressed the belief that the carport was constructed in good faith.
6. There have been setback changes in the Zoning Ordinance since the carport was constructed.
7. The mistake was done in good faith and to require the applicant to tear it down would be a mistake.
8. It is a very nice looking garage and it is unfortunate that it is in the wrong place.

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 specified carport shown on the plat submitted with this application and not transferable to other land.
2. A plat showing the approved location and dimensions of the carport in accordance with this special permit shall be submitted and attached to the building permit.
3. A copy of the as-built survey shall be obtained for the carport and submitted to the Office of Zoning Administration within thirty (30) days of the final date of approval of this special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicants 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.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Thonen made a motion to waive the 10 day time limitation. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith 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 December 11, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 16, December 11, 1990, (Tapes 1 and 2), Scheduled case of:

10:30 A.M. JOHN M. THOBURN AGENT FOR ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL & THOBURN LIMITED PARTNERSHIP, A 90-C/D-017, appeal under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that if a private school of general education as approved in Special Exception SE 88-C/D-098 is implemented, then Condition #6 of SE 88-C/D-098 limits the use of the five structures on the property to those uses set forth in the special exception and precludes residential use of the structure at 10700 Sunset Hill Road as long as the special exception use exists, on approximately 29.15 acres located at 10700 Sunset Hills Road and 1620, 1624, 1628, 1630 Hunter Mill Road, zoned R-E, Centreville and Dranesville Districts, Tax Map 180-3((1))4, 5; 18-3((3))2, 3, 4A. (DEFERRED FROM 11/2/90).

Vice Chairman DiGiulian called for staff's location of the property.

Jane W. Gwinn, Zoning Administrator, addressed the Board and stated that the property consist of five (5) contiguous lots located north of Sunset Hills Road and west of Hunter Mill Road.

The agent for the appellant, John M. Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, addressed the Board and stated that the appeal was a simple matter. He explained that at the time the special exception was granted, it had been indicated on the plat that the house



Page 17, December 11, 1990, (Tapes 1 and 2), (JOHN M. THOBURN AGENT FOR ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL & THOBURN LIMITED PARTNERSHIP, A 90-C/D-017, continued from Page 16 )

located on Sunset Hills Road was labeled for a future administrative building. Mr. Thoburn stated that there are five houses on the property with four fronting on Hunter Mill Road. He said of the four houses fronting on Hunter Mill Road, one was labeled for existing residence/caretaker security building and the other three were labeled for classroom and administrative use. He noted that a horse barn and a maintenance/storage building are also on the property.

Mr. Thoburn expressed his belief that staff had taken a very hyper-literal view of Condition 6. He said that this case was very easily distinguished from Appeal A 88-P-033, National Memorial Park, Inc. because the appellant was not asking for abandonment of any portion of the land. He explained that the appellant was asking only to implement the special exception already approved as shown on the plat. He stated that the County's view defied common sense because Condition 6 stated that the structures at 1620, 1624, and 1628 Hunter Mill Road shall be used for classroom and administrative purposes only. He argued that no one would believe that the Board of Supervisors intended that the horse barn and the storage/maintenance building be used as classrooms.

Mr. Thoburn stated that the special exception conditions had been poorly written by staff and used Condition 11 as an example. He explained that this condition limited the clearing and grading to what was already indicated on the Special Exception Plat. He said that staff had indicated that a special permit amendment would have to be obtained in order for the required drainfield to be cleared because it had not been indicated on the plat. Mr. Thoburn noted that this had been overruled by Irving Birmingham, Director, Department of Environmental Management. He stated that Mr. Birmingham had issued a determination that common sense would prevail.

He pointed out to the Board that the reason that the property was originally part of the special exception was that the appellant had requested a college for 50 students which had been denied by the Board. Mr. Thoburn stated that he had been told by the Dranesville Planning Commissioner that it would be denied, not because of the merit of the request, but in order to "throw a bone to the community". He explained that because the college would have required the administrative space, and because the property included approximately one-third of the soccer field, the entire property was included in the special exception request.

Mr. Thoburn said that the County had taken the position that a traffic analysis would be required. This analysis would be the basis for a decision on whether frontage improvement and a turn lane would be needed if the house were to be used for administrative space. He stated that these improvements along with the 24 foot fire road requirement would cost approximately \$50,000.

He said that because of the denial of the college and the prohibited cost, the appellant wished to use the house as a residence. He noted that the vacant house presented a security problem. Mr. Thoburn stated that there was already one caretaker residence on the property. He expressed his belief that the appellant should be allowed to use the house as a residence because it was shown on the plat submitted to the Board of Supervisors as an existing residence.

Mr. Thoburn noted the difference in the language used for the structures along Hunter Mill Road and the three houses which were previously renovated to comply with Code requirements for a school. He said that the conditions imposed by the special exception specified that the structures at 1620, 1624, and 1628 Hunter Mill Road should be used for classrooms and administrative purposes only, whereas the structure at 1630 Hunter Mill Road would be limited to the caretakers residence. The house on Sunset Hill Road was to be limited to school administration purposes. He contended that the use of the word "limited" implied that this is the outer limits to what would be allowed. He expressed the belief that the Board of Supervisors' intention was clearly to limit the non-residential use of the property and the number of students. Mr. Thoburn said that there is a hierarchy of use; the caretaker residence, administration, and then classrooms as the most intensive. He said that the purpose of the condition was to limit the most intensive use. In closing, Mr. Thoburn stated that it was the appellant's position that the implication was that the lesser ranking use, which was shown on the Special Exception Plat, was covered under that limit, and asked the Board of Zoning Appeals to allow the use of the house as a residence.

Ms. Gwinn stated that it was staff's position that the conditions of the special exception were very specific. She referred to page 2 of her memorandum dated November 20, 1990, and said that although the plat had the notation, "existing house/future administration," Condition 2 specifically provided that the special exception was approved in accordance with the plat as qualified by the development conditions. She noted that Condition 6 clearly spells out the permitted uses of each of the structures. Ms. Gwinn stated that she did not concur that it had been outer limits and not specific conditions placed on the use.

She expressed her belief that the uses were very specifically designated with certain structures for certain uses. Ms. Gwinn noted that the structure at 10700 Sunset Hills Road was limited to school administration purposes. She stated that based on the specifications of those conditions as well as Section 9-004 of the Zoning Ordinance, that once special exception use is established, the property is subject to all the conditions and can only operate in accordance with the special exception. Ms. Gwinn noted that Section 9-004 speaks to when one special exception has been approved that any site plan, subdivision plat, building permit, or non-residential use permit can only be approved in accordance.

Page 18, December 11, 1990, (Tapes 1 and 2), (JOHN M. THOBURN AGENT FOR ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL & THOBURN LIMITED PARTNERSHIP, A 90-C/D-017, continued from Page 17 )

Ms. Gwinn addressed Mr. Thoburn's statement regarding the horse barn and storage shed on the lot on Hunter Mill Road and noted that these were accessory structures; whereas, the house was the principle structure. She stated that the change to the limit of clearing and grading based on the need to install a septic field was in the realm of an engineering change. She expressed her belief that these points were separate or distinguishable from the issue of the appeal. Ms. Gwinn stated that the Special Exception Conditions were very specific and that there was no basis to allow any other use than that which was shown on the plat or in the development condition absent the approval of an amendment to the special exception.

In closing, Ms. Gwinn stated that the appeal was somewhat similar to Appeal A 88-P-033, National Memorial Park, Inc. She said that the appeal requested approval for the subdivision of land that was subject to a special permit to allow the land to be used for single family dwellings which is a use permitted by-right in that zoning district. Ms. Gwinn said that her position was that the appellant was bound by the special permit and that they had forfeited the right to the permitted by-right uses absent approval of an amendment. That appeal was upheld by the Board of Zoning Appeals. She stated that it has been the County's long standing position that once a special exception or special permit is implemented then all uses must be in accordance with the provision of the special exception or special permit.

Mr. Thonen stated that when the Board of Zoning Appeals approves a special permit for a church, the residence on the property has to be connected with the church. She asked if the same rules applied to the special exception and if the residence of the house would have to be school staff. Ms. Gwinn stated that one of the houses on the property had been specifically advertised and approved by the Board of Supervisors for a caretakers residence. She noted that this was not the case in this instance. Ms. Gwinn explained that there is a provision in the Zoning Ordinance that says no dwelling units will be allowed on a lot with a principle use. She expressed her belief that when a church is approved under a special permit, the house on the property may be used as the minister's residence and that it is an intricate part of the church use. She said that she did not view the need for two residences as normally being an intricate part of a school use, unless specifically approved by the Board of Supervisors.

Ms. Harris stated that it was her understanding that if the appeal were approved that there would be two residences on the property which would be in violation and not coincide with the development conditions that were approved by the Board of Supervisors. Ms. Gwinn said that Ms. Harris was correct and noted that the caretaker's residence has been specifically set forth in the special exception and this would constitute a second residential use.

There being no speakers to the appeal, Vice Chairman called for rebuttal.

Mr. Thoburn reiterated that this is a matter of interpretation of Condition 6. He stated that the plat clearly showed the house remaining as a residence for some point in the future, and that it was in fact labeled existing residence/future administration, the same as the caretakers building which was labeled existing residence/future caretaker/security building. He stated that the common sense approach would dictate that the intent of the Board of Supervisors was to put restrictions on the classroom use. Any other interpretation defies common sense and also defies law. He expressed his belief that the Board of Supervisors would have committed an illegal act if they had denied the appellant that which was requested on the Special Exception Plat. He said that there had been no reason stated for the record for not allowing the house to continue to be used as a residence. He stated that there have been no legislative finding or debate on this issue and that there would be no rational or public interest served by a denial.

Mr. Thoburn again stated that the appeal was distinguishable from the National Memorial Park Appeal as it was not an abandonment of part of the special exception, but simply a request for an interpretation to allow exactly what is showed on the Special Exception Plat.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he disagreed with the argument set forth by Mr. Thoburn that it was a matter of interpretation. He expressed his belief that the interpretation was not the issue. He noted that if it had been the issue then, the interpretation should have made by the Board of Supervisors who had instituted the development conditions. He stated Conditions 6 is clear on its face. He stated that the Board of Zoning Appeals approves special permits on a routine basis and that special exceptions and special permits are really identical. He noted that a County Board had held a public hearing, it had debated certain issues that applied to the school, the conditions had been part of the staff report, it had been considered and reviewed by the appellant, and once approved the appellant is bound by the condition. He expressed his belief that the Board of Zoning Appeals should not second guess the legislative intent of the Board of Supervisors.

Mr. Hammack said that he believed that the appellant was bound by the condition and advised Mr. Thoburn that the proper remedy was to return to the Board of Supervisors for an amendment to the special exception. He stated that while the request may be perfectly justifiable and reasonable, the Board of Zoning Appeals was not cognizant of the reasons the conditions were imposed on the special exception. He stated that for these reasons and the reasons set forth by Ms. Gwinn, that he would uphold the Zoning Administrator's determination.

Page 19, December 11, 1990, (Tapes 1 and 2), (JOHN M. THOBURN AGENT FOR ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL & THOBURN LIMITED PARTNERSHIP, A 90-C/D-017, continued from Page 18)

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator on Appeal A 90-C/D-017.

Mr. Kelley seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she had been informed that the Planning Commission recommended to the Board of Supervisors that Condition 6 be part of the special exception. She expressed her belief that the Planning Commission must have had very strong reasons for doing so. She advised the appellant to seek an amendment to the special exception from the Board of Supervisors.

The motion carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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Page 19, December 11, 1990, (Tape 2), Scheduled case of:

10:45 A.M. AIRSTON CORPORATION OF VIRGINIA, A 90-C-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that freestanding signs erected on subject properties are in violation of Par. 1 of Sect. 12-102 and therefore must be removed on approx. 74,262 sq. ft. located at 3600 Block of West Ox Rd. and Tilton Valley Dr., zoned R-1, Centreville District, Tax Map 46-1((25))7A and 8A.

Vice Chairman DiGiulian stated that a letter from Jane W. Gwinn, Zoning Administrator, to the appellant rescinding the notice of violation had been submitted to the Board.

Mr. Hammack made a motion to dismiss Appeal A 90-C-018 based upon the determination of the mootness of the appeal made by the Zoning Administrator. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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Page 19, December 11, 1990, (Tape 2), Scheduled case of:

11:00 A.M. MRS. DOROTHY V. BEACH APPEAL, A 90-V-019, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that a mobile home located on appellant's property is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance and therefore must be removed on approx. 3.9219 acres located at 10725 Old Colchester Road, zoned R-E, Mount Vernon District, Tax Map 117-1((1))5.

Vice Chairman DiGiulian stated that a letter requesting deferral had been submitted to the Board.

Mrs. Thonen made a motion to defer A 90-V-019 until February 26, 1991 at 9:00 a.m. Mrs. Harris seconded the motion.

There being no speakers to the deferral, Vice Chairman DiGiulian call for a vote.

The motion carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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Page 19, December 11, 1990, (Tape 2), After Agenda Item:

Request for Scheduling of Appeal of  
Janice K. and Gary Scavongelli; Anne-Marie S. and David C. Cumming;  
James R. and Cecile Boucher; Patricia Cunningham; Kathleen Dorn;  
Lucille C. Ralford; Helen R. Haynie; Brad Rawls; Susan Rawls Appeal

Vice Chairman DiGiulian called for comments from Jane W. Gwinn, Zoning Administrator, regarding the appeal.

Ms. Gwinn stated that there had been some confusion regarding the appeal. She referred to her memorandum to the Board dated November 27, 1990, and said that the appellants had submitted a letter containing additional information dated December 3, 1990, to the Board.

Ms. Gwinn said that she would like to clarify the issue. She explained that when the appeal was filed, it had appeared to her that the appellant was appealing a letter dated October 25, 1990, from William Shoup, Deputy Zoning Administrator. It had also appeared to her that the appellant was trying to appeal the issuance of the Home Occupation Permit in May 1989, and since there is a thirty day time limit for filing an appeal, she believed that they could not appeal the issuance of the Permit. However, Mr. Shoup's letter did state that it was the Zoning Administrator's position that this person was operating in accordance with the Home

019

Page 20, December 11, 1990, (Tape 2), (JANICE K. AND GARY SCAVONGELLI; ANNE-MARIE S. AND DAVID C. CUMMING; JAMES R. AND CECILE BOUCHER; PATRICIA CUMMINGHAM; KATHLEEN DORN; LUCILLE C. RAIFORD; HELEN R. HAYNIE; BRAD RAWLS; SUSAN RAWLS APPEAL, continued from Page 19)

Occupation Permit, and the basis of their justification was that he did not comply with the conditions of the Permit. Ms. Gwinn stated that the non-compliance issue could be appealed.

Ms. Gwinn stated that while the appellant believed that she was trying to preclude their right to appeal the issue, she was recommending that legally the appeal should be based on Mr. Shoup's letter. She noted that there would be two issues involved, one that the vehicle in question was not a commercial vehicle, and secondly that the use is or is not being operated in accordance with the Home Occupation Permit.

In response to Mrs. Harris' question to whether the appellants understood the clarification, Ms. Gwinn stated that she would call the appellants to insure that they did. Mrs. Harris asked whether the appellants had been given a copy of the original approval of the Home Occupation Permit. Ms. Gwinn stated that a copy had been submitted as a part of the appeal. Ms. Gwinn explained that the submission of a copy of the Home Occupation Permit with the appeal had caused the confusion because it had given the impression that the appellants were appealing the issuance of the Permit.

Mr. Hammack made a motion to accept the appeal as complete and timely filed and to schedule the hearing for February 5, 1991 at 9:00 p.m. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. Ribbie absent from the meeting.

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The Board recessed at 11:20 a.m. and reconvened at 11:35 a.m.

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Page 20, December 11, 1990, (Tape 3), Scheduled case of:

11:30 A.M. RILLIE R. FRANCA, SP 90-V-043, appl. under Sect. 3-303 of the Zoning Ordinance to allow accessory dwelling unit on approx. 11,257 s.f. located at 1402 Olde Towne Rd., zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(29)1, 2, and 3. (CONCURRENT WITH SE 90-V-022)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Franca replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that she would present the case to the Board because Kul Sandhu, the Staff Coordinator, was ill.

Ms. Kelsey stated that the application for an accessory dwelling was filed in conjunction with a special exception application for a permit to fill in the 100 year floodplain associated with the Potomac River. The fill as requested was to allow the construction of a single family dwelling on the property. Ms. Kelsey said that the property is located on the north side of Olde Towne Road opposite the intersection of 13th Street with Olde Towne Road. It is bounded by townhouse development on land which is zoned R-8 to the west, to the north by a professional building on land zoned C-2, and to the east and south by residential uses, zoned R-3. Ms. Kelsey explained that the property currently contains structures that were built around 1930, which are proposed to be removed.

Ms. Kelsey noted that the staff report addressed both the fill in the floodplain and the special permit application for the accessory dwelling unit. She stated that the Planning Commission recommended and the Board of Supervisors approved the special exception application for filling in the floodplain on October 29, 1990. She noted that the application had development condition which pertained to the accessory dwelling unit.

Ms. Kelsey stated that for reasons set forth in the staff report, staff recommended approval of the special permit application in conformance with the development conditions contained in the staff report dated October 3, 1990.

In response to Mr. Hammack's question as to the location of the accessory dwelling unit, Mr. Franca stated that the accessory dwelling would be located in what is shown as the existing garage. He said that instead of two garage doors, there would be a side entrance door.

The applicant's son and agent, Robert L. Franca, 8789 Village Green Court, Alexandria, Virginia, addressed the Board and stated he had reviewed and agreed with the proposed development conditions, and asked the Board to approve the application.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 90-V-043 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 3, 1990.

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

Mrs. Harris made a motion to waive the ten day time limitation. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. 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 90-V-043 by RILLIE R. FRANCA, under Section 3-303 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1402 Olde Towne Road, Tax Map Reference 83((2))(29)1, 2, and 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 December 11, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,257 square feet.
4. The application fits into the accessory dwelling unit provisions; whereby, Mr. Franca and his family will be residing in the principle dwelling unit and his mother will be residing in the accessory dwelling unit.
5. The application will be in harmony and will be a vast improvement for the area.
6. The dwelling will be in harmony with the new houses in the area.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 on the application property and is not transferable to other land.
2. This Special permit is granted only for the purpose(s), structure(s) indicated on the special permit plat (drawn by Holland Engineering, dated September 14, 1990 as revised, approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 issuance of a building permit for the establishment of an accessory dwelling unit.
5. The accessory dwelling unit shall occupy no more than 35% of the total gross floor area of the principal dwelling unit.
6. The accessory dwelling unit shall contain no more than one bedroom.
7. 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.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
9. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance, if the Zoning Administrator determines all special permit conditions have been complied with.
10. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

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11. The Clerk to the Board of Zoning Appeals shall cause the BZA's action to be recorded among the appropriate land records of Fairfax 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 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 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 which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Harris made a motion to waive the ten day time limitation. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith 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 December 11, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 22, December 11, 1990, (Tape 3), Scheduled case of:

11:45 A.M. LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, appl. under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow garage to remain 7.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 20,061 s.f. of land, located at 3023 Aspen Lane, zoned R-3, Mason District, Tax Map 51-3((6))25. (DEF. FROM 9/20/90 PER REQUEST OF P.C. MEMBER; DEFERRED FROM 11/13/90 AFTER AGENDA ITEMS FOR DECISION ONLY ON WHETHER OR NOT TO APPROVE THE RESOLUTION FROM NOVEMBER 8, 1990 HEARING).

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and referred to a copy of the minutes the Clerk had submitted to the Board. She noted that the Board had deferred the approval of the resolution in order to rule on the reconsideration that had been requested by Mr. Hansbarger, the agent for the applicants.

Mrs. Thonen stated that he had not requested a reconsideration. Ms. Kelsey explained that he had asked for a deferral of his original request asking for a reconsideration until he could determine whether he could obtain additional property. She noted a letter from a neighbor had also been submitted along with the minutes.

Vice Chairman DiGiulian noted that SP 90-M-039 had been deferred for decision only on the request for reconsideration.

Mrs. Thonen noted that Mr. Hansbarger had indicated that he had hoped to resolve the issue before the reconsideration hearing, and would inform the Board as to whether he had been successful.

Mrs. Harris stated that there was to be no additional testimony on the case.

Vice Chairman DiGiulian called Mr. Hansbarger to the podium and asked if the issue had been resolved.

The applicants agent, William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, addressed the Board and stated that he had not worked out a revision of the lot line, although, he was still attempting to accomplish it.

He explained that a proposal had been presented to Mr. Frazier, the adjacent neighbor, to purchase a strip of the abutting land, and then to grant Mr. Frazier a perpetual easement over that strip of property. He stated that if Mr. Frazier would agree to the proposal, the applicant's garage would meet all the setback requirements.

Mrs. Thonen stated that the neighbor had telephoned her and stated that he was not interested in giving up any of his property. Mr. Hansbarger explained that the neighbor would not be giving up property. He said that the neighbor would merely be adjusting a portion of his lot line because after the sale of the property, he would be given a perpetual easement over that portion of the property.

Page <sup>23</sup> 23, December 11, 1990, (Tape 3), (LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, continued from Page 22 )

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Mr. Hansbarger stated that he would appreciate a reconsideration to allow time to investigate additional information to present to the Board.

Mr. Hammack made a motion to approve the Resolution from the November 8, 1990 public hearing for SP 90-M-039 which was a motion to deny.

Mrs. Thonen seconded the motion.

Ms. Kelsey stated that the County Attorney had advised that the Board has the ability to reconsider an application during the time period between when the motion is made and when it is final. She noted that once a motion is final the Board cannot make a motion to reconsider an application.

After a brief discussion by the Board, Mr. Hammack withdrew his motion.

Hank Strickland, Planning Commissioner for Mason District, addressed the Board and stated that at the conclusion of the November 8, 1990 hearing, he had suggested to Mr. Hansbarger the possibility of a sale of a portion of Mr. Frazier's lot in order to readjust the property. He said that this would have made the garage more compatible with the Zoning Ordinance. He stated that Mr. Frazier had indicated that he was not interested in the sale of his property.

Mr. Hammack made a motion to deny the request for reconsideration of SP 90-M-039.

Mrs. Harris and Mrs. Thonen seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mr. Kelley stated that he would like to hear the additional information referred to by Mr. Hansbarger. He said that it would be an extensive undertaking for Mr. Ralston. He expressed his sympathy for how the Board had voted previously, but stated he would like to have the opportunity to review the additional information.

Mrs. Harris stated that at the previous hearing the Board had discussed the issue thoroughly, had received testimony from the neighbors, and had realized the financial repercussion of the decision.

Mr. Kelley stated he did not want to indicate that the Board had made a bad decision, but believed that the applicant deserved to be able to present additional information.

Vice Chairman DiGiulian called Mr. Hansbarger to the podium and stated that he had two minutes to present the additional information to the Board.

Mr. Hansbarger stated that the subsequent investigation from the prior hearing revealed that the survey referred to at the hearing had been made after construction of the building. He noted that it was made for the sole purpose of filing for the special permit and presented the bill for the surveys to the Board. He stated that the plat produced from the April 17, 1990 survey had been deemed not sufficient by the County. He noted that plat before the Board had resulted from another survey made on May 24, 1990.

Mr. Hansbarger explained that as a consequence of the two surveys, Mr. Ralston thought that the wrong stakes indicated the property line. He stated that there had been no complaints filed regarding the location of the building until it had been 95 percent completed. Mr. Hansbarger said that the applicants' contractor had received a Building permit from the County and that the County had the benefit of knowing the past history of the property.

He noted that the Zoning Administrator had signed a plat which stated that the garage and carport appeared to meet the provisions of the zoning Ordinance and was permitted by-right.

Mrs. Thonen stated that the removal of the stake had nothing to do with her opposition of the request. She said that the visual and physical impact on the neighbor was immense and not compatible with the neighborhood. She expressed her belief that the switching of the lot line would not alleviate the detrimental impact to the neighbors.

Mr. Hansbarger stated that if the request was denied, then the applicant would remove the side of the structure.

Mrs. Harris said that Mr. Hansbarger's testimony on how the applicant would correct the problem if the request was not granted could not be considered new information.

Mr. Kelley stated he would like testimony from Mr. Frazier regarding the applicants alternative. He expressed his belief that the error had been made in good faith.

Mrs. Harris stated that she would be concerned with taking testimony as to whether the neighbor would prefer a by-right or a variance solution.

Mr. Kelley made a motion to reconsider SP 90-M-039.

Ms. Kelsey explained that the Board member who makes a motion for reconsidering has to have been on the prevailing side of the original motion.

Page 24, December 11, 1990, (Tape 3), (LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, continued from Page 23)

Mrs. Thonen made a motion that the request for reconsideration for SP 90-M-039 be denied. Mrs. Harris seconded the motion. The vote was 3-1 with Vice Chairman DiGiulian, Mrs. Harris and Mrs. Thonen voting aye; Mr. Kelley voting nay; and Mr. Hammack abstaining. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Thonen made a motion to approve the Resolution from the November 8, 1990 hearing for SP 90-M-039. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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Page 24, December 11, 1990, (Tape 3), Scheduled case of:

12:00 Noon PARKWOOD BAPTIST CHURCH AND WEEKDAY EARLY EDUCATION CENTER, SPA 84-A-048-2, appl. under Sect. 3-103 of the Zoning Ordinance to amend SPA 84-A-048-1 for a church, child care center, and related facilities to allow three trailers on approx. 8.6782 acres located at 8726 Braddock Rd., zoned R-1, Annandale District, Tax Map 70-3(1)6. (DEF. FROM 9/20/90 PER REQUEST OF PLANNING COMMISSION MEMBER; DEF. FROM 11/13/90 AFTER AGENDA ITEMS FOR DECISION ONLY ON WHETHER OR NOT TO APPROVE THE RESOLUTION FROM NOVEMBER 29, 1990 HEARING).

Vice Chairman DiGiulian stated that the application had been deferred for staff review and for revised plats.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that a memorandum had been submitted to the Board indicating that staff had reviewed the plat and found that the proposed trailer locations conform with staff recommendations. She noted that there have been no other changes to the plat and that staff recommended approval subject to the revised proposed development conditions dated December 11, 1990.

In response to Mrs. Thonen's question as to whether the applicants have agreed to the revised conditions, Ms. Kelsey said they had.

Mrs. Thonen made a motion to grant SPA 84-A-048-2 subject to the revised development dated December 11, 1990. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Thonen made a motion to waive the ten day time limitation. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. 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 SPA 84-A-048-2 by PARKWOOD BAPTIST CHURCH AND WEEKDAY EARLY EDUCATION CENTER, under Section 3-103 of the Zoning Ordinance to amend SPA 84-A-048-1 for church, child care center, and related facilities to allow three trailers, on property located at 8726 Braddock Road, Tax Map Reference 70-3(1)6, 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 December 11, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 8.6782 acres.

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

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



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2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Jack E. Rinker and revised by George Truman Ward (last revision dated November 30, 1990) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The hours of operation for the 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) spaces for the church use and a maximum of two-hundred and two (202) parking spaces for the combination of uses.
7. The maximum daily enrollment for the child care center shall not exceed eighty-five (85) children.
8. There shall be a maximum of three hundred and fifty (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 1 requirement. The existing vegetation along the western lot line shall be deemed to satisfy the Barrier H requirement. The barrier requirement along the remaining lot lines shall be waived.
10. In order to minimize pedestrian safety hazards, the third trailer located near the driveway entrance to the site shall be relocated nearer the existing church building so as not to require pedestrian access through any parking lot or parking lot travel aisles.
11. Right-of-way along Braddock Road shall be dedicated to the Board of Supervisors for public street purposes in fee simple on demand or at the time of site plan approval if it is determined to be necessary by the Department of Environmental Management.
12. The trailer shall be skirted and finished in a color and with materials that are compatible with the existing building on site as determined by the Department of Environmental Management.
13. Any new lighting on the site 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.
14. The approval of trailers on the site shall be limited to a term of (5) years beginning from the date of final approval of this special permit. All development conditions shall be implemented prior to the issuance of a non-residential use permit for the first trailer.
15. The trailers shall be utilized for Sunday School uses only and shall not be utilized for the child care center.

This approval, contingent on the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicants 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. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Thonen made a motion to waive the ten day time limitation. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith 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 December 11, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris thank the staff for their generosity in the clothing donations for the shelter in Annandale. She also noted that she had received a donation of 300 match box toys along with other toys for the children. She applauded staff's work with the Fairfax County Social Service Toys for Foster Children campaign.

Mrs. Thonen stated that the United Community Ministry in the Gum Springs area was also desperate for toys and for clothing.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and suggested that a motion to make the decisions for cases heard today be final in ten days so that the applicants would have ample time to submit a request for a reconsideration.

Mr. Hammack made a motion that any items not acted upon on the agenda not become final for 10 days. Mrs. Harris seconded the motion which carried by vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: February 26, 1991

APPROVED: February 26, 1991

027

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, December 20, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. Vice Chairman DiGiulian asked if there were any Board matters to bring before the Board.

Mrs. Thonen made a motion that the Board issue an intent to defer three appeals scheduled later in the public hearing. They were: Zane Mason Appeal, A 90-S-020, Louise Mason Appeal, A 90-S-021, and Wolftrap Meadows Appeal, A 89-D-018. Mrs. Harris seconded the motion which passed by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman Smith was absent from the meeting.

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Page 21, December 20, 1990, (Tape 1), Scheduled case of:

9:00 A.M. ALEXANDER & EVA PAZ, SP 90-A-073, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow deck to remain 0.8 ft. from side lot line such that side yards total 12.4 ft. (8 ft. min. side yard, 20 ft. total min. side yards required by Sect. 3-307, 5 ft. extension permitted for deck by Sect. 2-412) on approx. 10,993 s.f. located at 5008 Woodland Way, zoned R-3 (developed cluster), Annandale District, Tax Map 69-4((8))395.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Paz replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicants did not obtain a building permit prior to the construction of the deck. In the applicants' statement, they indicated that they inquired as to whether or not a building permit was necessary and were informed that a building permit was not necessary. At the time of the inquiry, the applicants were refurbishing their carport, for which they did obtain a building permit, and evidently there was some miscommunication since a building permit was not obtained for the deck. Mr. Riegler noted the dwelling on Lot 394A is approximately 10 feet from the shared lot line. He called the Board's attention to several letters received by staff with respect to the case.

The applicant, Alexander Paz, 5008 Woodland Way, Annandale, Virginia, came forward. He stated that he was an architect so he was aware of all the requirements but apparently he was given incorrect information. Mr. Paz stated that he had been told that if a deck is built less than 8 inches from the ground a building permit is not required. He stated that he has added a lot of landscaping to his property which he discussed with the sidewalk inspector prior to installation. He stated that the inspector advised him to plant English ivy and several plants to protect the soil against erosion.

In response to a question from Mrs. Harris, Mr. Paz stated that he did not store items on the carport nor on the deck. He added that the carport is very small and he had constructed the deck to prevent his small children from having to step onto the mud and grass when getting out of the car.

Vice Chairman DiGiulian called for speakers in support of the request and hearing no reply he called for speakers in opposition to the request.

Mary Stewart, 5008A Woodland Way, Annandale, Virginia, came forward. She stated that after being cited with a Notice of Violation the applicant proceeded to construct steps to the back yard, which exceeded the deck measurements. Ms. Stewart stated that the applicant had not planted additional ivy but had cut the ivy from another part of his yard and threw it over the railing. (She submitted a letter from the Civic Association's Architectural Review Committee to the Board.) Ms. Stewart stated that the applicant knew where the property line was because she had discussed it with him when he was doing construction in the rear of his property. (She submitted photographs to the Board showing the deck.) Ms. Stewart stated that the carport faces her two bedroom windows and that a traffic pattern would be established directly below those windows.

In response to questions from Mr. Hammack, Ms. Stewart replied that her house sets 10 feet back from the shared property line. She stated that the carport has been used for over 20 years and the applicant was aware of the conditions of the house because he had rented the house prior to purchase.

Ms. Stewart stated that the applicant could access his house from the other side of the house because there is a gate in the brick wall.

Mr. Hammack asked the speaker which she would prefer, having the deck remain or having it removed. Ms. Stewart answered that she would rather have it removed. She stated that the applicant sounds very cooperative, but he proceeds to do whatever he wants. Mr. Hammack explained that the applicant could park his car there without adding any screening or landscaping which would allow the noise to impact her bedroom more so than it does now.

028

Ms. Stewart stated that there used to be evergreens there but the applicant had moved them to construct the steps.

Mrs. Thonen asked if there were any restrictions to prohibit the applicant from black topping the whole area. Mr. Riegler replied that the Zoning Ordinance does not speak to driveways in the same way that it does to decks; therefore, the applicant could provide a driveway right up along the property line.

During rebuttal, Mr. Paz stated that between his lot and Ms. Stewart's lot there is a line of very heavy bush which is 12 to 16 feet high. He stated that he completed the steps at the request of the Zoning Inspector for safety reasons because of the children.

In response to a question from Mrs. Harris, Mr. Paz replied that 60 percent of the bushes are on Ms. Stewart's property and 40 percent of the bushes are on his property. He stated that no one maintains the bushes because they do not really require maintenance.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report with the following addition.

- "3. Additional evergreen landscaping and screening shall be provided around the deck and stairs as may be determined to be appropriate by the County Arborist."

Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

Mr. Hammack made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Chairman Smith 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 90-A-073 by ALEXANDER AND EVA PAZ, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow deck to remain 0.8 feet from side lot line such that side yards total 12.4 feet, on property located at 5008 Woodland Way, Tax Map Reference 69-4((8))395, 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 December 20, 1990; and

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

The Board has determined that:

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

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

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

029

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

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

- 1. This special permit is approved for the location and specified shed shown on the plat submitted with this application and not transferable to other land.
- 2. A building permit shall be obtained for the deck which indicates that all requisite inspections have been made and building codes met within sixty (60) days of the date of approval of this application.
- 3. Additional evergreen landscaping and screening shall be provided around the deck and stairs as may be determined to be appropriate by the County Arborist.

This approval, contingent on the above noted conditions, shall no relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This special permit shall be null and void if the above listed conditions are not met.

Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1990.

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Page 29, December 20, 1990, (Tape 1), Scheduled case of:

9:15 A.M. ANNE HOBBS, VC 90-V-106, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 21.5 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 7,600 s.f. located at 2005 Belle Haven Rd., zoned R-4, Mt. Vernon District, Tax Map 83-3(14)(13)14.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Hobbs replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicant would like to construct an enclosed 7 foot by 5 foot protoco, 12 feet in height. Mr. Riegler pointed out that the entire dwelling is in violation of the 30 foot setback, but the dwelling was constructed in the 1930's and does meet the definition of a nonconforming use provided by the Zoning Ordinance; therefore, the existing dwelling can remain but any modifications must meet the current requirements.

The applicant, Anne Hobbs, 2005 Belle Haven Road, Alexandria, Virginia, came forward. She stated that she would like to construct a protoco over the front door similar to others in the neighborhood. She stated that the request would be architecturally in keeping with the existing dwelling.

Mr. Ribble stated that he agreed that the applicant's lot is exceptionally shallow as noted in her statement of justification.

In response to a question from Mrs. Harris about the design, Ms. Hobbs replied that it would be a roof with pillars.

There were no speakers, either in support or in opposition, and Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report.

Mr. Kelley stated that he lived in the neighborhood and that he was surprised that the applicant had not already made the request as such structures are very prevalent in the neighborhood.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-106 by ANNE HOBBS, under Section 18-401 of the zoning Ordinance to allow addition 21.5 feet from front yard line, on property located at 2005 Belle Haven Road, Tax Map Reference 83-3((14))(13)14, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,600 square feet.
4. The house was built many years before the Zoning Ordinance was changed.
5. The lot has exceptional shallowness.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 roofed porch 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.

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.

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Page 31, December 20, 1990, (Tape 1), (ANNE HOBBS, VC 90-V-106, continued from Page 30)

Mr. Kelley seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1990.

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Page 31, December 20, 1990, (Tape 1), After Agenda Item:

Approval of the September 25, 1990 Minutes

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 31, December 20, 1990, (Tape 1), After Agenda Item:

Acceptance of Markey Business Center IV Appeal

Vice Chairman DiGiulian called the Board's attention to a letter from the appellant wherein he requested that the Board defer accepting the appeal until January 8, 1991.

Mr. Kelley made a motion to grant the appellant's request. Mr. Hammack seconded the motion which passed by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman Smith was absent from the meeting.

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Page 31, December 20, 1990, (Tape 1), After Agenda Item:

Colvin Run Pet-Otel Additional Time

Mr. Kelley asked the Board to pass over this item until such time as the applicant's attorney arrived in the Board Room. Hearing no objection, the Chair so ordered.

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Page 31, December 20, 1990, (Tape 1), After Agenda Item:

Acceptance of National Amusements Incorporated Appeal

Mrs. Thonen made a motion to schedule the above referenced appeal as it was complete and timely filed. Mr. Kelley seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting. The public hearing was scheduled for January 29, 1991 at 11:00 a.m.

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Page 31, December 20, 1990, (Tape 1), After Agenda Item:

Michael Dalton Reconsideration

Mr. Kelley suggested that perhaps the Board should defer action on the request in order for the Board to review the rather lengthy document submitted by the applicant. He stated that if the Board did not choose to grant the reconsideration perhaps the Board would consider waiving the 12-month waiting period for filing a new application.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out the Board's policy with respect to the granting of a waiver of the 12-month time limitation.

Mrs. Thonen made a motion to deny the request for reconsideration. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

Mrs. Thonen then made a motion to grant the applicant a waiver of the 12-month time limitation for filing a new application. Mrs. Harris seconded the motion.

Mr. Hammack stated that he was not inclined to grant a variance request so close to the lot line.

Following some discussion among the Board members about the alternatives suggested in the applicant's letter, the motion passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 32, December 20, 1990, (Tape 1), Scheduled case of:

Centreville Preschool, Inc. Out of Turn Hearing Request

Mr. Kelley made a motion to grant the out of turn hearing request and asked staff for a date and time.

Mr. Hammack asked if the request was for an existing school. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that a previous application was denied by the Board and the applicant is currently operating in Centreville under a special permit which has expired. She stated that the applicants are requesting to be allowed to continue to use the current structure until they can open a new facility. Ms. Kelsey stated that the applicant was present to respond to questions.

Mrs. Thonen seconded the motion.

Ms. Kelsey suggested that the out of turn hearing be scheduled for the night meeting of March 5, 1991.

Mrs. Thonen made a motion to schedule the out of turn hearing for March 5, 1991 at 8:00 p.m. as suggested by staff.

Donna Teepe, 15050 Greymont Drive, Centreville, Virginia, stated that the school is really in a bind as far as the registration for the upcoming school is normally scheduled for February 16th. She stated that she does not really want to hold the registration until she knows that the school will be operating in the fall because that would not be fair to the parents.

Ms. Kelsey stated that the applicant's current application is scheduled for February 26, 1991, and perhaps the Board would like to schedule both cases for that date.

Mrs. Harris asked if that would allow staff adequate time to review the application. Ms. Kelsey explained it is always difficult for staff to meet the 90-day deadline and have room for negotiations with the applicant. Mrs. Harris then asked the applicant if that would allow her sufficient time to contact the Western Fairfax County Citizen Group to get their input. Ms. Teepe stated that she would do her best.

Mrs. Thonen amended her motion to reflect February 26, 1991. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 32, December 20, 1990, (Tape 1), Scheduled case of:

10:00 A.M. NEIL RINEARSON, VC 90-M-107, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 25.4 ft. and 28.0 ft. from street lot lines of corner lot (35 ft. min. front yard required by Sect. 3-207) on approx. 14,212 s.f. located at 6375 Cavalier Corridor, zoned R-2, Mason District, Tax Map 61-1(11)533.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Rinearson replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance in order to construct a two bay garage in front of the dwelling. The construction would place the structure 25.4 feet from the northern front lot line and 28.0 feet from the western front lot line; therefore, the applicant requested variances of 9.6 feet and 7.0 feet, respectively. She stated that staff's research revealed that the house on abutting Lot 534 is located 16.9 feet from the shared lot line.

The applicant, Neil Rinearson, 6375 Cavalier Corridor, Falls Church, Virginia, came forward and stated that the architect for the project, Stuart Liss, was present to respond to questions. He began his presentation by stating that the terrain is the primary consideration, specifically the trees which he would like very much to preserve. He stated that in order to construct an attached garage and preserve the trees the architectural solution was very restricted. Mr. Rinearson stated that he was not aware of any opposition from his neighbors.

Vice Chairman DiGiulian informed the applicant of opposition letters that the Board had received.

After reading the letters, Mr. Rinearson responded to the comments made by Mr. Horowitz by stating that he was aware of the covenants and of the fact that he had to make a request to the Architectural Review Committee as he had worked with them on a deck that he had constructed on his property. He stated that it was kind of a "pony horse situation" and he chose to obtain county approval prior to making an application to the Architectural Review Committee. Mr. Rinearson addressed Mrs. Estes' letter by stating that most of the structure would be within the setback and agreed that the wooded area should be preserved. He stated



Page 33, December 20, 1990, (Tape 1), (NEIL RINEARSON, VC 90-M-107, continued from Page 32)

that the garage could be constructed on the west side of the house and violate only one setback, but that would require the removal of two large trees.

In response to questions from Mrs. Harris regarding the hardship standard, Mr. Rinearson replied that there is a carport but that it cannot be turned into a garage. He stated that the slope of the driveway is treacherous, and although the driveway was there when he purchased the property five years ago, he would now like to change its location. He stated that one of the adjacent neighbors has expressed concern when anyone parks at the bottom of the driveway since she believes that restricts her movements when trying to get out of her driveway.

Vice Chairman DiGiulian called for speakers in support of the application.

Stuart Liss, 2416 Drexel Street, Vienna, Virginia, architect for the applicant, stated that he had tried to determine the best location for the garage and that he believed that the proposed location is the best solution. He stated that the 11 foot driveway would fit between the large trees and would have a minimal impact on other trees on the property. Mr. Liss stated that the garage would be located at the basement level of the house such that the garage would be sunk into the ground. The same stone would be used on the lower portion of the garage to give the appearance that the garage was a part of the original structure and the siding material and the roof slope would be identical.

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

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-107 by NEIL RINEARSON, under Section 18-401 of the Zoning Ordinance to allow addition 25.4 feet and 28.0 feet from street lot lines of corner lot, on property located at 5375 Cavalier Corridor, Tax Map Reference 61-1((11))533, 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 ; 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 14,212 square feet.
4. Although the lot has an unusual shape and has two front yard setbacks, the applicant has not met the strict requirements of the Zoning Ordinance.
5. There are other lots in the neighborhood similar to the applicant's.
6. The applicant testified that there are locations that the garage can be constructed without a variance, and the applicant should pursue those locations.
7. The applicant has reasonable use of the property and has not satisfied the standards for a variance.

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

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

Page 34, December 20, 1990, (Tape 1), (NEIL RINEARSON, VC 90-M-107, continued from Page 33)

6. That:

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

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 which passed by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the Office of the Board of Zoning Appeals and became final on December 20, 1990.

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Page 34, December 20, 1990, (Tapes 1-2), Scheduled case of:

10:15 A.M. THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052-1, appl. under Sect. 3-203 of the zoning Ordinance to amend SP 82-V-052 for monastery to allow addition, a mausoleum as an accessory use, and bell tower on approx. 6.4514 acres located at 2501, 2503, and 2505 Stone Hedge Dr., zoned R-2, Mt. Vernon District, Tax Map 93-3(8)(3)1,2,3 and 93-3(1)4.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Strobel replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the property is located at the southeastern intersection of Stone Hedge Drive and Bertram Lane. The surrounding properties to the north are zoned R-2 and developed with single family detached dwellings. The property to the northeast is zoned R-2 and the property to the southeast is zoned R-8 and both are vacant. The property to the west and south is zoned R-20 and developed with multi-family units. The applicant, The Community of the Poor Clares of Alexandria, Inc., is the owner of 6.4514 acres located at 2501, 2503 and 2505 Stone Hedge Drive. The subject property is zoned R-2, and is presently developed with a monastery, chapel choir, and sixteen parking spaces. The applicant's request is for an amendment to an existing special permit for a monastery and a chapel choir to allow an addition to the monastery, a mausoleum, and a bell tower. The addition would provide for expansion of the living and working quarters of the Poor Clare Sisters by 11,714 square feet, and the provision of a mausoleum for the use of the Poor Clare Sisters after their demise.

The bell tower will be 31 feet, 6 inches tall. At the time the staff report was written, the applicant proposed to ring the bell six (6) times a day: (1) 7:00 a.m., (2) 11:00 a.m., (3) 12:00 p.m., (4) 2:00 p.m., (5) 4:00 p.m., and (5) 6:00 p.m. Ms. Bettard stated that an issue had arisen regarding the adverse impacts due to noise from the bell and staff visited the site with a noise meter while the bell was being rung; however, the bell was not in its proposed location. It was found that the highest dBA, 54.3, occurred in the southeastern corner of the site and based on that the applicant proposed the deletion of the 7:00 a.m. ringing of the bell. Staff was in favor of this, but the noise from the bell will have to conform to the noise level or dBA allowed in residential areas.

In closing, Ms. Bettard stated that staff found that the subject application met the applicable Zoning Ordinance standards for the use and would be in conformance with the Comprehensive Plan. Therefore, staff recommended that SPA 82-V-052-1 be approved subject to the revised development conditions.

Lynne J. Strobel, attorney with the law firm of Walsh, Colucci, Stackhouse, Erich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, came forward to represent the applicant. She stated that the nuns are very unique as they devote their lives to prayer and work and the Community is unique as it is the only cloister monastery on the East Coast. This particular order was established here in 1987 and originally came from New Mexico. There are presently 14 nuns living on the property who spend approximately 8 hours a

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Page <sup>36</sup> 36, December 20, 1990, (Tapes 1-2), (THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052-1, continued from Page 34)

day in prayer with an additional 5 to 6 hours a day in work including making their own clothes, tending the grounds, baking bread, and making some crafts for sell, including Christmas cards and rosaries. The Community tries to be as self sustaining as possible but depends on parishioners who once a week delivers a supply of food and also escorts the nuns to doctor appointments. With the exception of visiting a doctor, the sisters never leave the property. The proposed addition is an amendment to a special permit that was approved in 1977, the special permit was amended in 1982 to add the chapel, and this is the final phase of the development as proposed by the sisters. The sisters look at this as a final phase of some very long term plans and they envision this will last them for the next 100 years.

Ms. Strobel stated that the proposed addition will be to house the nuns who are now in training and have not yet taken their final vows. Under the laws of the order, the novices are suppose to be in a separate living quarters from the sisters. The novices also have different schedules and the only time the novices and sisters are together is for prayer and meals. The addition will be for the novices and will also include some additional work rooms. The addition will be constructed of the same materials as the existing building and will not significantly increase the density on the site. The density on the site is proposed at a .089 FAR (Floor Area Ratio) and is significantly less than the .2 FAR that is permitted in the R-2 District. As part of the proposal, the sisters are requesting to have a mausoleum which will be located on the first floor of the addition and will be used only for the sisters who live on the property and will not be open to visitors. There would be no exterior entrance and no evidence of signage or anything exterior that would evidence the use. The population of nuns is a fairly young Order and the oldest member is 60 and the next oldest is 45 with most of the members being in their 20's with some in their 30's and 40's. The women enter the Order no later than the age of 25 and spend their entire lives at the one location, it is their only home, and their only family. She stated that if the request is denied and the sisters are buried somewhere other than the subject property the other sisters cannot leave to go visit the grave site and pay their respects.

With regard to the bell, Ms. Strobel stated that the sisters are requesting approval for a bell to be located in the proposed court yard. The applicant agreed to put louvers on the bell tower to help muffle the sound. She stated that she visited the site with Ms. Bettard and Paul McAdam, with Zoning Enforcement, and Mr. McAdam took several noise readings on the site. He first took an ambience reading, which is background noise, on the property and the measurement was 48.7 decibals. Ms. Strobel used the viewgraph to show the location of the highest and lowest readings on the property with the highest being approximately 54 decibals and the lowest being 47.2. She stated that if the bell exceeds the level allowed in a residential area the applicant has agreed to either muffle or remove the bell. The applicant had initially requested that the bell be rung six times a day but have agreed to eliminate the 7:00 a.m. ringing.

Ms. Strobel stated that meetings have been held with the neighbors in order to address some of their concerns and she stated that she would be happy to incorporate all of those items into the development conditions. She addressed the traffic concerns by stating that there will be no traffic generation because the nuns do not own cars, nor do they come and leave the site. The neighbors have expressed concern with the amount of visitors who will visit the chapel during the Easter and Christmas holidays. She stated that the applicant is currently in compliance with the zoning regulations of Article 11, however, the applicant is willing to provide 10 additional parking spaces to address the neighbors' concerns. (Ms. Strobel used the viewgraph to show where the parking spaces would be located.)

She stated that the neighbors have also expressed concern with regard to screening of the proposed addition. Ms. Strobel assured the Board that 95 percent of the site will remain as open space and the applicant has agreed to add some additional white pines approximately 6 to 8 feet in height to be located near the proposed addition on the west side which is nearest to the neighbors. She stated that this will aid in screening and added that the nearest neighbor is approximately 269 feet from the shared property line.

In closing, Ms. Strobel stated that the proposed special permit is in harmony and conformance with the Comprehensive Plan as well as the R-2 requirements of the Zoning Ordinance. The applicant well exceeds open space requirements and the proposed addition will be less than half of what is permitted. She again stated that this is the final phase of development as proposed by the applicant.

In response to questions from Mrs. Harris about the bell, Ms. Strobel explained that the bell is presently located in a walkout basement on the ground level. She stated that both doors to the basement were open at the time the bell was rung when Mr. McAdam took the readings. She stated that Mr. McAdam had indicated that the placement would have a significant impact on the noise and the placement of the bell would be slightly lower than the roof line; therefore, the noise from the bell would be going up and not out into the neighborhood.

Mrs. Harris expressed concern that the tests were conducted and the bell was not in its proposed location. Ms. Strobel stated that she would discuss the possibility of moving the bell outside in the approximate location to conduct the tests.

Vice Chairman DiGiulian called for speakers in support of the application.

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John Kilcullen, 1210 Burtonwood Court, Alexandria, Virginia, came forward and stated that he is a resident of the Mount Vernon District and is very familiar with the subject property since he has worked with the sisters in improving the back part of the property. He explained that the property is very heavily wooded except where an area has been cleared in order to construct walkways. Mr. Kilcullen stated that the sisters are good neighbors who are very quiet and who observe a vow of silence for most of the day except when they are in prayer. With respect to the traffic concerns, Mr. Kilcullen stated that there is never more than 8 to 10 cars parked in the driveway with the exception of perhaps Christmas and Easter. He stated that the chapel is very small and would not accommodate more than 50 people and the parking is adequate. Mr. Kilcullen stated that in August there is a nine day Novena which is held at 7:00 p.m. for approximately half an hour and the event is to honor the Saint who is the founder of the congregation. He agreed that there is excess parking during that time but that he believed that the additional parking spaces would alleviate any parking problems.

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

Peter Ranney, 7121 Rita Court, Alexandria, Virginia, asked that Mr. Kilcullen's address be made a part of the record. He called the Board's attention to a petition that had been delivered to Supervisor Hyland's office on December 7, 1990. Mr. Ranney stated that the citizens met with Ms. Strobel on Sunday night in Supervisor Hyland's office, and following that meeting another petition was circulated to obtain additional signatures. He stated that he has also obtained the name of the President of the Popkins Farm Inc. Homeowners Association, Jim Rockley. Mr. Ranney then read the petition into the record, which noted the citizens' opposition to the overall size, height, and special uses of the addition. He stated that the citizens do not believe that the request would be in harmony with the land use and character of the residential neighborhood. He stated that there were also individual petitions from neighbors who are opposed to the addition. Mr. Ranney submitted photographs to the Board showing the impact of the use on the community.

Mrs. Harris asked Mr. Ranney to explain to the Board exactly what the citizens were opposed to, whether it was the bell tower, the addition, or the parking situation. Mr. Ranney explained that the citizens believe that any expansion of the building would not be in keeping with the residential character of the community.

In response to a question from Mr. Hammack regarding the parking situation, Mr. Ranney replied that he considered the parking a very small part of the objection, but it was a very strong objection especially to the citizens who live adjacent to the property.

Vice Chairman DiGiulian stated that Mr. Ranney had not answered the question since Mr. Hammack asked how often the overflow parking occurred. Mr. Ranney stated that he would have to defer to Nelson Hoffman. (Mr. Hoffman started to respond from the audience.) Mr. Ranney stated that it occurs at least three times per year.

Timothy A. Berkoff, 7120 Rita Court, Alexandria, Virginia, stated that he is a resident of the Calvert Park Community and a youth group advisor at the Mount Vernon Unitarian Church, and that he believed in the freedom of religious expression and the toleration of different religious ideas. He stated that he respected the sisters in their unique expression of religion; however, the proposal before the Board goes way beyond the scope of those values. He strongly objected to the mausoleum as he believed it would impact the property values of the nearby houses and would not be in harmony with the neighborhood. He stated that there are no cemeteries nor mausoleums in the Calvert Park community and there are no dead bodies stored in Calvert Park homes.

Following a discussion between Mrs. Harris, Mr. Hammack, and Mr. Berkoff about the cemetery, Mr. Berkoff stated that it would be a known fact that the mausoleum was there and some people object to living near cemeteries. He stated that he believes that the granting of the request would set an undesirable precedent.

Cindy Ksenics, 2504 Stone Hedge Drive, Alexandria, Virginia, submitted a letter of opposition into the record from the Mount Vernon Apartments. She objected to the bell tower since she had recently had a baby and was concerned with the noise level. She stated that she did not believe that the whole neighborhood needed to hear the bell, only the people inside the monastery.

In response to a question from Mr. Hammack, Mrs. Ksenics stated that the sisters presently use a hand bell which can be heard but that does not create any problems.

Mrs. Ksenics also objected to the storm drainage waiver requested by the applicant. She stated that her property is located on an extremely high water table and a two year construction process was just completed to get curbs and gutters for proper drainage. She stated that there are neighbors who suffer from problems with the drainage directly related to the monastery and the proposed construction is to be located on an area of the property where there is marine clay, which does not drain at all.

Bryan Krizek, 2601 Stone Hedge Drive, Alexandria, Virginia, came forward and used the viewgraph to show where his property was located in proximity to the subject property. He stated that he was concerned with the bell tower and the number of times the bell would be

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rung a day. Mr. Krizek also expressed concern with the drainage problem, the mausoleum, and the traffic.

Mr. Hammack assured the speaker that the applicant had to go through the site plan process which would include soil studies. He then asked the speaker if he would oppose the bell tower if it met the County requirements. Mr. Krizek answered that he would oppose the bell tower since no accurate readings have been taken and he did not see how there could be before the bell was in place. He acknowledged that the sisters had agreed not to use the bell if it did not meet the County requirements but stated that no one could assure the citizens that is what would be done.

George Ksenics, 4504 Stone Hedge Drive, Alexandria, Virginia, stated that he had moved to the neighborhood two years ago because it was quiet and located on a dead end street. He stated that there have been parking problems but that he was willing to ignore the problem because it was a quiet neighborhood. Mr. Ksenics stated that he believed that might change and asked why a bell tower was needed outside when the sisters were inside. He stated that the bell tower would be 35 feet high, which is higher than his house. With respect to the mausoleum, Mr. Ksenics stated that he would like to see a study submitted on surrounding mausoleums to determine if there will be any leakage and the impact from the use over the next 15 to 20 years. He stated that he also believed that more traffic will be generated. He expressed concern that the bell would be rung when someone passes away and the possibility of other people, outside the monastery, being buried on the site.

Mrs. Harris assured the speaker that if the request is approved the applicant would have to comply with the development conditions. She stated if the conditions stipulate that only the sisters can be buried in the mausoleum that is all who can be buried there.

Scott Hoffman, 2507 Stone Hedge Drive, Alexandria, Virginia, called the Board's attention to a letter that he received which did not list any of the specifics of the request and referenced the petition that had been circulated. He stated that he was opposed to the applicant's request for the mausoleum because his wife is very sensitive to living next to this type of use.

Mrs. Harris asked if the neighbors signed the petition without knowing what the request was all about. Mr. Hoffman answered that there was still a lot of issues that the citizens were concerned about. He stated that the sisters have already constructed two additional buildings and that the citizens were not aware that this was to be a phase construction process.

Mrs. Harris asked staff to clarify what was actually being requested by the applicant. Ms. Bettard answered that the request was for a mausoleum, bell tower, and an addition.

Mr. Hoffman stated that his main concern was the mausoleum since his wife is very sensitive as she has been married twice before and both her husbands had passed away.

In response to a question from Mr. Hammack, Mr. Hoffman used the viewgraph to show the location of his property. He stated that he is also sensitive since his wife was killed while trying to cross Richmond Highway.

Leon Spencer, 2502 Stone Hedge Drive, Alexandria, Virginia, stated that he was very sympathetic to the cloister orders and for their witness, work, and discipline and that he did not want to limit that in any way. He stated that he was very concerned about the general sense of development in a residential area because he believed that the use should be in harmony with the neighborhood and this request violates that. Mr. Spencer stated that he was particularly concerned with the bell tower because it was a message of a discipline to the order that has no relationship and no relevance to the rest of the community. He stated that to impose the bell on the community was insensitive on the part of the order and was not really in harmony with the community.

Mrs. Harris stated that it was obvious from the speaker's attire that he was part of a church and asked if his church had a bell. Mr. Spencer answered that it did not. He stated that church bells are rung on Sundays or on special occasions. Mr. Spencer stated that the bell would be a part of the discipline and had nothing to do with the residential community. Mr. Hammack pointed out that perhaps members of the Jewish community could say the same thing about the church bells rung on Sunday mornings was an imposition to them. Mr. Spencer agreed.

In response to a question from Mr. Hammack about the size of his church, Mr. Spencer replied that he was an active member in a non-parochial ministry.

Mrs. Harris asked what Rita Court and Stone Hedge Drives were zoned and the average FAR (Floor Area Ratio). Ms. Bettard replied R-2 and were developed with two dwellings per acre. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the maximum allowable FAR for non-residential uses in a R-2 District is .20.

There were no more speakers and Vice Chairman DiGiulian asked Ms. Strobel for rebuttal.

In rebuttal, Ms. Strobel addressed the issues raised by the citizens by stating that the mausoleum would not be visible from the exterior, there would be no exterior entrances to the

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mausoleum, no signage, nor would there be any outside visitors, nor would there be anyone other than those residing at the monastery buried there. With respect to the bell tower, Ms. Strobel stated that if the bell exceeds the noise level it will not be rung and agreed to make that a part of the development conditions. She added that the bell would not be rung all day when someone passes away but will only be rung at the designated times and will be struck only one time. Ms. Strobel stated that the applicant would have to comply with all health department regulations regarding the mausoleum. She stated that a soils study had been done and the addition would not be constructed on marine clay. She stated that the applicant had agreed to provide ten additional parking spaces and assured the Board that there is only one chapel.

Mrs. Thonen expressed concern with the high water table and pointed out that all parking had to be on site. She stated that she did not believe that the use would be in harmony with the residential neighborhood. Ms. Strobel stated that the nuns were not aware of any parking problem. She stated that the applicant would agree to deferring the Board's decision for two weeks in order to work with the citizens.

Mr. Kelley asked if it were possible to test the bells in the approximate location and height that it will be on the bell tower. Ms. Strobel answered that she could investigate the possibilities.

Vice Chairman DiGiulian noted that Ms. Kelsey had pointed out to the Board that the plat up on the viewgraph was not the same one submitted with the application. Ms. Strobel explained that following the last meeting with the citizens a new plat had been prepared to show the approximate location of the additional parking.

There was no further discussion and Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to defer the application for decision only and stated that the applicant would have to submit a revised plat and asked that the applicant work with the citizens to try to resolve outstanding issues. He also asked that the applicant provide the Board with possible language to be used in the development conditions. He stated that he would like to see the following: additional screening on the west side; additional parking spaces; language that would restrict the use of the mausoleum for burial for the sisters only; and, a provision that would preclude the building of the tower until appropriate tests were conducted that would conform to the applicable noise standards as required by the Code.

Mrs. Thonen stated that she was concerned with the water problem and that she hoped that the citizens and the applicant could reach an understanding as she hated to see a neighborhood torn apart.

Mr. Hammack stated that he shared Mr. Kelley's concern with the noise level generated from the bell tower. He suggested that perhaps when drafting the condition, the Board should look at whether or not the bell tower is an integral part of the addition. He stated that he would not like to delay the construction of the addition because of the bell tower and that he would be willing to look at alternatives.

Mr. Kelley amended his earlier motion to allow additional testimony and stated that he would like to have the plats two weeks prior to the public hearing. He asked staff for a deferral date.

Ms. Kelsey outlined the Board's schedule for the dates of January 24th, January 29th, and February 5th. It was the consensus of the Board to schedule the case for February 5, 1991. Ms. Kelsey suggested 9:15 p.m.

Mr. Ribble seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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The Board took a five minute recess before proceeding with the next scheduled case.

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Page 38, December 20, 1990, (Tape 2), Scheduled case of:

10:30 A.M. CLAUDE H. SR./JACQUELINE T. CREGER, SP 90-A-071, appl. under Sect. 8-914 of the zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow structures to remain 8.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,200 s.f. located at 7909 Hatteras Ln., zoned R-3, Annandale District, Tax Map 79-2((3))(25)18.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Creger replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject property is generally located northwest of the intersection of Sedgwick Lane and Queenberry Avenue, on Hatteras Lane. The surrounding residential neighborhood consists of single family dwellings on lots zoned R-3.

The applicants are requesting approval of a special permit for a modification to the minimum side yard requirement based on an error in building location to allow a roofed deck and an addition to remain 8.1 feet from the side lot line. Ms. Bettard stated, for clarification purposes, that the accompanying plat showed the roofed deck as an open porch and the addition as an enclosed porch. The plat also showed an open deck, noted as a frame deck on the plat, which is also located 8.1 feet from the side lot line. The structure is not a part of the application as it is allowed to extend into the minimum side yard based on Sect. 2-412 of the Zoning Ordinance. Section 3-307 of the Zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 district. A modification of 3.9 feet is therefore requested for the roofed deck (open porch) and the addition (glass-enclosed porch).

Sect. 8-914 states that the BZA may require landscaping and screening measures to mitigate the impact of a building in error. The 8.1 foot area between the dwelling and the side lot line is asphalted and additional screening measures would be helpful in mitigating adverse impacts to the abutting property to the west, but such measures are not possible due to the inadequate width between the asphalt and the lot line.

Ms. Bettard stated that in staff's opinion the use met the general standards for special permit approval.

The co-applicant, Jacqueline T. Creger, 7909 Hatteras Lane, Springfield, Virginia, came forward. She called the Board's attention to her letter dated September 10, 1990, in regard to the structure in question. Mrs. Creger explained that in 1968 she and her husband constructed an addition to their house which included a family room, a bedroom, a bathroom, and a side concrete patio which is now an enclosed porch. She stated that they had obtained a building permit and at that time only 8 feet was required. In 1978, she stated that they added a deck and a flagstone patio in the back of the house. Mrs. Creger stated that over the years the flagstone patio, due to the lay of the land, caused flooding in the basement whenever it rained and they tried to find a solution to the problem. After obtaining various estimates, they decided to take up the flagstone patio, construct a deck, and extend the existing porch on out to the front. She stated that they believed since there was an 8 foot requirement previously that it would be all right to go ahead and extend the porch. Mrs. Creger stated that she had no reason to cause any problems with the neighbors and requested that the Board grant the request. She stated that it would be an extreme hardship on them if they had to remove the porch since her husband had been laid off from his job. Mrs. Creger stated that she and her husband would be more than happy to meet any requirements. She expressed surprise that her neighbor, Mr. Whalon, was opposed to the request since she had discussed it with him prior to construction and at time he had no objections.

In response to a question from Mrs. Harris, Mrs. Creger replied that occasionally they do drive a car back on the asphalt if they have to unload anything from the car. She added that one time her son was having difficulty with his vehicle and it was parked there until he could get rid of it. Mrs. Creger explained that the asphalt was installed to help with the parking problem and because they cannot get grass to grow in that area of the yard.

Mrs. Harris asked her to elaborate on her comment that it helped with the parking problem. Ms. Creger explained that they had widened the driveway in the front so they can park both cars in the driveway. The asphalt in the rear of the house is used as a play area for the grandchildren.

There were no speakers in support of the request and Vice Chairman DiGiulian called for speakers in opposition.

Stephen Fox, an attorney with the law firm of Fox & Proffitt, 11320 Random Hills Road, Fairfax, Virginia, came forward to represent Don Whalon, an adjoining property owner. He stated that Mr. Whalon was opposed to the granting of the special permit and that he did not believe that the applicants had acted in bad faith but that they had also not acted in good faith. He stated that the house was built in 1963 and was basically a four bedroom split foyer and is now a "colossus". He stated that the house is out of scale with the community and is now a six or seven bedroom house which accommodates the applicants as well as someone who Mr. Whalon believes is a renter. Mr. Fox stated that the problem Mr. Whalon has with the structures is that it has a negative impact on his property. (He submitted photographs to the Board which showed the proximity of the offending structures to Mr. Whalon's house.) Mr. Fox explained that the driveway originally was not all the way over to the property line but the addition of all the structures have moved the driveway westward and removed the aura of potential green space. He stated that the applicants obtained the appropriate building permits in 1968 but since that time have failed to follow the permit procedure and had they followed that procedure the situation would not exist. He stated that he did not believe that it was a situation of good faith compliance and that he believed that the Ordinance had been substantially flouted. Mr. Fox stated that there is a hardship on Mr. Whalon from the fumes coming from the vehicles parked on the applicants' driveway going into his elderly mother's bedroom. He stated that the houses are on small lots and built in a very linear

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fashion with no offset; therefore, any encroachment has a more significant impact than it would in a cluster subdivision.

Don Whalon, 7907 Batteras Lane, Springfield, Virginia, the adjoining property owner came forward. He stated that in 1968 and 1978 the applicants had obtained building permits to make additions to their house but since that time they have expanded their four bedroom house to a seven to eight bedroom house. Mr. Whalon stated that a real estate agent viewed both properties and told him that because of the closeness of the two properties it is not a good selling point from Mr. Whalon's standpoint. He stated that since the structures were not inspected he believes there are safety factors involved with respect to the electrical outlets and the soundness of the structures. Mr. Whalon stated the driveway runs from the front sidewalk to the rear lot line and any vehicle parked in the driveway with the engine running creates a health hazard from carbon monoxide poisoning. Mr. Whalon stated that when a door is slammed on the applicants' property it sounds like it is his door because of the close proximity of the applicants' house. He stated that the hardship is really on him because there are three known violations noted by the building inspector, the applicants violated the Ordinance by not obtaining a building permit, and that he personally knows the builder of the structure who was well aware of the fact that a building permit was needed. Mr. Whalon asked the Board to deny the request. He stated that he had recently been ticketed for an expired state inspection and when he received the ticket he paid the fine as should the applicants.

In rebuttal, Mrs. Creger stated that Mr. Whalon was under the impression that she had called and turned him for the expired sticker but that she would never do anything that way. She added that there are three bedrooms in use right now and the other rooms are used as a den and for the grandchildren to play in. She stated that the driveway is where it has always been, with the exception of the addition, and the cars are very seldom sitting with the engines running.

Mrs. Thonen asked if the applicant would be willing to remove all the asphalt and add screening if the Board granted the request. Mrs. Creger answered that she would do what she could do.

There was no further discussion and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Harris agreed with the motion and stated that the intent of the Zoning Ordinance is to provide space between dwelling units. She stated that there are possibly mitigating measures that the applicants could propose but as it is now there is no space to lessen the visual or usage impact.

Vice Chairman DiGiulian stated that he would support the motion because the lots are narrow and the structures and driveway comes right up to the property line and that it was hard for him to believe that the applicants did not know that a building permit was needed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-A-071 by CLAUDE H. SR. AND JACQUELINE CREGER, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow structures to remain 8.1 feet from side lot line, on property located at 7909 Batteras Lane, Tax Map Reference 79-2((3))(25)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 December 20, 1990; 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.
4. The applicant does not meet the standards.
5. If the special permit was granted, it would impair the intent of the Zoning Ordinance by moving it over into her property line.
6. The use creates an unsafe condition to the neighbor and the fact that the applicant has reached the standards for a special permit.

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



Page 41, December 20, 1990, (Tape 2), (CLAUDE H. SR./JACQUELINE T. CREGER, SP 90-A-071, continued from Page 40)

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, 8-903 and 8-914 of the zoning Ordinance.

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

Mr. Ribble seconded the motion which passed by a vote of 5-1-0 with Mr. Hammack abstaining. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1990.

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Page 41, December 20, 1990, (Tape 2), Scheduled case of:

10:45 A.M. ZANE MASON APPEAL, A 90-S-020, appl. under Sect. 18-301 of the zoning Ordinance to appeal the Director of the Department of Environmental Management's decision to disapprove a gift lot subdivision of property shown on Plat #7796-RP-01-3 for Louise R. Mason and Plat #7796-RP-02-3 for Zane S. Mason on approx. 8.525 acres located on Braddock Road, zoned R-C, Springfield District, Tax Map 67-2((1))15A.

10:45 A.M. LOUISE MASON APPEAL, A 90-S-021, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of the Department of Environmental Management's decision to disapprove a gift lot subdivision of property shown on Plat #7796-RP-01-3 for Louise R. Mason and Plat #7796-RP-02-3 for Zane S. Mason on approx. 5.0 acres located on Braddock Road, zoned R-C, Springfield District, Tax Map 67-2((1))15B.

Vice Chairman DiGiulian stated that at the beginning of the public hearing the Board had issued an intent to defer the public hearings on A 90-S-020 and A 90-S-021 since some of the members had not received the staff report in time to review the material.

Mrs. Thonen made a formal motion to defer both appeals. She asked staff for a date and time certain.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested February 26, 1991 at 10:00 a.m.

Mr. Ribble seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 41, December 20, 1990, (Tape 2), scheduled case of:

11:00 A.M. WOLFTRAP MEADOWS APPEAL, A 89-D-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Evaluation Director's decision that Tax Map 19-3((13))K satisfies the zoning Ordinance definition of usable open space and therefore meets the provisions of Condition Number 22 of Special exception SE 83-D-106 on approx. 4 acres located on Days Farm Drive, zoned R-1, Dranesville District, Tax Map 19-3((13))K. (DEF. FROM 3/13/90 AT APPELLANT'S REQUEST. DEF. FROM 5/22/90 AT APPELLANT'S REQUEST. DEF. FROM 9/20/90 AT APPLICANT'S REQUEST FOR 3-MONTH DEFERRAL)

Vice Chairman DiGiulian stated that at the beginning of the public hearing the Board had issued an intent to defer the public hearing on A 89-D-018 since the Board had received a request from the appellant requesting a deferral.

Mrs. Thonen made a formal motion to defer the above referenced appeal. She asked staff for a date and time.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested February 26, 1991 at 10:15 a.m.

Mr. Harris seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 41, December 20, 1990, (Tape 2), After Agenda Item:

Colvin Run Pet-Otel Additional Time

The Board had passed over this case earlier in the public hearing to allow the applicant's attorney to be present. Vice Chairman DiGiulian asked if the applicant's representative was present.

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Page 42, December 20, 1990, (Tape 2), AFTER AGENDA ITEM, COLVIN RUN PET-OTEL HOTEL, continued from Page 41 )

Sarah Reifsnnyder, attorney with Blankingship & Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, came forward and stated that she had not represented the applicant when the original application was submitted. She stated that the site plan was submitted the first of December, that it had been assigned a site plan number, and the process would be completed shortly.

In response to questions from Mrs. Harris, Ms. Reifsnnyder replied that the development conditions under the special permit required that the applicant go through the site plan process. She stated that the applicant requested a waiver of that stipulation which was denied; therefore, the applicant is now trying to complete the site plan process.

Mrs. Harris made a motion to grant the additional time. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting. The new expiration date is December 16, 1991.

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Page 42, December 20, 1990, (Tape 2), After Agenda Item:

Letter from Brian McCormack, Legal Counsel for the BZA

Mrs. Thonen called the Board's attention to a letter received Brian McCormack with respect to the Pulite court case wherein he explained the appellant was planning to file a special exception and would like to forego any litigation until such time as a decision has been made on the special exception. Mr. McCormack asked the Board for their concurrence. Mrs. Thonen made a motion to accept Mr. McCormack's recommendation.

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

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Page 42, December 20, 1990, (Tape 2), After Agenda Item:

BZA Meeting Dates for 1991

Mrs. Thonen made a motion that the Board reschedule all their meetings to Tuesdays with the night meeting being scheduled for the third Tuesday of the month. She suggested that the change be implemented in March. The Board discussed the proposed change.

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

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

*Betsy S. Hirtt*

Betsy S. Hirtt, Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: February 5, 1991

APPROVED: February 12, 1991

042

043

The regular meeting of the Board of Zoning Appeals was scheduled in the Board Room of the Massey Building on Tuesday, January 8, 1991. The following Board Members were present: Vice Chairman DiGiulian; Martha Harris; and, Paul Hammack. Chairman Smith; Mary Thonen; Robert Kelley; and John Ribble was absent from the meeting.

Vice Chairman DiGiulian announced that due to the lack of a quorum the public hearing could not be held. The Board proceeded to call each applicant to the podium to obtain their approval for moving the cases to Thursday, January 10, 1991, at 9:00 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that anyone who could not be present on January 10th at 9:00 a.m. come to the podium and tell the Board when it would be convenient for them.

Vice Chairman DiGiulian called the first applicant to the podium.

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Page 40, January 8, 1991, (Tape 1), Scheduled case:

KENTSTONE, LTD., VC 90-M-110 and KENTSTONE, LTD., VC 90-M-111

Todd Canterbury, Vice President of Kentstone, came forward and agreed to the suggested date and time of January 10, 1991, at 9:00 a.m.

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Page 43, January 8, 1991, (Tape 1), Scheduled case:

VFPJ, INC., SP 90-L-074

Quinley Johnson, the applicant, came forward and agreed to the suggested date and time of January 10, 1991, at 9:00 a.m.

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Page 43, January 8, 1991, (Tape 1), Scheduled case of:

CREATIVE PLAY SCHOOL, INC., SPA 89-V-046-1

Ralph Smalley, the applicant, came forward and agreed to the suggested date and time of January 10, 1991, at 9:00 a.m.

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Ms. Kelsey stated that perhaps the Vice Chairman would like to poll the audience to determine if that date was agreeable with anyone who was present to address any of the cases.

Vice Chairman DiGiulian asked if there was anyone present who would like to speak to the new date.

A lady came up and stated that she was present to oppose the Kentstone applications and that it would be very difficult for her since she has recently started a new job in Washington, D.C. She asked what options were available to her.

Vice Chairman DiGiulian explained that she could submit a written statement to the Board. She stated that she was concerned that a written statement would not carry as much weight as her personal appearance. The Board assured her that would make no difference and pointed out that they could not act without a quorum. Mr. Hammack suggested that perhaps she could persuade someone to come to the January 10th public hearing and make her presentation. He asked her name and she replied Penny Gross. She explained that she was an adjacent property owner and was very concerned about the requests.

Vice Chairman DiGiulian asked if there was anyone else present who would like to address the rescheduling of any of the cases. There was no reply.

Ms. Kelsey informed the Board that there were citizens present who were interested in the After Agenda items, in particular Accotink Unitarian Universalist Church. She stated that staff was recommending an additional twelve months; therefore, she saw no problem with that item.

Mr. Hammack again apologized to the citizens. Ms. Kelsey apologized on behalf of staff and stated that when she left the office at 5:00 p.m. it had been her understanding that a quorum would be present.

Someone from the audience asked if seven Board members would be present on January 10th. Vice Chairman DiGiulian explained that there would be no more than six members present since Mr. Smith, the Chairman, was ill. Ms. Kelsey added that one member of the Board had the flu.

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Page 44, January 8, 1991, (Tape 1), ADJOURNMENT:

The Board members and staff left the Board room at approximately 8:30 p.m.

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Betsy S. Burtt  
Betsy S. Burtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: February 12, 1991

APPROVED: February 21, 1991



045

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, January 10, 1991. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Vice Chairman DiGiulian called the meeting to order at 9:13 a.m. and Mrs. Thonen gave the invocation. Vice Chairman DiGiulian asked if there were any Board matters.

Mr. Kelley made a motion to defer the discussion regarding the Board's organization until later in the meeting. Mr. Ribble seconded the motion which passed by a vote of 4-0 with Mrs. Harris and Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

Vice Chairman DiGiulian then called for the first case which had been scheduled for Tuesday, January 8, 1991. These cases were rescheduled to January 10, 1991, at 9:00 a.m. due to the lack of a quorum because of inclement weather.

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Page 46, January 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. KENTSTONE, LTD., VC 90-M-110, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 12.5 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 5,500 s.f. located at 6416 6th St., zoned R-2, Mason District, Tax Map 72-3(8)(G)53, 54.

9:00 A.M. KENTSTONE, LTD., VC 90-M-111, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 12.5 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 5,500 s.f. located at 6416 6th St., zoned R-2, Mason District, Tax Map 72-3(8)(G)51, 52.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Canterbury replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that applications VC 90-M-110 and VC 90-M-111 were combined into one staff report since the subject properties lie side-by-side, but the development conditions are separate. The subject properties (Lots 51, 52, 53, and 54) are located at 6416 Sixth Street in the Weyanoke Subdivision near Lincolnia. The area is generally located north and west of the Shirley Highway, south of Little River Turnpike, and east of Braddock Road. Lots 53 and 54 are combined and filed under application VC 90-M-110 and Lots 51 and 52 are combined and filed under application VC 90-M-111. Each of the four lots are substandard but allowed in the R-2 Zoning District, and all are vacant with no structures nor appreciable vegetation. Surrounding parcels in the Weyanoke subdivision are also zoned R-2 and are developed with single family detached dwellings.

Mr. Jaskiewicz addressed application VC 90-M-110 for Lots 53 and 54 and stated the applicant was requesting a variance to the minimum side yard requirement to permit a dwelling to be located 12.5 feet from the eastern lot line, shared with Lot 55. Since the Zoning Ordinance requires a minimum side yard of 15 feet, the applicant was requesting a variance of 2.5 feet to the minimum side yard requirement for the proposed dwelling.

He stated similarly, in application VC 90-M-111 for Lots 51 and 52, the applicant is requesting a variance to the minimum side yard requirement to permit a dwelling to be located 12.5 feet from the eastern lot line, shared with Lot 53. Since the Zoning Ordinance requires a minimum side yard of 15 feet, the applicant was requesting a variance of 2.5 feet to the minimum side yard requirement for the proposed dwelling.

Todd Canterbury, Vice President of Kentstone, came forward and stated that his company is the owner of the building sites. He stated that the building sites are 50 feet wide and are exceptionally narrow. He stated that strict application of the Zoning Ordinance would restrict the building envelope to only 20 feet in width, which would mean 60 percent of the width would be used to meet the setback requirement. He stated that approval of the request would allow the houses to be upgraded and would allow design flexibility in both interior and exterior. Mr. Canterbury stated that the applicant shared a common interest with the neighborhood in wanting to protect the ambience as well as the property values. He pointed out that many existing houses are on similar lots and have side yards less than 15 feet, specifically the adjacent house on Lot 50, which was built in the '60's. He stated that the applicant has met with the neighbors to discuss the plans and answer questions. In closing, Mr. Canterbury stated that the houses could be constructed without the variance but he believed that it would be better for the neighborhood if larger houses could be built.

Vice Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Kathleen Chevalier, 4816 Virginia Street, Lincolnia, Virginia, President of Lincolnia Park Civic Association, came forward. She stated that Penny Gross, a member of the Executive Board, appeared before the Board on January 8th, but unfortunately she could not be present at this public hearing. Ms. Chevalier submitted a written statement into the record on behalf of Ms. Gross. She stated that Mr. and Mrs. Gross have owned property adjacent to the subject property for the last seventeen years. Ms. Chevalier continued by stating that the

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subdivision is comprised mostly of older houses, brick and frame ramblers, a few fieldstone bungalows, and some authentic farm houses dating from the time when Lincolnia Park was still farm land. She stated the neighborhood still has that "country feeling" with some winding roads, an abundance of trees and large yards. She stated that three years ago the community voted overwhelmingly in opposition to putting in curbs, gutters, and sidewalks. Ms. Chevalier stated that the citizens in Lincolnia Park tend to "stay put," remodeling their houses rather than selling. She pointed out that the entire community is zoned R-2 and is platted out in 8 one-acre plots and that was done many, many years ago. She stated that there are a few houses that are actually built on quarter acre lots and they predate the zoning ordinance. Ms. Chevalier stated that for the most part, as the population has aged, young people have moved in, upgraded the properties, and in some cases have bought adjacent lots to enlarge their lots. She stated that no one has ever argued that because the plats were drawn before the zoning ordinance, they now have a right to build according to the plats and build what amounts to a R-4 zoning. Ms. Chevalier stated that the country feeling of the community is one reason why the applicant's requests are completely unacceptable. Under the Comprehensive Plan for the L-2 sector, Ms. Chevalier stated that the area between Cherokee and Shallow Avenue is described as developed with detached single family residential units at approximately two units per acre and planned for residential development at one and a half dwelling units per acre. She stated that the particular portion of Lincolnia Park was originally platted in 25 x 100 foot lots apparently 60 years ago. She stated that Standard number 8 states that the granting of the variance will not change the character of the zoning district and the applicant's request will since the applicant proposes to construct townhouses. In addition to an addendum to the statement that she had presented, Ms. Chevalier submitted photographs and a written statement from another adjacent neighbor to the Board. She asked the Board to deny the request.

In rebuttal, Mr. Canterbury agreed that the community is a charming area and is undergoing a transition since six new houses have been constructed within six blocks of the subject property within the past two years.

Vice Chairman DiGiulian asked what size lots the new houses were constructed on and Mr. Canterbury answered 25 x 110 each and some were combined lots.

Mr. Canterbury noted that the applicant was only requesting a 2.5 foot variance in order to upgrade the product.

Mr. Jaskiewicz called the Board's attention to Development Conditions 1 and 1A which referenced "specific addition" and should state "specific dwelling."

In response to a question from Mr. Ribble, Mr. Jaskiewicz stated staff's research showed combined lots made up of at least three or four lots.

Mr. Ribble stated that he had been on the Board since 1982 and he could not recall the Board ever granting a request for two lots in that particular subdivision.

Mr. Canterbury stated in 1989 the Board did grant a similar request on Seminole Avenue. He used the viewgraph to show the Board the location of the subject property.

There being no further discussion, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-110 by KENTSTONE, LTD., under Section 18-401 of the Zoning Ordinance to allow dwelling 12.5 feet from side lot line, on property located at 6416 6th Street, Tax Map Reference 72-3((8))(G)53, 54, 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, the public hearing for January 8, 1991 was held by the Board on January 10, 1991; 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 5,500 square feet.
4. The applicant has not met the nine standards required for a variance.
5. After hearing the testimony, it does not appear that the request will be harmonious with the neighborhood.

- 6. The applicant did not deal with the hardship issue and stated that the variance was requested simply to upgrade the property and that is not a justification for a variance in this case.

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 so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991.

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Mr. Ribble made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-111 by KENTSTONE, LTD., under Section 18-401 of the Zoning Ordinance to allow dwelling 12.5 feet from side lot line, on property located at 6416 6th Street, Tax Map Reference 72-3((8))(G)51, 52, 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, the public hearing for January 8, 1991 was held by the Board on January 10, 1991; 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.

Page 48, January 10, 1991, (Tape 1), (KENTSTONE, LTD., VC 90-M-110 and VC 90-M-111, continued from Page 47)

3. The area of the lot is 5,500 square feet.
4. The applicant has not met the nine standards required for a variance.
5. After hearing citizen testimony, it does not appear that the request will be harmonious with the neighborhood.
6. The applicant did not deal with the hardship issue and stated that the variance was requested simply to upgrade the property and that is not a justification for a variance in this case.

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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.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991.

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Page 48, January 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. VFPJ, INC., SP 90-L-074, appl. under Sect. 4-603 of the Zoning Ordinance to allow a dance hall on approx. 11,610 s.f. located at 8730 Richmond Highway, zoned C-6, Lee District, Tax Map 109-2((1))24.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Johnson replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report on behalf of Bernadette Bettard, Staff Coordinator. She stated that the subject property is located on the north side of Richmond Highway, east of its intersection with Sacramento Drive. The subject site is surrounded by property on the south and west that is zoned C-6 and developed with commercial uses. Residential property with zoning designations of R-2 and R-20 abut the site on the east and the north, respectively. The R-2 property is developed with single family detached dwellings and the R-20 parcel is developed with multi-family units.

Ms. Kelsey made the statement that the applicant was requesting approval of a special permit to operate a dance hall in the Woodlawn Shopping Center at 8730 Richmond Highway. The proposed dance hall would occupy a total of 4,176 square feet in the existing shopping



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center. The existing shopping center contains approximately 89,000 square feet. Only non-alcoholic beverages would be served at the establishment and music would be played from pre-recorded tapes, compact disks or albums. There will be no food service and no new construction was proposed.

The proposed hours of operation, will be from 9:00 p.m. until 2:00 a.m. on Tuesdays, Wednesdays, Fridays and Saturdays. The applicant proposes to have three full time service staff employees and one manager; with no more than two service persons and one manager on duty during the hours of operation. Approximately one hundred twenty five (125) patrons are expected to utilize the facility per evening.

Ms. Kelsey stated that staff's sole concern was the potential for negative impacts upon an abutting residential area to the east, due to the close proximity of the subject use to this area, the late night and early morning hours proposed by the applicant and the lack of adequate screening between the parking and the lot line. Staff believed that the negative effects may be mitigated if additional screening and a four foot fence was provided along the eastern lot line. Therefore, staff recommended that SP 90-L-074 be approved, subject to the Development Conditions contained in Appendix 1 of the staff report.

The applicant, Quinley Johnson, 12508 Colewood Street, Herndon, Virginia, came forward and stated that he was the sole owner and stockholder of VFFJ, Incorporated. He stated that staff's approval of the request was much appreciated and added that he believed such a dance hall would be unique in the County. He stated that he has been a County resident for 37 years and for 11 years he worked for E-Systems Melpar Division. In July 1990, he stated that he resigned from management with that company in order to pursue the establishment of a non-alcoholic social club. Mr. Johnson stated that he has seen what is happening to citizens of Fairfax County and the problems that need to be addressed. He expressed concern that it appears that the only time people are feeling good is when they have a beer in their hand and that he would like to offer an alternative. Mr. Johnson commented that he could confidently state that when his patrons drive home that he has done nothing to impair their ability to drive. He stated that the Plan calls for an expansion of the diversity of businesses along Richmond Highway and he believed the request would do that. Mr. Johnson submitted copies of the 1968 and 1981 Comprehensive Plans to the Board.

With respect to the development conditions, Mr. Johnson stated that staff has asked for a maximum of 3 employees at any one time but that he would like to change the word maximum to "minimum." He appreciated the fact that staff recommended approval of his request, but stated that it appeared that staff gives with one hand and takes with the other by applying extraordinary requirements on a tenant in a 29 year old shopping center. Mr. Johnson called the Board's attention to Appendix 1, Paragraph 4 of the staff report, wherein staff requested a parking tabulation. He stated that staff had been provided with such a document on September 20, 1990, but elected not to include that document in the staff report. He stated that the special permit area would be 11,610 square feet of a 372,000 square foot shopping center. Mr. Johnson asked the Board to waive the site plan submission requirement. With respect to the screening, Mr. Johnson stated that there are 56 parking spaces along the eastern boundary, 28 spaces face a heavily wooded area not mentioned in the staff report. He called the Board's attention to the circle drawn on the plat which represented a 200 foot straight line distance to the special permit entrance and noted that all the parking spaces would be located within that area. He stated that there are an additional 25 parking spaces that face the heavily wooded area and 7 parking spaces face a chain link fence with year around cover on the eastern boundary. Mr. Johnson stated that he considered those spaces less desirable since many of them do not have straight line access to the special permit entrance. He added that the shopping center traffic patterns do not encourage the use of those spaces by the patrons. He called the Board's attention to the aerial photograph and ground photographs that he submitted. He objected to having to install a four foot high wooden fence along the eastern boundary since the parking would not impact any residential properties.

Mrs. Thonen stated that she served on the Southeast Fairfax Development Corporation, along with Supervisors Alexander and Hyland, and that corporation had passed a resolution that no waivers of site plan requirements, building codes, etc., would be granted along the Route 1 Corridor. She stated that most of the shops in the shopping center close by 7:00 p.m. and the hours being requested by the applicant would impact the neighbors and noted that there is no landscaping between the shopping center and the neighborhood. Mrs. Thonen stated that she did not believe that the dance hall would be harmonious with the neighbors and that part of the parking spaces would have to be taken for landscaping and for the fence.

Mr. Johnson stated that if Mrs. Thonen was referencing the Woodlawn Clusters, staff had not requested that landscaping be provided along the northern property line. Mrs. Thonen showed the applicant the exact location she was referencing.

Mr. Johnson stated that the staff report states that there are two uses in the shopping center that are presently operating during similar hours. Mrs. Thonen informed the speaker that the two restaurants in the shopping center are allowed by right.

In response to a question from Mrs. Thonen, Mr. Johnson replied that he is using his own money to start the dance hall, that it will be his own business, and that he will be working there every day.

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Mr. Ribble asked how much the patrons would be charged. Mr. Johnson answered that there would be a \$7.00 cover charge and all sodas, fruit drinks, and coffee would be \$1.00.

Mr. Johnson stated that he was trying to do something good and was getting caught up in the other issues that are put in place to see that other good things are done for the County. Mrs. Thonen explained that the Board has to look at land use and how it impacts the community and how harmonious the use would be with the community. She assured the speaker that it had nothing to do with the type of program that he was proposing. Mrs. Thonen pointed out that the Board had received several letters in opposition to the request. Mr. Johnson stated that on January 3rd he talked with the condominium residents and after explaining the use to the residents they voiced no objection. Vice Chairman DiGiulian told Mr. Johnson that he could respond to the letters during rebuttal.

Vice Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Mr. Johnson addressed the letters by stating that he shared the neighbors' concerns and that he did not believe that the use would negatively impact the neighborhood. He stated that his brother-in-law has been operating a similar establishment for the past 3 years in Rhode Island and has experienced no problems. Mr. Johnson agreed that there is a correlation between drinking and crime but not between dancing and crime.

There was no further discussion and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 90-L-074 by VFFJ, INC., under Section 4-603 of the Zoning Ordinance to allow a dance hall, on property located at 8730 Richmond Highway, Tax Map Reference 109-2(1)24, 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, the public hearing for January 8, 1991 was held by the Board on January 10, 1991; and

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

1. The applicant is the lessee of the land.
2. The present zoning is C-6.
3. The area of the lot is 11,610 square feet.
4. The decision was made strictly on land use and protecting the neighborhood.
5. The request would not be in harmony with the neighborhood.
6. The area where the use would be located backs up to residential property.
7. The restaurants in the shopping center are on the other end and do not abut residential, they are there by right, and they close early.
8. The hours of the dance hall would impact the neighbors.
9. Staff was right in asking for a parking tabulation and traffic things because the shopping center is in pretty bad shape as far as circulation goes.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991.

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Page 51, January 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CREATIVE PLAY SCHOOL, INC., SPA 89-V-046-1, appl. under Sect. 4-803 of the Zoning Ordinance to amend SP 89-V-046 for a child care center and to allow modification of previously imposed transitional screening condition on approx. 15,043 s.f. located at 8331 Washington Ave., zoned C-8 and EC, Mt. Vernon District, Tax Map 101-4((8))(D)5. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smalley replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the property is located at the intersection of Mohawk Lane and Washington Street, just south of Route 1 in the Mount Vernon District. It contains 15,043 square feet and is zoned C-8.

The application was an amendment to an existing special permit for a child care center, which was granted by the BZA in December of 1989. The previous approval allowed an increase in the maximum daily enrollment from 34 to 60 children and two building additions on the property. The previously approved plat showed 8.33 feet of transitional screening with a 7 foot high brick wall along the rear lot line. Condition 9 imposed by the BZA reiterated this requirement. The applicant was now requesting that the requirement for a brick wall be eliminated and that the plantings shown on the submitted special permit plat be used to satisfy the transitional screening requirement. She stated that staff had produced an abbreviated staff report and stated that staff's analysis of the request was on page 2 of the report. Essentially, staff believed that some type of solid barrier was necessary to screen the activity of the play area, which is adjacent to the rear lot line from the neighborhood farther to the south. Staff routinely recommends the provision of solid wood fencing around play areas for this reason and a wood fence, 5 feet in height, was required along the southern lot line on this property. The applicant had asked that the brick wall be deleted partially because the footings, associated with the construction of a brick wall, may injure or kill the sweet gum tree. The preservation of this tree is important because it is one of the few trees on the property. Construction of a wood fence would not require the extensive footings that a brick wall requires and would serve the purpose of a physical barrier on the site. Thus, staff concluded that, with the provision of the wood fence, the application met the standards for approval; thus, staff recommended approval-in-part of the application in accordance with the development conditions in Appendix 1.

In closing, Ms. Greenlief stated that most of the conditions were carried forward from the last approval and Condition 9 was changed to reflect the provision of a wood fence instead of a brick wall.

Mrs. Thonen stated that the subject property was located in a high water table and if the fence is not set in concrete it will not stand for very long and asked if staff had a problem with the chain link fence. Ms. Greenlief stated that staff would prefer to see a solid barrier between the play area and the residential area to the south.

The applicant, Ralph Smalley, 3129 Valley Lane, Falls Church, Virginia, stated that the two properties have co-existed for at least 20 years and although the school would be expanding there would no more children playing at one time on the play ground than there is now. He stated that to his knowledge there has never been an issue with the neighbors about the noise being generated from the play ground. Mr. Smalley thanked staff for agreeing that the brick wall is not needed but that he also did not believe that a wooden fence was needed since there is a 3 foot chain link fence in that location.

In response to a question from Mr. Kelley, Mr. Smalley replied that the chain link fence was there when he first occupied the property.

There were no speakers either in support or in opposition to the request and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen stated that she believed that additional landscaping would do the job along the area in question and that she would be perfectly willing to amend the application to say just that, if the applicant agreed.

Mr. Smalley stated that he would be happy to do that but noted that he would not like to go back through Site Review.

In response to questions from Mrs. Thonen, Ms. Greenlief replied that she had discussed the requested revision with the Department of Environmental Management and she had been told that the applicant would have to go through the site plan waiver process. She added that all conditions have to be met before an applicant can be issued an occupancy permit.

Mrs. Thonen made a motion to delete the requirement for the brick wall on the subject property with the following revisions to development Conditions Numbers 4 and 9:

- 4. The Board requests that the applicant be processed as rapidly as possible and not be charged any additional fees.
- 9. Delete the reference to the fence.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 89-V-046-1 by CREATIVE PLAY SCHOOL, INC., under Section 4-803 of the Zoning Ordinance to amend SP 89-V-046, on property located at 8331 Washington Avenue, Tax Map Reference 101-4((8))(D)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, the public hearing for January 8, 1991 was held by the Board on January 10, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 15,043 square feet.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 by RC Fields and Associates, dated 8/13/90, revised 11/14/90 and these development conditions. The Board requests that the applicant be processed as rapidly as possible and not be charged any additional fees.
5. The maximum daily enrollment for the child care center shall be limited to 60 children.\*
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a maximum of 12 spaces. All parking shall be on site and shall meet the parking geometrics specified in the Public Facilities Manual.\*
7. The maximum number of employee on site at any one time shall be seven (7).\*
8. The hours of operation for this facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.\*
9. Transitional Screening 1 (25') shall be provided along the southern lot line. Transitional Screening 1 shall be modified in the following areas:
  - o The driveway and the building shall be allowed to occupy a portion of the screening yard as shown on the special permit plat.
  - o The width of the screening yard shall be reduced to 8.33 feet in the southwestern portion of the site. The plantings within this reduced portion of the screening yard shall be as shown on the special permit plat.
10. A tree preservation plan 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 on the site. The tree preservation plan shall include the preservation of the sweet gum tree in the western portion of the site.

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11. Noise attenuation measures shall be provided for the new construction and the existing building. In addition, in the area surrounding the play area, acoustical fencing shall be provided which is at least five (5) feet in height as determined by DEM. The purpose of this fencing shall be to shield the children from adverse noise from Route 1 and to mitigate noise impacts of the use on the adjacent neighborhood to the south and to screen the use from adjacent properties. Acoustical fencing shall be architecturally solid from the ground up with no gaps or openings. The structure employed shall be of sufficient height to adequately shield the impacted area from the source of the noise. Attenuation measures shall be in accordance with the following standards:
  - A. In order to achieve a maximum interior noise level of 45 dBA Ldn, structural components shall have the following acoustical attributes:
    1. Exterior walls shall have a laboratory sound transmission class of at least 39, and
    2. Doors and windows shall have a laboratory sound transmission class of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory sound transmission class 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.
    4. In areas of outdoor recreation, a maximum exterior noise level of 65 dBA Ldn shall be attained.\*
12. Contribution to road improvements as determined necessary at the time of site plan review shall be provided along Mohawk Lane and Washington Street. The contribution shall equal that amount determined by the Mount Zephyr Community Improvement Committee.\*
13. 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 focus directly onto the subject property.
  - o Shields shall be installed, if necessary, to prevent the light 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, 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 which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 53, January 10, 1991, (Tape 1), Scheduled case of:

Approval of Minutes for November 13, 1990

Mr. Ribble made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 54, January 10, 1991, (Tape 1), Scheduled case of:

Additional Time for Accotink Unitarian Universalist Church, SP 85-S-083

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant was present and disagreed with staff's recommendation of 12 months.

Peter Pondue, Chairperson, Building and Steering Committee of the Church, 7578 Vocals Way, Springfield, Virginia, came forward and requested an extension of 18 months. He stated that at the time of the last extension, providing for a construction loan, and resolution of the position and alignment of a sewage pumping station/sewer main were unresolved issues. Mr. Pondue stated that at that time the Board approved an 18 month extension but directed the church to resolve the issues and submit a site plan for the property. He stated that one week ago, the church met with First Virginia Bank to obtain a bank loan. Stanley Martin has submitted a plan for the location of the sewage pumping station and the sewer alignment is noted on the church's site plan. He stated that a formal agreement has yet to be reached between the church and Stanley Martin, but once that agreement has been reached, the church will convey the sewer easement to the County. The preliminary design for the church has been completed and the church is in the process of finalizing contracts for detailed structural, mechanical, electrical, and acoustical designs. The church has requested proposals for additional geotechnical and foundations studies and is in the process of finalizing negotiations for a construction manager. He stated that on October 18th, a site plan was submitted and as of January 9th, all additional comments were being consolidated for final review. Mr. Pondue stated that the church has diligently pursued establishing the use and implementing development conditions on the property and have made substantial progress since the last appearance before the Board.

Mr. Ribble made a motion to grant the church an additional 18 months making the expiration date June 3, 1992. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 54, January 10, 1991, (Tape 1), Scheduled case of:

Additional Time for Immanuel Bible Church, SP 90-A-068-1

Mrs. Thonen made a motion to grant the applicant a 12 month extension making the expiration date December 7, 1991.

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

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Page 54, January 10, 1991, (Tape 1), Scheduled case of:

Acceptance of Vienna Moose Lodge #1896 Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the appellant has requested that the Board forgo accepting the appeal until January 17, 1991.

Mrs. Thonen made a motion to defer action until January 17, 1991. Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 54, January 10, 1991, (Tape 1), Scheduled case of:

Acceptance of Markey Business Center Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the appellant has requested that the Board forgo accepting the appeal until March 1991, in order for the Planning Commission to take action on the Proffer Condition Amendment scheduled for February 7, 1991. Ms. Kelsey suggested March 12th.

Mrs. Thonen made a motion to defer action on the above referenced appeal until March 12, 1991. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 54, January 10, 1991, (Tape 1), After Agenda Item:

Memorandum from Barbara Byron, Director, Zoning Evaluation Division  
RE: Reduction of Staff Reports

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Page 55, January 10, 1991, (Tape 1), (AFTER AGENDA ITEM, REDUCTION OF STAFF REPORTS, continued from Page 54)

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It was the consensus to pass over this item to allow the Board time to thoroughly review the request.

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Page 55, January 10, 1991, (Tape 1), Scheduled case of:

Reappointment of Robert J. Kelley

Mrs. Thonen made a motion to recommend the reappointment of Mr. Kelley to the Board of Zoning Appeals. Mr. Ribble seconded the motion which passed by a vote 6-0. Chairman Smith was absent from the meeting.

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The Board took a short recess before taking up the regularly scheduled agenda for January 10, 1991.

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Vice Chairman DiGiulian called the January 10, 1991 meeting to order and asked if there were any matters to bring before the Board.

The first order of business was the organization of the Board of the Zoning Appeals for the 1991 year.

Vice Chairman DiGiulian announced that Daniel Smith had resigned as Chairman of the Board of Zoning Appeals as of January 9, 1991. He stated that Chairman Smith had served on the Board for 32 years.

Mrs. Thonen stated that Chairman Smith was involved in many activities over the years and his dedication while serving on the Board could be achieved by very few people. She added that the Board would miss his leadership and dedication and he will always be thought of as "Chairman Smith."

Mr. Kelley nominated John DiGiulian to serve as Chairman of the Board of Zoning Appeals. Mr. Ribble seconded the motion which carried by a vote of 6-0.

Mr. Kelley proposed an amendment to the Board's by-laws to provide for two Vice Chairpersons. He stated that during Mr. Smith's prolonged absence there were many occasions that the Board had to nominate someone to serve as Acting Chairman. Mr. Ribble seconded the motion. The motion carried by a vote of 6-0.

Mr. Kelley then nominated Paul Hammack and John Ribble to serve as Vice Chairmen of the Board of Zoning Appeals. Mrs. Thonen seconded the motion which carried by a vote of 6-0.

Mr. Kelley nominated Betsy Hurrst to serve as Clerk to the Board of Zoning Appeals. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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Page 55, January 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CLYDE & ELAINE B. MORRIS, VC 90-A-113, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 10.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 15,091 s.f. located at 9120 Saranac Ct., zoned R-2, Annandale District, Tax Map 69-2((6))15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Morris replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the property is located on the north side of Saranac Court in the Rutherford subdivision. It contains 15,091 square feet, is zoned R-2 and is developed with a single family detached dwelling. The applicants were requesting a variance to the minimum side yard requirement to allow an addition to the northwest side of the dwelling. The addition would be located 10 feet from the side lot line where the minimum side yard requirement is 15 feet. Thus, the applicants were requesting a variance of 5 feet to the minimum requirement. She stated that the applicants obtained a variance from the BZA in December of 1985 to construct an addition to their existing garage. A copy of the minutes and resolution were contained in the staff report.

In response to a question from Mr. Hammack, Ms. Greenlief replied that the adjacent dwelling is approximately 14 to 26 feet from the shared lot line.

The applicant, Clyde Morris, 9120 Saranac Court, Fairfax, Virginia, came forward and stated that he believed that the application met all the required standards. He explained that he and his wife would like to extend an existing bedroom and enlarge the bathroom. He stated

that he did not realize how small the bathroom was until his wife had an accident and was on crutches and could not get into the bathroom and shut the door. Mr. Morris stated that he would also like to expand the closet space. He stated that he had talked to the neighbors before making the application for the variance. He and his wife have lived on the property for thirty years. Along the side of the lot where the addition would be constructed, Mr. Morris stated he had planted trees to create screening between the two properties and the trees are now 35 to 50 feet tall. He stated that the planned addition would have no gables which would be in keeping with the present architecture and design of the existing dwelling.

Chairman DiGiulian asked the applicant if he had seen the opposition letter from the neighbor on Lot 14. Mr. Morris answered that he had not seen the letter until he arrived in the Board room. The Board gave Mr. Morris a copy to read. After reading the letter, Mr. Morris stated that he had discussed the request with the neighbor and the neighbor had not voiced any objection at that time. Mr. Morris was surprised that the neighbor was concerned that the request would impact his privacy since Mr. Morris, himself, had planted the trees to provide the privacy.

In response to a question from Mr. Kelley, Mr. Morris replied that the addition would set approximately 36 feet from the neighbor's house.

There were no speakers to address the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-113 by CLYDE AND ELAINE B. MORRIS, under Section 18-401 of the Zoning Ordinance to allow addition 10.0 feet from side lot line, on property located at 9120 Saranac Court, Tax Map Reference 69-2((6))15, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 10, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,091 square feet.
4. The applicants have satisfied the nine required standards for a variance to be granted, in particular that the lot lines are somewhat irregular.
5. The line where the variance is required is an angle to the rear of the applicants' property and their dwelling is set somewhat far back on the lot.
6. There is some shallowness associated with the rear property that justifies it under 2(b).
7. Only a corner of the addition requires the variance since 80 or 85 percent of the addition could be built without a variance.

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

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



Page 57, January 10, 1991, (Tape 1), (CLYDE & ELAINE B. MORRIS, VC 90-A-113, continued from Page 56)

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

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.

Mr. Ribble seconded the motion which carried by a vote of 6-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 57, January 10, 1991, (Tape 1), Scheduled case of:

9:15 A.M. DUNCAN TURNBULL & DEBORAH A. BERGER, SP 90-L-077, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of side yard requirement based on error in building location to allow existing addition to remain 13.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 15,004 s.f. located at 7020 Ridge Rd., zoned R-2, Lee District, Tax Map 92-2((19))135A. (CONCURRENT WITH VC 90-L-118)

9:15 A.M. DUNCAN TURNBULL AND DEBORAH A. BERGER, VC 90-L-118, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 13.0 ft. from side lot line and addition 24.7 ft. from front lot line (15 ft. min. side yard and 35 ft. min. front yard required by Sect. 3-207) on approx. 15,004 s.f. located at 7020 Ridge Road, zoned R-2, Lee District, Tax Map 92-2((19))135A. (CONCURRENT WITH SP 90-L-077)

Chairman DiGiulian stated that the notices were not in order.

Lori Greenlief, Staff Coordinator, explained that the applicant had failed to submit the certified receipts to the Clerk within the allotted timeframe.

Chairman DiGiulian polled the audience to determine if the applicant was present. There was no reply.

Mrs. Thonen made a motion to defer the applications to February 21, 1991. Mrs. Harris seconded the motion which passed by a vote of 6-0.

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Page 57, January 10, 1991, (Tape 1), Scheduled case of:

9:30 A.M. TASSO N. FLOCOS, VC 90-D-112, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,250 s.f. located at 1444 Buena Vista Ave., zoned R-3, Dranesville District, Tax Map 30-2((7))(3)18, 19, 20.

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Flocos replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval to construct a garage 8.5 feet from the side lot line. Since the zoning Ordinance requires a 12 foot minimum side yard in the R-3 District, the applicant was requesting a 3.5 foot variance. Mr. Riegle stated that the dwelling to the north of the subject property is 15 feet from the shared lot line.

Tasso N. Flocos, 905 Lawton Street, Alexandria, Virginia, came forward and stated that the request would not be detrimental to the neighborhood and would allow him to upgrade the house. He stated that the neighbors have told him that they welcome the improvements and the garage. Mr. Flocos stated that the garage will be in keeping with the character of the neighborhood, the proposed location is the only practical one as the driveway leads to it, and the garage has been designed so that only a minimal variance is required. He stated that when he and his wife purchased the house one of its features was the view and the spacious back yard and they would like to keep the natural appearance of the yard and retain the trees. Mr. Flocos stated that the lot is exceptionally narrow and the strict application of the Zoning Ordinance would produce an undue hardship. (He submitted photographs to the Board showing the improvements that he has already made and the location of the proposed garage.) He stated that the street is narrow and the garage will help the parking situation.

In response to questions from Mr. Hammack, Mr. Flocos replied that a brick veneer has been added to the front of the house.

There were no speakers either in support or in opposition and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-112 by TASSO N. FLOCOS, under Section 18-401 of the Zoning Ordinance to allow addition 8.5 feet from side lot line, on property located at 1444 Buena Vista Avenue, Tax Map Reference 30-2((7))(3)18, 19, 20, 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 January 10, 1991; and

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

1. The applicant is owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,250 square feet.
4. The property does have an unusual topographic condition as the photographs show that the back of the property falls away and it would be very difficult to build a garage in that location.
5. The request is for a minimal variance and will not intrude on the neighbors on Lot 21.

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

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

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

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.

Mr. Ribble seconded the motion which carried by a vote of 6-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 59, January 10, 1991, (Tape 1), Scheduled case of:

9:45 A.M. GRACE & PARK CORPORATION, VC 90-D-114, appl. under Sect. 18-401 of the Zoning Ordinance to allow 7.0 ft. high fence to remain in front yard of corner lot (3.5 ft. max. height permitted for fence on corner lot by Sect. 2-503, 4 ft. max. height permitted by Sect. 10-104) on approx. 18,985 s.f. located at 1800 Briar Ridge Ct., zoned R-2, Dranesville District, Tax Map 31-3((22))29.

Patrick Via, attorney with the law firm of Hazel & Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, represented the applicant. He stated that the applicant would like to request a deferral to work with the citizens based on concerns raised in a petition recently received.

Mrs. Thonen asked how long a deferral and Mr. Via answered approximately a month.

Greg Riegler, Staff Coordinator, informed the Board that there were citizens present interested in the case.

Chairman DiGiulian polled the audience to determine if anyone would like to speak to the deferral request.

Michael Hall, 1824 Briar Ridge Court, McLean, Virginia, came forward and stated that the neighbors first raised objections in August 1989, the neighbors were notified of the case on January 3, 1990 and that the neighbors believe there has been plenty of time for the applicant to prepare the case. He objected to the deferral.

Sarah Ackerson, 1806 Briar Ridge Court, McLean, Virginia, agreed with Mr. Hall's comments and stated that it was the neighbors' understanding that a land covenant was just discovered that prohibits the construction of the type of fence that is the subject of the variance. She stated that the applicant does have legal counsel and it is inappropriate for the counsel to request a deferral in the "eleventh hour." Ms. Ackerson stated that the fence has already been constructed and the neighbors believe that any delay the Board would grant is in favor of the applicant.

Page 60, January 10, 1991, (Tape 1), (GRACE & PARK CORPORATION, VC 90-D-114, continued from Page 39)

Richard Neill, 1829 Briar Ridge Court, McLean, Virginia, objected to the deferral.

Anne Reynolds, 1830 Briar Ridge Court, McLean, Virginia, objected to the deferral.

Mr. Via stated that he had contacted Mrs. Gilmore to tell her that the applicant would be requesting a deferral but he did not have the telephone numbers of all the people who were interested. He stated that the applicant did not believe that there was violation of the covenants and that it would be beneficial to work with the citizens.

Chairman DiGiulian suggested that the case be deferred to a night meeting to make it easier on the citizens. Mr. Riegler suggested March 19, 1991.

A discussion took place among the Board members about a date for the deferral. Mrs. Harris stated that since the fence is already up, she could not see why negotiations were necessary and she was prepared to go forward. Mr. Kelley stated that he would like to see the covenants issue resolved before the Board hears the case. He made a motion to grant the deferral.

Mrs. Thonen seconded the motion and stated that she would like to see the neighborhood resolve the issue among themselves. The motion carried by a vote of 6-0.

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Page 60, January 10, 1991, (Tape 1), Scheduled case of:

10:00 A.M. GEORGE TSENTAS, VC 90-L-115, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition to 18.9 ft. of rear lot line (25 ft. min. rear yard required by Sect. 3-207) on approx. 19,000 s.f. located at 3904 Ivanhoe La., zoned R-2, Lee District, Tax Map 82-4((24))8A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tsentas replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance in order to construct an addition 18.9 feet from the rear lot line. Section 3-207 of the Zoning Ordinance requires a minimum front yard of 25 feet, thus a variance of 6.1 feet was required. She stated that research in the office of Zoning Administration indicated that the dwelling on adjacent Lot 6 is located approximately 15 feet from the shared lot line. Ms. Bettard noted that the variance plat indicates that a 6 foot stockade fence is located in the front yard along the eastern portion of the property. Section 10-104 of the Zoning Ordinance prohibits fences in excess of 4.0 feet in front yards, therefore that portion of the fence within the front yard should be removed.

The applicant, George Tsentas, 3904 Ivanhoe Lane, Alexandria, Virginia, explained that he would like to construct two bedrooms with a bathroom in between to accommodate his 11 year old handicapped daughter. He stated that the property was bought in good faith 5 years ago and since that time his daughter has had two operations which they had hoped would help her to be able to move on her own, but they did not. Mr. Tsentas stated that he believed that the application met all the nine requirements, there are no objections from the neighbors, and this is the only feasible location to construct the addition because of sewer easements on the property.

In response to questions from Mrs. Harris, Mr. Tsentas replied that two bedrooms were needed because his daughter cannot move without assistance. Since the other bedrooms are located on the second floor they could not hear her during the night.

There were no speakers, either in support or in opposition to the request, and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-115 by GEORGE TSENTAS, under Section 18-401 of the Zoning Ordinance to allow addition to 18.9 feet of rear lot line, on property located at 3904 Ivanhoe Lane, Tax Map Reference 82-4((24))8A, 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

Page 64, January 10, 1991, (Tape 1), (GEORGE TSENTAS, VC 90-L-115, continued from Page 60 )

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 10, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 19,000 square feet.
4. The subject property was acquired and there is no other place an addition can go because of the easements on the other side of the house.
5. Would not like to see the addition in the front of the property.
6. The request will not affect the Zoning Ordinance in any way.
7. A big hunk of the applicant's property has been taken up by the easements, which is not a problem shared with the other property owners in the area.

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

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

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

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

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

1. This variance is approved for the addition to the specific dwelling 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.
3. That portion of the 6.0 foot fence that is located within the front yard shall be removed or reduced to 4.0 feet.

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.

Mrs. Harris seconded the motion which carried by a vote of 6-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 62, January 10, 1991, (Tape 1), Scheduled case of:

10:15 A.M. ROBERT L. & JOAN B. HOWE, SP 90-L-075, appl. under Sect. 8-914 of the zoning Ordinance to allow reduction of minimum yard requirement to allow shed to remain 2.9 ft. from side lot line and playhouse to remain 9.4 ft. from rear lot line (15 ft. min. side yard required and 16 ft. min. rear yard required by Sects. 3-207 and 10-104) on approx. 24,071 s.f. located at 4511 Dolphin Lane, zoned R-2, Mt. Vernon District, Tax Map 110-3(4)(J)2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Howe replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject property is located southeast of the intersection of Forest Haven Drive and Dolphin Lane, zoned R-2, and developed with a single family dwelling.

The applicants were requesting approval of a special permit for a modification to the minimum side and rear yard requirements based on an error in building location, to allow an existing shed to remain 2.9 feet from the side lot line, and a 16.0 foot high playhouse to remain 9.4 feet from the rear lot line. Section 10-104 of the Zoning Ordinance states that no accessory structure which exceeds 8.5 feet in height shall be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line. Section 3-207 of the Zoning Ordinance requires a side yard of 15 feet in the R-2 District. Therefore, modifications of 6.6 feet from the rear lot line for the playhouse and 12.1 feet from the side lot line for the wooden shed were requested.

She stated that the subject property is located in an older subdivision where many of the dwellings have accessory structures located in the rear yards, in close proximity to the lot lines. There is an accessory structure located on the lot to the immediate west, which appears to be closer than the required side yard requirement. However, research of the files in the zoning Administration Division did not reveal that any Special Permits for building errors have been received in the immediate vicinity. The dwelling on adjacent Lot 1 is located 47.7 feet from the shared lot line. Staff did not believe that vegetation could be provided between the structures to mitigate the adverse effects of the building on the lot to the west due to the distance from the property line. Staff also believed that the metal shed should be relocated, since it is approximately 1.0 feet from the property line. She stated that a development condition had been included in appendix 1 to address this concern.

The applicant, Robert L. Howe, 4511 Dolphin Lane, Alexandria, Virginia, referenced the statement of justification. He stated that when he and his son built the shed they were not aware of the 15 foot setback requirement. He stated that he discussed the shed with his neighbor, who already had a shed surrounded by bamboo, and the neighbor had no objection. Mr. Howe stated that he paid particular attention to the materials for both the playhouse and the shed and used cedar siding and pressure treated lumber, and raised the structures to prevent deterioration from the water.

Mrs. Harris asked if the shed was movable. Mr. Howe answered that it would be very difficult to remove since it is up on stilts. Mrs. Thonen asked if the applicant knew where Kenneth Campbell, 9429 Forest Haven Drive, lived. Mr. Howe pointed out the location of Mr. Campbell's house on the viewgraph. He stated that he did not talk to Mr. Campbell prior to constructing the shed since it was not located near his property. Mr. Ribble asked Mr. Howe if he had talked with Mr. Campbell recently. He stated that he did not see a reason to talk to the neighbor since his compromise would have moved the shed closer to the adjacent neighbor. Mr. Ribble asked if his justification was that he was not aware of the setback requirement and Mr. Howe replied that was correct.

Chairman DiGiulian called for speakers in support of the request.

Orville Schribner, 4505 Dolphin Lane, Alexandria, Virginia, property owner directly to the west, stated that he had no objection to the shed staying in its present location but that he would object to the shed being relocated to the center of the lot. He stated that he could not understand why Mr. Campbell objects to the shed since he lives quite a distance away. He pointed out that there is a drainage ditch behind the applicants' property with approximately 3 feet of land on both sides.

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

Michelle Campbell, 9429 Forest House Drive, Alexandria, Virginia, opposed the request and used the viewgraph to show the Board where her property was located. She stated that throughout the neighborhood there are large clumps of trees and the shed and play house is located right in the middle of one section of the trees. Mrs. Campbell stated that the beauty of the neighborhood comes from having areas of trees in the middle of each block, the neighborhood is old, and is very special to the neighbors because of those kinds of things. She stated that Mr. Schribner's shed is much smaller and dark in color, the applicants' shed is the size of a small house similar to those Cooper Road, and the applicant's shed is light in color. Mrs. Campbell stated that the shed obstructs her view from her property and that

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she believes that it is very important for people to find out what the rules are before they do something and our society is based on people following the rules. She stated that she strenuously objected to the shed in its present location and believed that the applicant had ignored the facts of how things go here in Fairfax County. Mrs. Campbell stated the applicant's wife has been President of the Mount Vernon Civic Association for a couple of years and should have been aware of the procedures.

Mr. Kelley asked Mrs. Campbell if she lived on Lot 20 and she replied that was correct.

Mrs. Campbell continued by stating that the applicant uses the shed as a workshop and uses the workshop at times that impacts them. She stated that she has often seen deer going through the unobstructed wooded areas in the neighborhood and that her husband has offered to help the applicant move the house.

Chairman DiGiulian informed the speaker that her allotted time for speaking had expired.

Mr. Hammack asked if the shed were screened from her view would it cease to become objectionable and Mrs. Campbell replied that it would. Mr. Hammack pointed out that the applicant could move the shed closer to her without being in violation. Mrs. Campbell stated that she was aware of that and the applicant could do that if that was the way that he wanted to play but it would not be good for him nor for them. She voiced no objection to the playhouse. Mr. Ribble asked if the Campbells had any accessory structures on their property and she replied that they did not. Mrs. Barris asked if the neighbor on Lot 1 had a shed and she replied that he did but she could not see that shed and it was there when she built her house.

In rebuttal, Mr. Howe stated that the shed is as far from the Campbells' property as possible and if he were to move the shed it would be closer to them. He stated that it would be very expensive to move the shed.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report with the following addition:

5. Screening of no less than six (6) evergreens planted a height of five (5) feet shall be placed along the western lot line between the subject property and Lot 20 on the west, so as to screen the shed from the residence on Lot 20.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-075 by ROBERT L. AND JOAN B. HOWE, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement to allow shed to remain 2.9 feet from side lot line and playhouse to remain 9.4 feet from rear lot line, on property located at 4511 Dolphin Lane, Tax Map Reference 110-3((4))(J)2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 10, 1991; and

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

The Board has determined that:

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

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- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This special permit is approved for the location and the specified structures shown on the plat submitted with this application and is not transferable to other land.
2. This Special Permit is granted only for the 20 X 10 foot shed and the playhouse indicated on the special permit plat approved with this application, as qualified by these development conditions.
3. The metal shed on near the southern property line should be relocated outside of the required side lot line.
4. A building permit shall be obtained and inspections finalized for the wooden shed if required by The Department of Environmental Management.
5. Screening of no less than six (6) evergreens planted a height of five (5) feet shall be placed along the western lot line between the subject property and Lot 20 on the west, so as to screen the shed from the residence on Lot 20.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Board of Zoning Appeals Meeting Dates

Chairman DiGiulian stated that the Board Room was not available on April 23, 1991.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that perhaps the Board could determine whether to have the night meeting the first or the fourth Tuesday night and delete April 16, 1991 and keep April 18, 1991 as an "if needed" date.

It was the consensus of the Board to schedule the night meeting in April for April 23, 1991.

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

Betsy S. Gurtt  
 Betsy S. Gurtt, Clerk  
 Board of Zoning Appeals

John P. DiGiulian  
 John DiGiulian, Chairman  
 Board of Zoning Appeals

SUBMITTED: February 24, 1991

APPROVED: February 26, 1991



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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 17, 1991. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; and Robert Kelley. Chairman John DiGiulian and Paul Hammack were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation, ending with a prayer for peace. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 65, January 17, 1991, (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 90-S-072, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 2.7554 acres located at 15005 and 15001 Lee Highway, zoned R-C and WS, Springfield District, Tax Map 64-2((3))26A, pt. 27. (CONCURRENT WITH SE 90-S-021)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bonner, the applicant's agent, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the subject property is located on the south side of Lee Highway, or Route 29, west of its intersection with Interstate Route 66. The subject site and all adjacent properties are zoned R-C and WSP0D.

Ms. Dickey stated that the application requested approval of a special permit to allow a modification of the dustless surface requirement at the existing Johnson Substation. She said that the proposed gravel surfaces will be the driveway and parking area.

Ms. Dickey stated that, on January 14, 1991, the Board of Supervisors approved a concurrent special exception application, SE 90-S-021, with Development Conditions, to permit renovation and expansion of the existing Johnson Substation on the subject site.

Ms. Dickey stated that, in staff's opinion, the special permit application is in conformance with the requirements of the R-C District, the General Standards for all Special Permits, and the provisions for modifying the dustless surface requirement specified in the Zoning Ordinance. Therefore, she said, staff recommended approval of SP 90-S-072, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report, with the exception of Condition 9. Upon further consideration, Ms. Dickey said, staff recommended deletion of Condition 9, since there will be a minimum number of employees on site, except during emergencies.

The applicant's agent, Scott Bonner, 10323 Lomand Drive, Manassas, Virginia, stated that the applicant concurred with the recommendations of the staff, with the exclusion of Condition 9, which Ms. Dickey had earlier explained. In response to a question from Mrs. Thonen, Mr. Bonner stated that he simply would like to have Condition 9 deleted as Ms. Dickey had recommended.

Vice Chairman Ribble asked if there was anyone present who would like to speak in support of the application or in opposition to the application. Hearing no response, he closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-S-072, subject to the Proposed Development Conditions contained in the staff report dated January 8, 1991, with the exclusion of Condition 9, which was to be deleted.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 90-S-072 by NORTHERN VIRGINIA ELECTRIC COOPERATIVE, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement, on property located at 15005 and 15001 Lee Highway, Tax Map Reference 64-2((3))26A, pt. 27, 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 17, 1991; and

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

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1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 2.7554 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 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 prepared by R. B. Thomas, Jr., Ltd., dated March 9, 1990, revised September 11, 1990 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 pursuant to this special permit shall be in conformance with the approved Special Permit plat by R. B. Thomas, Jr., LTD., dated March 9, 1990, as revised September 11, 1990, and these development conditions.
5. The waiver of the dustless surface shall be approved for a period of five (5) years to begin from the final approval date of this special permit.
6. The gravel surfaces 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:

Speed limits shall be limited to ten (10) mph.

During dry periods, application of water shall be made in order to control dust.

Runoff shall be channelled 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.

Routine maintenance shall be performed to prevent surface unevenness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

7. The driveway shall be paved at least twenty-five feet into the site from the right-of-way of Lee Highway to prevent gravel from spreading onto Lee Highway and to allow for safe acceleration from the driveway onto Lee Highway.
8. Landscaping shall be provided as indicated on the approved Special Exception Plat. When the expanded substation is completed and in operation, the existing gravel drive on the western lot line shall be removed and shall be landscaped with a mixture of hard and softwood trees indigenous to the immediate vicinity, subject to the review and 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 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. Barris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Page 67, January 17, 1991, (Tape 1), (NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 90-S-072, continued from Page 66)

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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At this time the Board decided to consider the After Agenda Items.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions for January 8 and January 10, 1991

Mr. Kelley made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Approval of Minutes for November 8, 1990 Meeting

Mr. Kelley made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Approval of Minutes from October 30, 1990 Meeting

Mr. Kelley made a motion to approve the Minutes as submitted by the Clerk. Mrs. Thonen seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Moving decision for date and time for  
Markey Business Center IV Appeal  
From March 12 to March 19, 1991

Mr. Kelley made a motion to approve the Clerk's suggestion to move the decision on whether or not to schedule the above-referenced appeal application to March 19, 1991, as the Meeting for March 12 had been cancelled. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Request for Withdrawal of Appeal  
Vienna Moose Lodge #1896

Referring to a letter from the appellant requesting withdrawal, Mr. Kelley made a motion to allow the appellant to withdraw the appeal. Mrs. Thonen seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 67, January 17, 1991, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing  
Robert E. Simon, Jr., Children's Center, Inc., SPA 89-C-028-1

Mrs. Harris made reference to correspondence regarding a possible discrepancy over what had been included on the plat and what the applicant believed to have been included, which would prohibit the additional development of the area involved. She asked if staff believed there would be any problem if this case was rescheduled. Lori Greenlief, Staff Coordinator, replied that staff would have no problem with rescheduling this application for March 5, 1991.

Page 68, January 17, 1991, (Tape 1), (ROBERT E. SIMON, JR., CHILDREN'S CENTER, INC., SPA 89-C-028-1, continued from Page 67)

Mrs. Harris made a motion to approve staff's suggestion to schedule an out-of-turn hearing for March 5, 1991 at 9:00 a.m. Mrs. Thonen seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 68, January 17, 1991, (Tape 1), After Agenda Item:

Request for Approval of Reduction in Size of Staff Reports

Mrs. Thonen stated that Chairman DiGiulian had expressed a desire to have input into the discussion of this subject and, since he was not present, she moved to defer this item until January 24, 1991. Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 68, January 17, 1991, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Choi Ming Wu and Magdalen Z. Wu, VC 90-L-123

Mrs. Harris referred to a memo from Lori Greenlief, Staff Coordinator, explaining that the applicant had submitted a new plat after the staff report had been completed. Ms. Greenlief stated in her memo that staff required time to review the new plat and, because of the changes, the application had to be readvertised and new notices had to be sent out.

Mrs. Harris made a motion to reschedule the Intent to Defer from January 24, 1991 to February 21, 1991 at 10:45 A.M. Mr. Kelley seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 68, January 17, 1991, (Tape 1), Scheduled case of:

9:15 A.M. BENJAMIN E. COLLINS, JR., VC 90-L-134, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory structure to remain in front yard (accessory structures prohibited in front yard by Sect. 10-104) on approx. 13,329 s.f. located at 6813 Lois Dr., zoned R-3, Lee District, Tax Map 90-4((6))227.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Collins replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the subject property consists of slightly more than 13,000 square feet, is zoned R-3, and is located just east of Shirley Highway, as he pointed out on the viewgraph.

Mr. Riegler stated that the subject of this application was a detached storage shed located in the front yard, 0.0 feet from the front lot lines, and said that Section 10-104 of the Zoning Ordinance states that an accessory storage structure shall not be located in any minimum front yard or in any front yard on any lot containing less than 36,000 square feet.

Mr. Riegler stated that the request before the Board was for a variance to the location requirement provided by Section 10-104, to allow the accessory storage structure to remain in the front yard.

Mr. Riegler noted that another shed on the property is in violation but is not part of this application because the applicant had agreed to remove it.

Mr. Riegler stated that this property and the two sheds were the subject of a previously-filed special permit application which requested that the two sheds be allowed to remain in their present location, based on error in building location. He said that application was denied, however, the Board of Zoning Appeals granted the applicant a waiver of the twelve-month waiting period on rehearing. He referred the Board to the Minutes and Resolution from those proceedings in Appendix 4 of the staff report.

Mr. Riegler stated that an error was made by staff in the acceptance and processing of the original application, which was filed last March. He said that it had been later determined by staff of the Zoning Evaluation Division and the Zoning Administration Division that the provisions for approving special permits to reduce minimum yard requirements based on errors in building locations are not applicable to this shed. He said that was due to the fact that Group 9 special permits for errors in building locations only pertained to modifications of minimum yard requirements. Other location requirements contained in the Ordinance, such as location requirements for accessory storage structures such as sheds, are covered by Section 10-104 of the Zoning Ordinance.

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Mr. Riegler stated that specific location requirements for accessory structures cannot be addressed through special permits for errors in building locations. A variance application is the only way to address both the minimum yard requirements and the provisions of Section 10-104. Mr. Riegler stated that the location of the shed in the front yard made this application different from the typical applications for sheds.

Mr. Riegler called the Board's attention to letters in support of this application.

The applicant, Benjamin Collins, 6813 Lois Drive, Springfield, Virginia, presented the statement of justification. He stated that, during the last hearing for the special permit, he believed that Mr. Speaks had presented testimony which may have been damaging. Mr. Collins stated that he believed that, during the previous hearing, he had emphasized that no one from the Civic Association had ever said anything to him about his sheds, which had been in place for a considerable length of time. He said the metal shed had been there for twenty-two years and the wooden shed, which is really a workshop, had been there for eighteen months before anything had ever been said to him. Mr. Collins stated that he had not been aware of being in violation of any ordinance, that he had inquired if he needed building permits and had been told that he could put the sheds anywhere on the property. Mr. Collins also said that he did not know that the property on the side of his house was considered a front yard. Mr. Collins said that, at the suggestion of Mr. Kelley and (then) Vice Chairman DiGiuliano, he met with the Civic Association to see if he could work out a compromise. He said that, in September, he met with the members of the Civic Association at his home. Mr. Collins said that, at that meeting, they all agreed that the situation had gotten out of hand and that Mr. Collins would abide by the staff's recommendation in the staff report of last June, to remove the metal shed from its present location. He stated no one had any problem with the wooden shed. Mr. Collins stated that he had taken no action, awaiting the outcome of the hearing. Mr. Collins stated that, under the Freedom of Information Act, he had asked the Civic Association to tell him who the complainant was, but they still were unable to tell him. He stated that the testimony given by Mr. Speaks last June indicated that several neighbors had complained to the Civic Association; however, in the meeting in September, Mr. Speaks said there was "a" call, he had been the recipient of the call, but that Mr. Speaks did not know who it was. Mr. Collins stated that it was not presented to anyone else in the Civic Association and, if nothing else happened as a result of this, he said he believed there is now a policy in effect that no such similar action would be filed with the County by the Civic Association until the matter had gone through some sort of Executive Board hearing, or a meeting with the resident to attempt to resolve any such issues before taking further action.

Mr. Collins stated that he had problems with the submission requirements, but felt they had been resolved. He stated that the shed that he wanted to remain in place has underground wiring to conform with the environment, which had been approved through the appropriate County agency. Mr. Collins stated that the shed meets the requirements to the point where a building permit will not be required. He called attention to the left side of the plot, where he stated he intended to build a new shed to replace the metal shed.

Mr. Collins further stated that he intended to screen the shed with evergreens at the back and the side next to Conway Court, as suggested in the staff report.

Vice Chairman Ribble stated that, if he understood Mr. Collins correctly, Mr. Collins intended to take down the aluminum shed and put up a new shed, which would be eight (8) feet high, on the rear lot line. Mr. Collins said that Vice Chairman Ribbles' understanding was correct and that there would be about an eighteen (18) inch clearance between the back of the shed and the fence. He stated that he had already spoken with Mr. Tran, his neighbor on that side, who said Mr. Collins could put the shed in his (Mr. Tran's) yard if he wanted to. Vice Chairman Ribble asked if anyone else had any questions for Mr. Collins. No response was forthcoming.

Mr. Collins stated that he believed that the Civic Association was supportive of his proposed actions and referred the Board to Mr. Russell's letter, and referred to the fact that he did not know his shed was in violation until twenty-two years after it was built.

Mrs. Harris asked Mr. Collins to confirm that the wood shed was not the one which was built twenty-two years ago and Mr. Collins stated that it was built in November 1988. Mrs. Harris asked Mr. Collins if the wood shed was movable or if it was on a concrete foundation, and he replied that it was on 4' by 4' timbers that were levelled into the ground.

Mrs. Harris pointed out that, since this was a request for a variance, Mr. Collins would have to deal with the hardship issue; i.e., that the property somehow has a topographical condition which precludes his moving the shed to any other part of the property. She stated that, in reviewing his letters, she did not find that Mr. Collins had addressed that issue. Mr. Collins replied that he had stated before that the proposed location was primarily the only level spot on the property and that he had taken some pictures to try to show the way the property slants down at an angle, noting that Mrs. Harris had previously questioned the topography issue. Mr. Collins stated that the property had been an old creek bed and that everything slants down from the northwest corner. Mr. Collins gave the photographs to the Board for review. Mr. Collins asked the Board to note on the photos that the fence slants

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down into the corner. He stated that he would have to dig out an area to make a level place to build the proposed shed. Mr. Collins stated that the only other level spot would also require a variance and would be almost in his neighbor's front yard.

Mrs. Thonen asked Mr. Collins if the lots in his neighborhood were very narrow and he said that they were. Mrs. Thonen also observed that it looked like Mr. Collins has two front yards because of the location of the road. Mr. Collins stated that he had been told that he did have two front yards, according to the Ordinance, as a result of being on the corner, even though he is on a cul-de-sac.

Mrs. Harris expressed appreciation to Mr. Collins for providing the information the Board required to deal with the hardship issue.

Vice Chairman Ribble asked if there was anyone present who wished to speak in favor of the application.

Jeffery Daughtry, 7404 Conway Court, Springfield, Virginia, stated that his yard was essentially in the center of the court and he had lived there in excess of twenty years. Mr. Daughtry stated that he had never found the view of the sheds offensive or bothersome and stated that Mr. Collins had always been a very good neighbor, giving a helping hand when needed. He said he had never heard a complaint from anyone, including Mr. Gumma, who literally looks out from his front porch onto Mr. Collins' back yard, which he now understands is considered the front yard. Mr. Daughtry was very supportive of Mr. Collins' request.

Vice Chairman Ribble asked if there was anyone else to speak in support of Mr. Collins' application. Hearing no response, he asked if there was anyone to speak in opposition, to which there was also no response. Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant VC 90-L-134, subject to the Proposed Development Conditions contained in the staff report dated January 8, 1991, for the reasons outlined in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-134 by BENJAMIN E. COLLINS, JR., under Section 18-401 of the zoning Ordinance to allow accessory structure to remain in front yard, on property located at 6813 Lois Drive, Tax Map Reference 90-4((6))227, 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 January 17, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,329 square feet.
4. The topography is such that the land falls away in the back yard.
5. The extraordinary condition of two front yards exists on the greater portion of the property.
6. The one shed located in a place which requires the greater variance will be moved to another place that will not require a variance.
7. The second shed will be screened from the neighbors.
8. The unusual shape of the lot and the topographical conditions make it reasonable to have the shed located in the area selected.
9. Strict application of the Zoning Ordinance would restrict reasonable use of the property, because the applicant could not relocate the shed to any other place 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;

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

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

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

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

1. This variance is approved for the location of the frame shed shown on the plat included with this application and is not transferable to other land.
2. A four (4) foot high evergreen hedge shall be planted in a strip along the northwest, northeast, and southwest sides of the existing frame shed so as to soften and screen its appearance.
3. The existing aluminum metal shed shall be removed or relocated to an area in conformance with the location regulations for accessory structures contained in Sect. 10-104 of the Zoning Ordinance.

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.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. NATHANIEL & SANDRA C. JACOBS, VC 90-S-119, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.1 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,037 s.f. located at 6231 Martins Brandon Way, zoned R-C and WS, Springfield District, Tax Map 53-4((8))520.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Jacobs replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, which had been prepared by Mike Jaskiewicz, Staff Coordinator, who was attending a staffing meeting. Ms. Greenlief stated that the subject property is located in the Virginia Run subdivision, surrounded by parcels zoned R-C, and developed with single family detached dwellings.

Ms. Greenlief stated that the subject property contains 13,037 square feet, and is zoned R-C and WSP0D. Ms. Greenlief said that the applicants were requesting a variance to the minimum

Page 72, January 17, 1991, (Tape 1), (NATHANIEL & SANDRA C. JACOBS, VC 90-S-119, continued from Page 71)

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side yard requirement to permit a portion of an existing deck to be enclosed. Ms. Greenlief stated that the enclosure would be located 5.1 feet from the side lot line. Since the Zoning Ordinance required a minimum side yard of twenty (20) feet in this district, the applicants were requesting a variance of 14.9 feet to the minimum side yard requirement.

Ms. Greenlief stated that staff research revealed that, although no structure currently exists on Lot 521, located to the rear, an approved grading plan indicated that a future dwelling will be located approximately sixteen (16) feet from the shared lot line.

Ms. Greenlief offered to answer any questions that the Board might have.

Mrs. Harris referred to the house on Lot 521 and asked if the house would be situated so that it would be straight, facing Stillfield Court. Ms. Greenlief replied that she believed that to be true and, as far as the model shown on the grading plan was concerned, the master bedroom wing of the house would be closest to the applicants' lot. Ms. Greenlief showed the grading plan to the Board.

Mrs. Harris asked Ms. Greenlief how many feet away from the lot line the future house would be located. Ms. Greenlief stated a distance of sixteen (16) feet was shown on the grading plan. Mrs. Harris asked if there then would be less than twenty-two (22) feet between the two houses and Ms. Greenlief said it would be a little over twenty-one (21) feet.

Mr. Kelley asked if it could be ascertained how the future house would be positioned on the lot. Ms. Greenlief stated it could not be ascertained, other than going by what was shown on the grading plan, and then it was not known whether or not there would be a model change, or whether or not it was currently under construction. Ms. Greenlief said that perhaps the applicant could answer that question.

There were no other questions for staff and Vice Chairman Ribble asked to hear from the applicant.

Co-applicant Nathaniel Jacobs, 6231 Martins Brandon Way, Centreville, Virginia, presented the statement of justification. Mr. Jacobs stated that he would like to have a variance to enclose a portion of the existing deck, which was on the house when they purchased it in July of last year. Mr. Jacobs referred to photos which he had submitted and said he believed, as Ms. Greenlief had found on the grading plan, that the house to be built on Lot 521 would be built in a position with the bedroom facing the Jacobs' bedroom. Mr. Jacobs stated that his work kept him away from home a great deal and he believed that a hardship could be alleviated by enclosing the area where the bedroom and bathroom are located and providing some element of safety.

Vice Chairman Ribble stated that he appreciated the hardship mentioned by Mr. Jacobs but asked Mr. Jacobs to address the Ordinance, such as the nature of the lot.

Mr. Jacobs stated that the lot has a shallow rear and side yard. He said that the house sits on a corner lot and is in a corner as opposed to being centered, which is limiting.

Mr. Kelley asked Mr. Jacobs if he had a garage and he replied that he did. Mr. Kelley asked Mr. Jacobs what he knew about the house to be built next door and whether he did, in fact, know that it would not have the garage facing his lot. Mr. Jacobs stated that he had been told that the future house would be the same model as his and, if it was, the bedroom would face his house.

Vice Chairman Ribble asked if there were any other questions for the co-applicant and there was no response.

Vice Chairman Ribble asked if there was anyone else to speak in support or in opposition to the application and there was no response, so he closed the public hearing.

Mr. Kelley made a motion to deny VC 90-S-119, for the reasons outlined in the Resolution.

Mr. Kelley suggested that the twelve-month requirement on rehearing be waived in case the future house happened to be flipped, with the garage facing the applicants' bedroom, in which case, Mr. Kelley stated he would have a different opinion of the application. Vice Chairman Ribble stated that he possibly also would support such a motion. Mrs. Harris stated she would support the motion for the waiver of the twelve-month limitation. Mrs. Thonen told the applicant he had to come forward and request the waiver before it could be approved.

Vice Chairman Ribble asked Mr. Jacobs to come to the podium if he wished to request a waiver of the twelve-month limitation.

Mr. Jacobs came forward to request a waiver of the twelve-month limitation on rehearing and the motion and vote are reflected in the Resolution.

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Page 13, January 17, 1991, (Tape 1), (NATHANIEL & SANDRA C. JACOBS, VC 90-S-119, continued from Page 12)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-119 by NATHANIEL AND SANDRA C. JACOBS, under Section 18-401 of the Zoning Ordinance to allow addition 5.1 ft. from side lot line, on property located at 6231 Martins Brandon Way, Tax Map Reference 53-4((8))520, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 17, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,037 square feet.
4. The addition would be too close to the house proposed to be built on the lot next to the applicant's lot, especially with the bedroom facing the applicant's property. If the garage faced the applicant's property, it might possibly not appear so close.

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 which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Mr. Kelley made a motion to waive the 12 month limitation for refileing a new application on the same property. Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991.

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Page 74, January 17, 1991, (Tape 1), Scheduled case of:

9:45 A.M. CHARLES C. & DORIS C. HOUSTON, VC 90-P-116, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 14.1 ft. from both rear lot line and floodplain line (25 ft. min. rear yard required and 15 ft. min. setback from floodplain line required by Sects. 3-307 and 2-415) on approx. 10,090 s.f. located at 8601 Cherry Dr., zoned R-3 (developed cluster), Providence District, Tax Map 49-3((28))12A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Houston replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, which had been prepared by Mike Jaskiewicz, Staff Coordinator, who was attending a staffing meeting. Ms. Greenlief stated that the property is located in the Ashley Park subdivision. She said it contains 10,090 square feet, is zoned R-3, and that it was developed under the cluster provisions of the Zoning Ordinance with a two-story single family detached dwelling and a two-car garage.

Ms. Greenlief stated that the applicants were requesting a variance to the minimum rear yard requirement to allow an addition 14.1 feet from the rear lot line and to allow an existing deck and the proposed addition 14.1 feet from a floodplain.

Ms. Greenlief stated that the Zoning Ordinance requires a minimum rear yard of 25 feet in an R-3 District and also requires that no dwelling nor portion thereof may be located closer than 15 feet to the edge of a floodplain; therefore, a variance of 10.9 feet to the minimum rear yard requirement is requested and a variance of 0.9 feet to the minimum distance to the floodplain for the existing deck and proposed addition was also requested.

Ms. Greenlief stated that staff would be happy to answer any questions.

Vice Chairman Ribble asked if there were any questions for staff and, hearing no response, asked to hear from the applicant.

Co-applicant Charles Houston, 8601 Cherry Drive, Fairfax, Virginia, came forward and stated that he and his wife would like to request a variance. Mr. Houston gave his justification and stated that the property was acquired from a builder in good faith in August 1988. He stated that the lot is exceptionally shallow and backs up to a floodplain with a number of very large, beautiful trees, which he stated was one of the reasons they purchased the lot. Mr. Houston stated that strict application of the Ordinance would produce a hardship which he believed was not generally shared by any of the other property owners in that general area, and would prohibit reasonable use of the property. Mr. Houston stated that he believed the granting of his request would not be a detriment to the adjacent properties, but would enhance the adjacent properties and the appearance of his house. Mr. Houston stated that none of his neighbors would see the proposed screening because of the positions of the houses in the cul-de-sac. Only one neighbor could see it if he walked to the back of his lot and looked back at Mr. Houston's house. Mr. Houston said that granting this variance would be in harmony with the intended spirit and intended purpose of the Ordinance and would not be contrary to the public interest.

In response to a question from Mrs. Thonen, Mr. Houston said that because of a floodplain, the next house was about 700 feet away and that, during most of the year, the Houstons could not even see those houses because of the wooded plain.

Mrs. Thonen pointed out that Mr. Houston had obtained two prior administrative adjustments on his property. There was some discussion about the posts which, were determined not to extend onto the floodplain, but are on Mr. Houston's property, and are destined to remain. Mrs. Thonen said she believed the Board had to make a decision based strictly on whether or not the variance would interfere with the floodplain, and she did not believe that it would.

Mrs. Harris asked staff if the floodplain line was the circular line on the overhead screen. Ms. Greenlief said no, the floodplain line was the rear lot line. Some discussion ensued, clarifying the location of the floodplain.

Mr. Kelley requested a point of clarification. He asked if the deck was already built and was in conformance, to which Mr. Houston replied that it was, to the best of his knowledge. Mr. Kelley asked for further confirmation that the footings would not change, and that the only change was that a portion would be screened. Mr. Houston confirmed it.

Vice Chairman Ribble asked if there was anyone else present to speak in favor of, or in opposition to, the application. Receiving no response, he closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-P-116, subject to the proposed Development Conditions contained in the staff report dated January 8, 1991, for the reasons outline in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-116 by CHARLES C. & DORIS C. HOUSTON, under Section 18-401 of the Zoning Ordinance to allow addition 14.1 ft. from both rear lot line and floodplain line, on property located at 8601 Cherry Drive, Tax Map Reference 49-3((28))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 January 17, 1991, and

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

- 1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 10,090 square feet.
4. The posts are the only portion of the addition which would be in violation, and they were destined to remain in any case.
5. The floodplain extends for 700 feet behind the applicants' lot line.
6. The applicants' addition will not impact upon the floodplain.
7. The shape of the lot, the topography, and the floodplain contribute to the applicants' qualification for a variance.

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

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

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

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

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

- 1. This variance is approved for the location and the specific addition (existing deck and addition) shown on the plat dated January 8, 1991, revised, included with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

Page 16, January 17, 1991, (Tape 1), (CHARLES C. & DORIS C. HOUSTON, VC 90-P-116, continued from Page 15)

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.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 16, January 17, 1991, (Tape 1), Scheduled case of:

10:00 A.M. MILDRED MANSFIELD, SP 90-L-082, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 1.8 ft. from side lot line and 2.7 ft. from rear lot line (12 ft. min. side yard and 12.2 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 11,795 s.f. located at 5805 Accomac St., zoned R-3, Lee District, Tax Map 80-1((5))(30)20.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tye replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located on the east side of Accomac Street, south of Highland Avenue, in the Springfield subdivision. She said that the lot contains 11,795 square feet, is zoned R-3, and is developed with a single family detached dwelling and a detached shed.

Ms. Greenlief stated that the applicant was requesting approval of a special permit based on error in building location, to allow the existing shed to remain 1.8 feet from the side lot line and 2.7 feet from the rear lot line. She stated that the Zoning Ordinance requires a minimum side yard of 12 feet and a minimum rear yard equal to the structure's height, which is 12.2 feet. Thus, she said, the applicant was requesting a modification of 10.2 feet to the minimum side yard requirement and 9.5 feet to the minimum rear yard requirement. Ms. Greenlief stated that staff's analysis of this error was on pages 2 and 3 of the staff report. She stated that she would be happy to answer any questions.

Mrs. Harris asked Ms. Greenlief where the house was located on Lot 21 and how far it is from the side lot line. Ms. Greenlief said that she believed the house on Lot 21 is set back a distance equal to the house on the applicant's property. Mrs. Harris said that the plat said the house on Lot 19 has a 13.2 foot setback, but does not show the setback for Lot 21. Mrs. Greenlief said that her figures showed the house 11.9 feet from the shed's side lot line and that it looked like it is set back a distance equal to the subject dwelling from Accomac Street.

Alan R. Tye, Jr., 5798 Ganes Street, Burke, Virginia, with Hanover Custom Building, represented the applicant. Mr. Tye stated that, when he had first arrived at the site, he had informed Mrs. Mansfield that the existing slab was too close to the property line. He stated that Mrs. Mansfield informed him that a County Inspector had worked with a concrete person for approximately four years before and had put the slab in. He stated that Mrs. Mansfield had explained to the County Inspector that she was putting in a storage shed. Mr. Tye stated that he told Mrs. Mansfield he believed that was quite unusual and she told him that the County had been doing curb work out front at the time. He stated that she pointed out that Mr. White, whose house is right behind hers, had his concrete and drive done by the same person and that his garage was within two (2) feet of the property line. Mr. Tye said that he then assumed that Mrs. Mansfield "knew what she was talking about," went in and made a contract, prebuilt the building in Richmond, as is their practice, and Hanover came up and erected the building on the existing slab. He stated that the slab was 14' x 16', and that he knew that the maximum square footage allowed for a storage shed was 150 square feet without a permit, so he had telephoned Fairfax County and asked if it would be acceptable if he cut the actual storage shed down to a 9' x 16' or 9' x 14' and brought the square footage down under 150 square feet, and made the rest of it a porch which was not closed in. Mr. Tye stated that he was told that it would be okay as long as he did not close it in, so he used the entire slab. Unfortunately, he said, he did not get the name of the person with whom he spoke in Fairfax County. Mr. Tye said that he had asked Mrs. Mansfield to try to find out the name of the inspector with whom she had dealt and, although she had tried, by going through her cancelled checks, etc., she had been unsuccessful. Mr. Tye stated that, after the County contacted Mrs. Mansfield, he had told her that he would take the top of the shed off and make it a flat roof, and that the neighbors behind her said that if he made the roof flat they wanted the entire structure torn down. He said they thought it was attractive the way it is. He also said that he told Mrs. Mansfield that there was no way that he could move the shed because it was too heavy a structure.

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Mr. Ribble asked Mr. Tye if he had a copy of the contract. Mr. Tye stated the contract was just a typical sales form. He said he did not have one with him but that he could get one, if required. Mr. Tye stated that Hanover Building has over twenty locations where they prefab sheds and bring them to the sites, as was done in this case.

Mrs. Harris asked Mr. Tye if the shed was movable and Mr. Tye stated that it was not.

Vice Chairman Ribble asked if there was anyone to speak in favor of or in opposition to the application. There was no response, but Mrs. Thonen pointed out a letter of support for the application and Mr. Tye stated that he had gathered signatures from the neighbors in favor of the application.

Mrs. Thonen asked Mr. Tye about the Southern Railway being behind the site, stating that she knew the area very well. She said that she knew the area had some topographical problems and asked if Mrs. Mansfield's property had any topographical problems. Mr. Tye said that he was not aware of any.

Mrs. Harris asked Mr. Tye for confirmation that he had told the applicant before he constructed the shed that the location was in violation of the Ordinance. Mr. Tye stated that he had told the applicant that the slab, as far as he knew, was too close to the property line. Mr. Tye stated that the applicant was very upset because she believed that she had been misled by the Fairfax County inspector who had sat down in her home and helped make the contract with the concrete contractor. Mrs. Harris pointed out that the concrete slab was not in violation, but that the shed was in violation. Mr. Tye stated that the size of the shed contributed to the decision of how high it should be.

Vice Chairman Ribble asked if there were any other questions for the applicant's agent or staff and, hearing no response, closed the public hearing.

Mrs. Harris made a motion to deny SP 90-L-082 for the reasons outlined in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-082 by MILDRED MANSFIELD, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 1.8 ft. from side lot line and 2.7 ft. from rear lot line, on property located at 5805 Accomac Street, Tax Map Reference 80-1(5)(30)20, 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 January 17, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,795 square feet.
4. Testimony indicated that the applicant had full knowledge that the shed would be in violation of the Zoning Ordinance if placed in the proposed location, as the applicant had been advised by the builder that the proposed location was too close to the lot lines.
5. The size of the variance requested is excessive, relative to both the side and rear lot lines.
6. The lot has no topographical conditions which would preclude building the shed elsewhere on the property, and the plat appeared to confirm that.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mr. Kelley seconded the motion which carried by a vote of 3-1. Mrs. Thonen voted nay. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991.

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Page 18, January 17, 1991, (Tape 1), Scheduled case of:

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10:15 A.M. THE ENTERPRISE SCHOOL, SPA 85-C-049-2, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to amend SP 85-C-049 for private school of general education, and modification of dustless surface requirement to allow renewal of school use without term; renewal of modification of dustless surface, increase in students and parking, and building addition, on approx. 4.5038 acres located at 1629 Beulah Rd., zoned R-1, Centreville District, Tax Map 28-1((1))13.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lessard, the applicant's agent, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located on the east side of Beulah Road, south of the Dulles Access Road. She said that the lot contains 4.5 acres, is zoned R-1, and is developed with a private school of general education.

Ms. Greenlief stated that the application was an amendment to an existing special permit and that it made five (5) requests: 1) a 1,498 square foot building addition; 2) renewal of the waiver of the dustless surface for parking and driveway; 3) an increase in parking of two spaces, all shown on the overhead transparency; 4) an increase in the maximum daily enrollment from 25 to 30; and 5) renewal of the use which was approved with a five-year term initially and which expired on November 7, 1990.

Ms. Greenlief stated that staff believed adequate screening exists to mitigate the impact of the increased intensity on the site. She said that, as noted in the Environmental section of the report, the applicant's plan honors the EQC which exists in the rear corner of the site. Ms. Greenlief said that, since the use was approved for a period of five years, the BZA's review of this application must consider the use as a whole. She said that, in staff's opinion, the entire use met the standards for approval; thus, staff recommended approval of SPA 85-C-049-2, subject to the Proposed Development Conditions in Appendix 1. These conditions carried forward the conditions of previous approvals.

Ms. Greenlief stated that she would be happy to answer any questions.

Richard C. Lessard, 5142 Kingle Street, N.W., Washington, D.C., architect for the Enterprise School, represented the applicant and presented the statement of justification. He stated that the School currently had a permit for twenty-five (25) students and wanted to increase the number of students to thirty (30) because of the number of students who are on a waiting list. Mr. Lessard stated that, in order to accommodate the additional students, the applicant was requesting an addition to the building of roughly 1,400 square feet, and an additional two (2) parking spaces. He stated that the applicant was in agreement with staff recommendations for all of the zoning requirements necessitated by this addition. Mr. Lessard said he had two letters of support: one from the National Park Authority, across the street from the applicant; and Richard Labbey, an adjacent neighbor.

Vice Chairman Ribble asked if there was anyone to speak in favor of the application and received no response. He asked if there was anyone to speak in opposition and asked the person who responded to step forward.

Lois Love, 1641 Beulah Road, Vienna, Virginia, adjacent property owner, stated that her concerns were trash in the parking lot and on the lawns being shredded and not picked up; and blinding bright lights at her back door over 100 yards away.

Mr. Lessard came forward to address Mrs. Love's concerns, stating that he is not only the architect for Enterprise School, but he is also the Chairman of the Board of the School. He assured Mrs. Love that he would take up her concerns at the next Board meeting and endeavor to redirect the lights away from her property. Although the addition would be built on the other side of the School from Mrs. Love's property, Mr. Lessard stated they would do all possible to minimize any impact on her property during construction.

Vice Chairman Ribble asked Mr. Lessard what kind of lights the School had and Mr. Lessard replied that they were flood lights and showed on the overhead screen where they were located. Mr. Ribble stated that the applicant would have to keep illumination from the lights strictly on-site. Mrs. Thonen suggested low density lights which would not impact in the neighbors. Mrs. Thonen asked about the trash pickup policy, which she said also required attention. Mr. Lessard stated that he had not been aware of the situation but would see that it was resolved.

There being no further questions, or speakers, Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant SPA 85-C-049-2, subject to the Proposed Development Conditions contained in the staff report dated January 8, 1991, as amended to include two additional conditions, numbered 16 and 17. Mrs. Harris stated that the Board was very sensitive to the concerns of the adjacent property owners and included the two additional conditions to insure respect for their privacy and enjoyment of their property.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 85-C-049-2 by THE ENTERPRISE SCHOOL, under Section 3-103 of the Zoning Ordinance to amend SP 85-C-049 for private school of general education and modification of dustless surface requirement to allow renewal of school use without term, renewal of modification of dustless surface, increase in students and parking, and building addition, on property located at 1629 Beulah Road, Tax Map Reference 28-1((1))13, 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 January 17, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.5038 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-307, 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 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 by Richard C. Lessard dated May 7, 1990, revised Dec. 4, 1990 and these development conditions.
5. The maximum daily enrollment shall be limited to thirty (30) students.
6. The minimum number of parking spaces shall be that specified in Article 11 for this use. The maximum number of parking spaces shall be twenty-one (21). All parking shall be on site.
7. The hours of operation shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.
8. Right-of-way to 60 feet from the existing centerline of Beulah Road necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand from the Virginia Department of Transportation when a road improvement project is initiated in front of the site. Ancillary easements shall be provided to fifteen (15) feet behind the new right-of-way line. The applicant shall relocate the existing parking lot prior to dedication of the right-of-way, and shall provide a screening yard equivalent to that which currently exists along the front lot line.
9. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening requirements of Article 13. A modification to the transitional screening requirement shall be allowed along the front lot line to allow the existing vegetation to satisfy the requirement. This screening yard shall be maintained when the parking lot is shifted to accommodate the dedication for road improvements. A modification to the transitional screening yard along the southern lot line shall also be allowed to allow the infringement of a corner of the parking lot as shown on the special permit plat. The existing fencing shall be deemed to satisfy the barrier requirements of Article 13.

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10. 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 10 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.
11. The waiver of the dustless surface shall expire five (5) years from the final approval date of this special permit.
12. There shall be no clearing or grading within the limits of clearing and grading as shown on the special permit plat, except for dead or dying trees and shrubs and except for clearing and grading necessary for the septic field shown on the plat dated August 30, 1990 by Coldwell, Sikes & Associates. The clearing and grading for this septic field shall not exceed the line shown as "limit" on the plat.
13. There shall be a maximum of seven (7) employees.
14. Adequate sight distance shall be provided to the satisfaction of the Virginia Department of Transportation.
15. The entrance to the site may be relocated in order to provide adequate sight distance. The requirement for a deceleration lane shall be determined by the Director, Department of Environmental Management at the time of site plan review.
16. This special permit is approved for a five (5) year term and shall expire on January 25, 1996.
17. The lights shall be redirected to eliminate spillover onto adjacent properties.

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

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. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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10:30 A.M. AIRSTON CORPORATION OF VIRGINIA APPEAL, A 90-C-022, appeal of the Zoning Administrator's determination that a freestanding sign erected on subject property is in violation of Par. 9 of Sect. 2-302 and therefore must be removed on approx. 74,783 s.f. located at the intersection of West Ox Rd. and Centreville Rd., zoned R-1, C-5, Centreville District, Tax Map 25-1(1)18F.

Vice Chairman Ribble stated that it was his understanding that the appellant had requested a deferral. Lori Greenlief, Staff coordinator, advised the Board that there was a problem with the notices on this appeal and staff recommended deferral until February 5, 1991, at 8:30 p.m.

Mrs. Thonen made a motion to defer this appeal to February 5, 1991 at 8:30 p.m. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.



Page 81, January 17, 1991, (Tape 1), (AIRSTON CORPORATION OF VIRGINIA APPEAL, A 90-C-022, continued from Page 80 )

Mr. Kelley questioned Ms. Greenlief about the notice problem. Ms. Greenlief said there was a joint problem involving staff and the appellant, and that staff was going to redo the notices. Mr. Kelley said he did not understand the copy of a letter he had been given to review and Ms. Greenlief stated that it was an agreement to allow the appeal to be heard outside the ninety-day time frame.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John Ribble III  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: February 26, 1991

APPROVED: February 26, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 24, 1991. The following Board Members were present: Vice Chairman John Ribble, Martha Harris, Paul Hammack and Robert Kelley. Chairman John DiGiulian and Mary Thonen were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:45 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 82, January 24, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CHOI MING WU AND MAGDALEN Z. WU, VC 90-L-123, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot A having lot width of 19 ft. and proposed Lot B having lot width of 70 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 41,417 s.f. located at 6005 Old Rolling Road, zoned R-3, Lee District, Tax Map 81-4((1))80.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the applicant had requested a deferral. She suggested a deferral date of February 21, 1991 at 10:30 a.m. Ms. Kelsey noted that readvertising, renoticing, and reposting would have to be done.

Ms. Kelsey stated that a citizen was present and had asked to identify himself for the record and also wanted to insure that the letter sent to the Board had been made part of the record.

Vice Chairman Ribble called the citizen to the podium.

Hassan Shahidi, 6003 Old Rolling Road, Springfield, Virginia, identified himself to the Board. Vice Chairman Ribble assured Mr. Shahidi that his letter had been received and would be made part of the record.

Ms. Kelsey told the Board that Lori Greenleaf, Staff Coordinator, had contacted the citizens interested in the variance to inform them of the deferral.

There being no objection to the date and time of the deferral, Vice Chairman Ribble so ordered.

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Page 83, January 24, 1991, (Tape 1), Scheduled case of:

9:30 A.M. JOYCE P. LEAMON, VC 90-A-121, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 27,480 s.f. located at 4408 Banff St., zoned R-1, Annandale District, Tax Map 70-1((4))15.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Leamon replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report and stated that the subject property is generally located south of Little River Turnpike and west of Wakefield Chapel Road. The subject property, as well as the surrounding properties, is zoned R-1. The other residential uses in the area are zoned R-2 or R-3. The request for a variance resulted from the applicant's proposal to construct an attached garage at a distance 15.5 feet from the side lot line. In the R-1 district, the Zoning Ordinance requires a minimum side yard of 20.0 feet. Accordingly, a variance of 4.5 feet is requested.

Mr. Riegler stated that adjacent Lots 22 and 23A are developed with single family detached dwellings which are located in excess of 60.0 feet from the shared lot line. They are oriented toward the front of the properties on the adjacent street. Mr. Riegler noted that Turkey Run Stream flows on undeveloped land adjacent to the site.

The applicant, Joyce P. Leamon, 4408 Banff Street, Annandale, Virginia, addressed the Board and stated that when the property was purchased, the area was zoned R-2. She said that they had carefully placed the house so that a two car garage could be added by-right. Ms. Leamon explained that due to the zoning change a variance is required for the construction of the proposed garage.

In response to Mrs. Harris' question as to the dimensions of the garage, Ms. Leamon stated that because of the money involved, she had not had a permanent plan drawn for the garage.

Vice Chairman Ribble stated that the plat submitted with the application depicted the proposed garage as 26.0 by 28.0 feet. In response to Vice Chairman Ribble's question as to the width and depth of the proposed garage, Ms. Leamon said she did not know.

Mr. Hammack referred to the plat which depicted a 5.0 foot stairwell between the house and the garage. Ms. Leamon stated that the stairway went to the first floor of the existing structure. In response to Mr. Hammack's question as to whether the garage would have to be constructed around the existing stairway, Ms. Leamon said that it would.

Page 84, January 24, 1991, (Tape 1), (JOYCE P. LEAMON, VC 90-A-121, continued from Page 83)

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Mr. Riegler stated that the plat on file indicated that the width would be 26.0 feet and the length would be 28.0 feet. Ms. Leamon agreed with this statement.

Ms. Leamon stated that she had nothing to add to the staff report. Vice Chairman Ribble asked if the justifications submitted with the staff report were the basis for her case, and Ms. Leamon stated that they were.

In response to Mr. Hammack's question as to whether Ms. Leamon had discussed the request with the neighbors on the adjacent Lots 22 and 22A, Ms. Leamon said that she had not. Ms. Leamon said that these neighbors had received the certified notification and had not registered any objection.

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

Mr. Hammack made a motion to grant VC 90-A-121 subject to the conditions contained in the staff report dated January 17, 1991. He noted that the lot was narrow in relation to its' depth and that the houses on the two adjacent properties are approximately 60.0 feet away from the proposed addition. He stated that he was impressed with the applicant's testimony that when they bought the lot they could build the proposed addition by-right but had deferred doing so for financial reasons. Mr. Hammack expressed his belief that the stairway was one of the reasons a variance was necessary and that there was no other place on the property to construct a garage.

Mr. Kelley seconded the motion.

Mrs. Harris stated that she was concerned with the amount of the variance and with the applicant's statement that she did not have plans drawn up for the proposed addition. She expressed her belief that the Board has always been careful to approve only variances with specific specifications.

Mr. Hammack stated that the storm drainage easements on both sides of the property and the deck on the back of the existing house limited the applicant's options. He noted that although the addition would be constructed in the applicant's side yard, it would abut the backyard of the two adjacent properties. He expressed his belief that the neighbors would prefer a garage to having the cars parked in the driveway.

Mr. Kelley stated that while he shared some of Mrs. Harris' concerns, he was impressed with the applicant's statement that the house had been located on the property so that under the previous Zoning Ordinance the garage could be added by-right. He said that there would be no detrimental impact on the neighboring lots and that a variance would be justified.

Mrs. Harris stated that while she could understand the applicant's financial concerns, she was reluctant to approve a variance without a specific plat.

After a brief discussion, it was the consensus of the Board that because of the discrepancies between the applicant's plats the decision should be deferred.

Mr. Hammack stated that one plat depicted the width as being 26.0 feet and the other plat depicted the width as being 28.0 feet. He also noted that one plat showed a 3.0 foot wide stairway, and the other plat showed a 5.0 foot wide stairway. He requested that Ms. Leamon present a new plat showing the specific measurements of the addition at the deferred hearing.

Mr. Hammack made a motion to withdraw his motion to grant the variance. Mr. Kelley agreed to the withdrawal.

Jane Kelsey, Chief, Special Permit and Variance Branch suggested a deferral date of February 5, 1991, at 9:30 p.m.

The Board deferred the case to the suggested date.

Ms. Kelsey stated that staff would like to review the new plats before the deferral date.

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Page 84, January 24, 1991, (Tape 1), Scheduled case of:

9:45 A.M. DOUTHARD R. BUTLER AND JO JEWELL BUTLER, VC 90-L-120, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.7 ft. from side lot line (8 ft. min. side yard, 20 ft. total min. side yards required by Sect. 3-307) on approx. 12,234 s.f. located at 6909 Lamp Post Lane, zoned R-3 (developed cluster), Lee District, Tax Map 92-2((22))371.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Butler replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject site is located at the northeast corner of Stoneybrooke and Lamp Post Lanes. The

property is zoned R-3 and developed under the cluster provisions of the Zoning Ordinance with a single family dwelling. She noted that the site is surrounded by similarly developed lots in the Stoneybrooke Subdivision, which are also zoned R-3 and developed with single family dwellings under the cluster provisions of the Zoning Ordinance.

Ms. Bettard stated that the applicants were requesting a variance to allow an addition 4.7 feet from side lot line. Section 3-307 of the Zoning Ordinance requires a minimum side yard of 8.0 in an R-3 District that is developed under the cluster provisions of the Ordinance. Thus, a variance of 3.3 feet to the minimum side yard requirement was requested.

Ms. Bettard said that research of the files in the Zoning Administration Office indicated that the dwelling on adjacent Lot 401 is located approximately 12.0 feet from the shared lot line.

The applicant, Douthard R. Butler, 6909 Lamp Post Lane, Alexandria, Virginia, addressed the Board and stated he would like to add a recreation area to the existing structure. He explained that the house is situated on a corner lot and due to the four-way intersection, the house is located a great distance back from the street as is required under the Zoning Ordinance. He stated that because of the location of the house on the lot, the backyard is very small.

Mr. Butler stated that the deck, stairs, and patio would be enclosed. He noted that there is no basement because of drainage problems on the lot and that the only exit to the backyard is through the dining room.

In response to Vice Chairman Ribble's question as to whether the addition would be a sunroom, Mr. Butler stated that it have a sunroom, a recreation room, and also have a hot tub.

Vice Chairman Ribble noted the closeness of the neighbor's house and asked what part of the house would face his proposed addition. Mr. Butler said that the proposed addition would abut the neighbor's backyard. He stated that a large 15.0 foot high hedge separated the two properties; therefore, the addition would not visibly impact on this neighbor.

Mrs. Harris stated that the Board must take the hardship issue into consideration and asked Mr. Butler to speak to the hardship. She expressed her belief that a 360.0 square foot addition could be added by-right and that an addition of this size would be adequate.

In response to Mrs. Harris' statement, Mr. Butler stated that because of the slope of the lot, he could not build the addition straight across the back of the structure. He said that although he could build an addition by-right, a suitable size addition could not be built without a variance.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

The applicant's contractor, William McPherson, 7829 Solomon Seal Drive, Springfield, Virginia, addressed the Board and stated that because the addition would be 5.0 feet off the ground, the addition would have to include an entrance way, closet and stairway on the ground level. He stated that without the variance, the addition would be 14.0 by 10.0 feet with the stairway covering 4.0 feet of the space. He noted that this would leave an area space of 10.0 by 10.0 feet for a hot tub and furniture. He explained that due to the sloping of the lot and the needs of the applicants, the design of the proposed addition was the only practical solution.

In response to Mrs. Harris' question as to whether he had spoken to the neighbor on Lot 401, Mr. Butler said that he had not talked to Eugene McGuire but they have been neighbors for 16 years.

There being no speakers in opposition to the request, Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant VC 90-L-120 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report.

Vice Chairman Ribble called for discussion.

Mrs. Harris stated that she could not support the motion. She expressed her belief that there was no land hardship justification.

The motion FAILED by a vote of 3-1 with Vice Chairman Ribble, Mr. Hammack and Mr. Kelley voting aye; Mrs. Harris voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting. Four affirmative votes are required for approval of a variance.

Mrs. Harris made a motion to waive the 12 month time limit requirement for rehearing. Mr. Hammack seconded the motion which carried by a vote of 4-0, with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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**NOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 90-L-120 by DOUTHARD R. BUTLER AND JO JEWELL BUTLER, under Section 18-401 of the Zoning Ordinance to allow addition 4.7 ft. from side lot line, on property located at 6909 Lamp Post Lane, Tax Map Reference 92-2((22))371, 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, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 12,234 square feet.
4. The application has met the standards necessary for the granting of a variance.
5. The applicants have demonstrated a hardship in that there are double front yards. The house is set well back, 36.4 feet from one property corner and 31.1 feet from another, and set at an angle to the converging rear lot lines.
6. The corner of the addition would be 4.7 feet from a lot line, but it is just a corner. The greater bulk of the addition would be totally within the lot lines and only about 15.0 square feet of the building needs the variance.
7. The constraints on the property, the placement of the house on the lot, and the explanation of how the addition will be used justifies the granting of the variance.
8. There was no opposition from the neighbors.

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

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

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

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

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

Page 87, January 24, 1991, (Tape 1), (DOUTHARD R. BUTLER AND JO JEWELL BUTLER, VC 90-L-120, continued from Page 86)

1. This variance is approved for the addition to the specific dwelling 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.

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.

Mr. Kelley seconded the motion which FAILED by a vote of 3-1 with Vice Chairman Ribble, Mr. Hammack, and Mr. Kelley voting aye; Mrs. Harris voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting. Four affirmative votes are required in order to approve a variance.

Mrs. Harris made a motion to waive the 12 month time limitation for rehearing a new application on the same property. Mr. Hammack seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1991.

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Page 87, January 24, 1991, (Tape 1), Scheduled case of:

10:00 A.M. SALVATORE A. AND MARY JILL MARTINELLI, VC 90-V-122, appl. under Sect. 18-401 of the Zoning Ordinance to allow additions 6.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,314 s.f. located at 9004 Greylock St., zoned R-3, Mt. Vernon District, Tax Map 111-1((3))(4)12.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martinelli replied that it was.

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that the property is located at 9026 Greylock Street, which is south of Wakefield Street and north of Price's Lane near Mt. Vernon. The surrounding parcels in the Strafford Landing subdivision are zoned R-3 and are developed with single family detached dwellings.

He stated that the applicants are the owners of Lot 12 containing 11,314 square feet and zoned R-3. Mr. Jaskiewicz said that the subject property is developed with a single family detached dwelling with a carport. The applicants are proposing to enclose the existing carport, to enlarge the existing storage shed, and to extend the roof overhang over the front of the entire dwelling.

Mr. Jaskiewicz stated that the applicants are requesting a variance to the minimum side yard requirement to allow the storage room addition to be located 6.5 feet from the side lot line and since the Zoning Ordinance requires a minimum side lot line of 12.0 feet for the R-3 district, the applicant was requesting a variance of 5.5 feet.

He noted that the signed letters from the applicants' neighbor supporting the application were presented to the Board. He stated that the dwelling on Lot 13, which is the adjacent parcel to the south of the property and closest to the proposed addition, is located approximately 16.5 feet from the side lot line.

The applicant, Salvatore A. Martinelli, 9004 Greylock Street, Alexandria, Virginia, addressed the Board and stated that he would like to enclose the carport and to expand the storage area. He noted that the addition would not encroach any further into the south lot line than the existing carport. He noted that the height of the roof line would not be increased. Mr. Martinelli stated that the proposed addition would blend in with the existing structure and would be in harmony with the neighboring property. He noted that the unusual angle and placement of the house on the lot created a hardship.

He noted that the family room addition to the rear of the house does not require a variance. Mr. Martinelli stated that he had presented a detailed description of the proposed addition to the adjoining neighbor who has submitted written approval for the request.

In response to questions from the Board, Mr. Martinelli explained that the existing roof line would be extended by 5.0 feet. He noted that there would be no change in the garage roof line. He stated that the current roof changes pitch and that the builder proposes to double pitch the roof of the addition so as to conform with the existing structure. Mr. Martinelli explained that the existing storage shed and screened porch would be demolished. He expressed his belief that the renovations would be an aesthetic improvement.

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

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Page 88, January 24, 1991, (Tape 1), (SALVATORE A. AND MARY JILL MARTINELLI, VC 90-V-122, continued from Page 87)

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Mr. Kelley made a motion to grant VC 90-V-122 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 15, 1991.

Mr. Hammack seconded the motion. He requested that an additional development condition requiring that the existing screened porch be removed be added to the motion.

Mr. Kelley accepted the additional development condition as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-122 by SALVATORE A. AND MARY JILL MARTINELLI, under Section 18-401 of the Zoning Ordinance to allow additions 6.5 ft. from side lot line, on property located at 9004 Greylock St., Tax Map Reference 111-1((3))(4)12, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,314 square feet.
4. The application has met the standards necessary for the granting of a variance.
5. The removal of the screened porch would grant relief to the neighbors that doesn't now exist.
6. There has been impressive neighborhood support for the request.
7. The addition will compliment the house.

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

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

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

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



Page 89, January 24, 1991, (Tape 1), (SALVATORE A. AND MARY JILL MARTINELLI, VC 90-V-122, continued from Page 88)

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. A Building Permit shall be obtained prior to any construction.
3. The existing screen porch shall be removed.

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.

Mr. Hammack seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:30 a.m. and reconvened at 10:45 a.m.

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Page 89, January 24, 1991, (Tape 1), Scheduled case of:

10:15 A.M. ARTHUR W. JR. & BERNICE KROP, VC 90-D-117, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 3 having a lot width of 151.90 ft. (200 ft. min. lot width required by Sect. 3-206) on approx. 6.004 acres located at 910 Utterback Store Rd., zoned R-E, Dranesville District, Tax Map 7-3(1)30.

Vice Chairman Ribble called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Conroy replied that it was.

The applicant's agent, James J. Conroy, P.O. Box 297, Fairfax, Virginia, addressed the Board and requested a deferral. He stated that staff had agreed to the deferral and had suggested a date of February 12, 1991, at 10:45 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, confirmed that staff had agreed to the deferral. She noted that the representative of the Great Falls Civic Association, Mr. Peters, was present and had also agreed to the deferral.

Mr. Hammack made a motion to defer VC 90-D-117 to February 12, 1991, at 10:45 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 89, January 24, 1991, (Tape 1), Scheduled case of:

10:30 A.M. LYDIA B. GRIMSLEY, SP 90-D-083, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 9.68 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 12,400 s.f. located at 6531 Chesterfield Ave., zoned R-3, Dranesville District, Tax Map 40-2(13)69.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Grimsley replied that it was.

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that the subject property is generally located northeast of the intersection of Kirby Road and Westmoreland Street, south of Old Dominion Drive, and southeast of the McLean Central Business District. The surrounding residential neighborhood consists of single family detached dwellings without carports or garages on lots zoned R-3 and developed in a similar manner to the applicant's property, with numerous additions and freestanding structures.

He stated that the applicant, Lydia B. Grimsley, is the owner of Lot 69 (containing approximately 12,400 square feet in area and zoned R-3), located at 6531 Chesterfield Avenue in Section II of the Chesterbrook Gardens subdivision in McLean and developed with a one-story single family detached dwelling.

Page 90, January 24, 1991, (Tape 1), (LYDIA B. GRIMSLEY, SP 90-D-083, continued from Page 89)

Mr. Jaskiewicz explained that the applicant is requesting approval of a special permit for a modification to the minimum side yard requirement, based on an error in building location to allow the existing building addition to remain 9.68 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant is requesting a modification of 2.32 feet to the minimum side yard requirement.

Staff noted that the dwelling on adjacent Lot 70 is located approximately 26.5 feet from the applicant's addition that is the subject of this application.

The applicant, Lydia B. Grimsley, 6531 Chesterfield Avenue, McLean, Virginia, addressed the Board and stated that after she had purchased the property she realized that the carport and the screened porch had to be replaced. She had contracted with Frank Deeker of Excalibur Construction to remove the existing carport and screened-in-porch, and to add a single car garage and storage area.

She explained that the contract specified that Mr. Deeker would be responsible for the required building permits and inspections. Ms. Grimsley stated that she was not aware of any problems until the zoning Inspector informed her that she was in violation.

Ms. Grimsley stated that although Mr. Deeker had planned to attend the public hearing, he was not present.

It was the consensus of the Board that the hearing should be deferred so that Mr. Deeker could be present to answer questions on the building in error. The Board requested that Ms. Grimsley stress to Mr. Deeker the importance of his testimony.

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

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral date of March 19, 1991, at 8:15 p.m.

Mr. Hammack made a motion to defer the public hearing to the suggested time and date. Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

In response to Ms. Kelsey's suggestion, the Board asked the Clerk to send a letter to Mr. Deeker informing him of the Board's request that he be present at the March 19, 1991 public hearing. The Board also asked that the letter convey to Mr. Deeker that he could be subpoenaed to appear.

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Page 90, January 24, 1991, (Tape 1), Scheduled case of:

10:45 A.M. RADCLIFFE (U.S.A.), LTD., SPA 87-C-091-1, appl. under Sect. 5-503 of the Zoning Ordinance to amend SP 87-C-091 for commercial swimming pool and health club to allow change of permittee on approx. 12.4646 acres located at 13869 Park Center Rd., zoned I-5, WS, and AN, Centreville District, Tax Map 24-2((1))22D (formerly part of 22A).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Fehrman replied that it was.

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that the subject property is located at 13869 Park Center Road in the Dulles Industrial Aerospace Park, on the northeast corner of the intersection of McLearn Road and Sully Road, just east of Dulles International Airport.

He noted that the existing health club was originally developed as a permitted accessory use to the Ramada Renaissance Hotel located on the same site, and was granted Special Permit approval for a commercial health club under SP 87-C-091 on April 20, 1988. The surrounding properties in the Aerospace Park are similarly zoned and are developed with a mix of office and office/warehouse uses.

Mr. Jaskiewicz stated that the applicant was requesting an amendment to existing Special Permit, SP 87-C-091, for a commercial swimming pool and health club to allow a change in permittee from G.T. Warehousing Co., Inc. to Radcliffe (U.S.A.) Ltd. There would be no physical changes to the existing Special Permit facilities nor a change in the operation of these facilities as currently permitted under SP 87-C-091. The only change would be the change in permittee.

The applicant's agent, Michael E. Fehrman, 4057 Croker Lane, Woodbridge, Virginia, addressed the Board and stated that the property was purchased in early 1990. He noted that the applicant simply wished to change the name of G.T. Warehousing Co., Inc. to Radcliffe (U.S.A.) Ltd. He explained that there would be no other changes to the special permit.

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In response to Mrs. Harris' question as to whether the applicant had any problems with the proposed development conditions, Mr. Fehrman said that the applicant did not.

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

Mrs. Harris made a motion to grant SPA 87-C-091-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 17, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 87-C-091-1 by RADCLIFFE (U.S.A.), LTD., under Section 5-503 of the Zoning Ordinance to amend SP 87-C-091 for commercial swimming pool and health club to allow change of permittee, on property located at 13869 Park Center Rd., Tax Map Reference 24-2(1)22D (formerly part of 22A), 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 January 24, 1991; and

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

- 1. The applicant is the owner of the land.
- 2. The present zoning is I-5, WS and AN.
- 3. The area of the lot is 12.4646 acres.
- 4. All the request entails is a change of permittee.
- 5. The applicant has agreed to the development conditions which were binding on the previous owner.
- 6. The request is straight forward.

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 8-503 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, Radcliffe (USA) Ltd., 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 areas delineated as "2 Level Health Club & Pool and Air Supported Structure" on the plat submitted with this application (as drawn by Kilduff Associates, P.A. and dated September 19, 1990, revised) and the associated required parking, as qualified by these Development Conditions. The Special Permit shall not encumber the remainder of the 12.4646 acres.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. There shall be a maximum of eleven (11) employees on the special permit property (commercial swimming pool and health club) at any one time.
- 5. There shall be a maximum of 257 persons on the special permit property at any one time.
- 6. There shall be a minimum of eighty-one (81) parking spaces on-site associated with this use.
- 7. The Environmental Health Division of the Fairfax County Health Department shall be notified before any pool waters are discharged during draining or cleaning operations so that pool waters can be adequately treated. The recommended method of treatment should involve adding sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream. The standard for dissolved oxygen shall be attained prior to the release of pool waters. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. A minimum concentration of 4.0 milligrams per liter is required.

Page 92, January 24, 1991, (Tape 1), (RADCLIFFE (U.S.A.), LTD., SPA 87-C-091-1, continued from Page 91)

8. Any water discharged from the pool which is discolored or contains a high level of suspended solids shall be allowed to stand so that most of the solids settle prior to being discharged.
9. Any signs erected shall be in conformance with Article 12 of the Zoning Ordinance.

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

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. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 92, January 24, 1991, (Tape 2), Scheduled case of:

11:00 A.M. KENNETH LESTER APPEAL, A 90-S-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the storage of dump trucks and construction equipment and the stockpiling of mulch, gravel, and sand and the associated delivery business on the subject property are not permitted uses in the R-C District on approx. 7.1950 acres located at 7815 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 95-2((1))6 and 6B.

VICE CHAIRMAN RIBBLE: Is the appellant ready to be heard in this case? Could we ask staff to locate the property and present a brief opening remark.

MR. SANDERS: (H. Kendrick Sanders, 3905 Railroad Avenue #200N, Fairfax, Virginia, came to the podium.) Mr. Chairman, I was not being factious when I responded.

VICE CHAIRMAN RIBBLE: I see, would you like to step to the microphone, Mr. Sanders. State your name and address for the record.

MR. SANDERS: I am H. Kendrick Sanders, I am the attorney for the applicant in this matter. First, I have two preliminary matters I would like to bring up. The first motion is that the proceedings be dismissed on the following grounds. You today are sitting as a judicial body, not a legislative body, this is an appeal under the statutory procedures. As you know, the Supreme Court of Virginia has stated that you are legislating when you grant a variance or a use permit but in these proceedings, you are not. You are acting judicially or quasi judicially. You have been presented with a report from the zoning Administrator which I understand you have had for at least a week which contains hearsay, double hearsay, opinions, other matter prejudging the case. Evidence that has been in your hands for a week. I received the report yesterday afternoon by going to the office of the Zoning Administrator and seeking it out, so I have not even had a real opportunity to study it to see what the allegations are against the Lester's. So, that is my first motion. I would state that the matter should be, I believe properly, if there is to be a proceeding, it should be by way of a -- if the County so chooses -- Civil Suit brought in Circuit Court of Fairfax County to enjoining the use of this property, where they would properly have to make their case and we can properly defend it.

VICE CHAIRMAN RIBBLE: Does anybody have any questions of Mr. Sanders on this?

MR. HANNACK: I have two questions. Mr. Sanders if you feel that you have had inadequate notice to prepare a case, I think the Board would be willing to grant you a deferral so you could consider the staff report. Otherwise, the other, the second point is "isn't the County suppose to exhaust their administrative remedies", before they go to Court to seek injunctions. Isn't this part of the administrative remedy process that they should go through in making a determination as to whether maybe this, the issue involved is, or should go to court. Wouldn't you make the argument that hadn't exhausted it if they went to Court without coming to us?

MR. SANDERS: My opinion is that they, the County is not bound by the same rule we are. And that they do have the right to proceed directly to Court in any case, that's my opinion.

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Page 90, January 24, 1991, (Tape 2), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 92)

MRS. HARRIS: Mr. Sanders?

MR. SANDERS: If I could respond to the first --

MRS. HARRIS: All right.

MR. SANDERS: statement by Mr. Hammack is that I would like for the record, a ruling on my motion to dismiss.

BOARD TALK: In background.

VICE CHAIRMAN RIBBLE: Mrs. Harris has another question.

MRS. HARRIS: I am not a lawyer, but it seems to me that according to records on November 6th the subject application was filed by the appellant. By the applicant right. So therefore, they are, you are saying that we should not be hearing the case, but yet the appellant asked us to hear it. And it was accepted by us and was scheduled for a date and time certain. So I will go along with Mr. Hammack and defer it if you would like more time to prepare. But as to whether we should hear it or not, we are hearing it at your applicant's request, aren't we?

MR. SANDERS: Yes, I would like to respond to that.

MR. HAMMACK: That was my follow up question.

MRS. HARRIS: I am not a lawyer though.

MR. SANDERS: Lawyers or non lawyers, probably non. The law is you are required, if we are given a letter from the County, and that letter can be one sentence, says "we think you violate the Zoning Ordinance", we had 30 days to appeal that letter or we could not get to Court. We are forever barred. That is the only reason we are here.

MRS. HARRIS: Then we are within the legislative procedure, and --

MR. SANDERS: I am not contesting that. I am stating that, I think it is not proper for you to have the County's evidence before you, without it being presented here, under oath if necessary. It is not proper for you to have that before the hearing in this kind of case.

MRS. HARRIS: Well, you know what I would really like to have, I like to have something from the appellant and something from the County to read. If you would like to submit something for us to read, I would think that that would be good, if that is what you are asking for.

MR. SANDERS: No, I am not asking for that. We are not, the burden is on the County to present its case before we are obliged to present ours, that is the law of Virginia.

VICE CHAIRMAN RIBBLE: Mr. Hammack, do you have a question?

MR. HAMMACK: Well, that was my follow up question. If you, in fact, had not submitted yourself to the jurisdiction of this Body by filing the appeal to the Notice of Violation issued by the Zoning Administrator.

MR. SANDERS: I am not objecting to the jurisdiction, you have jurisdiction over the case. I am objecting to the procedures, which are prejudicial to my client. He certainly could not do it in Court, could not give the judge the hearsay evidence of the case before we came to trial.

MR. HAMMACK: But --

MR. SANDERS: I know you all are fair people in everyday dealings.

VICE CHAIRMAN RIBBLE: All right! Let Mr. Hammack finish it.

MR. SANDERS: But we are all human.

MR. HAMMACK: We are really not a court, we are a Board of Zoning Appeals. And I agree generally with what you said. But we are only quasi judicial and I am not at all sure that rules of evidence that apply in a criminal proceeding are necessarily applicable to hearings that are conducted before this particular Board. It's an interesting argument, but one which I would be inclined to reject at this stage. And in addition, I mean you haven't shown any prejudice to the client, to your client at this point. I feel that these, of course the procedure we are following here, is the standard procedure to some extent specified in the code. And I think it has a presumption of validity about it or at least has to be assumed to be a valid statutory arrangement for hearing appeals. I can understand the point you are making, but for purposes of hearing the appeal, I think that the Board can go ahead and either hear it today, or again come back if you, to the earlier point that you did not have much time to prepare. I'd certainly be willing to give you an opportunity to prepare and present whatever evidence you feel is appropriate. Some of which might even contain hearsay for all we know, but if you want a deferral so you can address the issues raised in the report, I'm certainly willing to go that route with you. But I'm not willing to grant your motion to dismiss.

Page <sup>94</sup> 94, January 24, 1991, (Tape 2), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 93)

MR. SANDERS: I am not suggesting that you are bound by the rule of criminal procedures. I think you are bound by some rules of procedure and you are bound by due process requirements, certainly. The -- and that is what my position is based upon. I take it as that is that you all, well, I guess I made my....

VICE CHAIRMAN RIBBLE: Mrs. Harris has another question.

MR. SANDERS: Yes ma'am.

MRS. HARRIS: Ok. According to what I understand, the reason for the appeal as you stated on November 1, 1990 was that this property had been used, without interruption, since 1952 and thus is a legal non-conforming use. I cannot see how hearsay, one way or the other, is going to have anything to do with your grounds in this appeal. So the hearsay one way, we had heard a lot of hearsay over the -- I don't know unptly unpted years this has been here, but we always seem to go back and focus on, and make the decision on what is the grounds of the appeal. And you clearly stated in it in your memo for appeal, very clearly, that it has a defined window as to what this appeal is based on. So, I would think hearsay testimony would not have much to do with the case, one way or the other. That is just my opinion.

MR. SANDERS: I am objecting to the procedure to this point. I am not getting into the merits of whether or not whose, we're right, or the County's right, that is not the issue.

VICE CHAIRMAN RIBBLE: One of the things you are saying is that you did not get the staff report until yesterday and you had to go pick it up, is that what I am hearing?

MR. SANDERS: Yes. My first motion is to dismiss the procedures as tainted. Short of that, of you don't, yes, the second is that if that is not agreed to by the Board, I request a deferral so we can respond to the report you have.

MR. KELLEY: Mr. Sanders, do you, as I try to follow this through the fact that we insist upon getting the Zoning Administrator's position on an appeal a week prior to the hearing. So, by your logic, does that mean every case we hear is tainted?

MR. SANDERS: Well not every case you hear where you are doing variances or special use permit's.

MR. KELLEY: I am talking solely about appeals.

MR. SANDERS: If the person is being accused of a violation of the Zoning Ordinance, which is a criminal violation, yes, I think you've got a different ball game.

VICE CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Ok, Mr. Chairman considering Mr. Sanders' motions, I move that we deny his motion that we dismiss this proceeding on the grounds that he has stated.

VICE CHAIRMAN RIBBLE: Do I hear a second?

MRS. HARRIS: Second.

VICE CHAIRMAN RIBBLE: The motion has been seconded, any discussion?

MR. KELLEY: Yes, Mr. Chairman.

VICE CHAIRMAN RIBBLE: Mr. Kelley.

MR. KELLEY: I do not feel that I am qualified to vote on this without some legal counsel. I know where my heart lies, my heart lies to the maker of the motion but, the -- I still don't know as if I am qualified to do that and I am wondering if we should get an opinion from Mr. McCormack, or talk to him, or if necessary I would like a little discussion amongst the Board about it. I'd like particularly to hear from Mr. Hammack on that subject.

MRS. HARRIS: Yeah.

VICE CHAIRMAN RIBBLE: Well, he made the motion. So --

MR. KELLEY: I know he made the motion.

VICE CHAIRMAN RIBBLE: I think we know where he stands.

MR. HAMMACK: My feeling is that the appeal before us has been filed under existing County Ordinance and procedures and some of the by-laws which we have even adopted. I think that our own by-laws address appeals. And if Mr. Sanders may have a valid point, it is certainly one where I am not aware of any case law in Virginia that has addressed the issue about the nature of evidence that can be presented. Or in a narrow sense, like this, due process requirements that apply to BZA appeal hearings. And if I might speculate a little bit, perhaps Mr. Sanders expects us not to dismiss it, but he would like to have a point for, to be preserved in the future. If Mr. Sanders, I'll say this, I would be willing to withdraw my

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Page <sup>95</sup> 94, January 24, 1991, (Tape 2), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 94)

motion, but if Mr. Sanders -- if you would like to present the -- us with some authority that we could consider, aside from your oral motion, that would back up your motion on this, so that we could have some case law, some authority that would support it, I would be happy to give you some time to prepare it and we could have the County Attorney look at it and then advise us. But at least on your oral motion, I would be inclined to just go ahead and dismiss it.

MRS. HARRIS: Mr. Hammack, why don't we just defer the whole thing. Why don't we defer the decision on both motions and give him time if he would like to present.

MR. KELLEY: That is what he just said.

MR. HAMMACK: Ok, I would be happy to do that.

MR. KELLEY: But, I -- it is my opinion, Mr. Chairman, that this is a -- very frankly, Mr. Sanders, at first I thought it was kind of frivolous motion, and now I don't believe it is. And, so I don't think we ought to treat it as such. It may have far reaching implications for all appeals that this Board hears, all appeals from the Zoning Administrator's decision hears. And I would feel more comfortable if Mr. Sanders could quote give us some information that we could use, case law whatever.

MR. HAMMACK: I don't have any problem with that. If you can give us some authority to support it, I'd certainly give it more consideration.

VICE CHAIRMAN RIBBLE: Would you like to redo your motion.

MR. HAMMACK: Yeah, I'll withdraw my motion and asked how much time you need to --

MR. SANDERS: 30 days.

MR. HAMMACK: 30 days. Staff!

VICE CHAIRMAN RIBBLE: Ms. Gwinn, do you have anything to say.

MS. GWINN: I would just note that the appeal involves a violation of the Zoning Ordinance and would suggest that, I think it is appropriate for Mr. Sanders to submit documentation. But, I would just be sensitive to the time limits, for the time that may all take.

MR. SANDERS: First of all, I guess I don't have to say that I am not making what I believe to be a frivolous motion or taken a frivolous decision, I assume that goes without saying. I think you can understand there are some issues here.

MR. KELLEY: I apologize for using that word.

MR. SANDERS: No, you said that it wasn't and I appreciate that, it's not. And I would be happy to proceed that way if we end up with the same result. If it was to be deferred, both issues can be, and I would be happy to repeat the, or provide you with additional briefing on that point and be prepared to go forward from that point should you pull the contract.

MR. KELLEY: Mr. Sanders let me get something -- I would like to get something on the record. If we put this off for thirty or so days, you will be prepared to come in and argue the motion to dismiss and you will also be prepared to argue the case itself.

MR. SANDERS: That's correct.

MR. KELLEY: In the event that the motion to dismiss is not granted?

MR. SANDERS: That's correct. The appeal was entered with the motion -- was the denial of the motion to dismiss, but perhaps the deferral of the merits issues. Same place.

MR. HAMMACK: You may be trying, I understood what we are trying to do here, but if we want to have the County Attorney or our own attorney take a look at this, can you get us your brief?

MR. SANDERS: I'll agree, I'll agree if we can have all the matters deferred for thirty days which I think is a reasonable period of time with these issues. In two weeks say.

MR. HAMMACK: Ok, that would -- a brief in two weeks.

MR. SANDERS: I would want to provide with additional legal information on the first issue, I would do so.

MR. KELLEY: That won't be in violation now of anything. It won't be hearsay will it, Mr. Sanders.

MR. SANDERS: No, it's going to be law. It will be law.

Page 96, January 24, 1991, (Tape 2), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 95 )

VICE CHAIRMAN RIBBLE: Mrs. Harris would like to ask another question.

MRS. HARRIS: In reading this, there was one piece of information from the applicant that I would have like to have seen. Not to hearsay, or but I, there was a point, that evidently the applicant had stated that he had been in business since 1952 and that he had documentation to that effect. Is there anyway that you can get that documentation to us before the 30 day period.

MR. SANDERS: In all due respect, Mrs. Harris, how I will present my case, as I am representing my client I haven't determined yet.

MRS. HARRIS: Ok, well I just, it had been said that the applicant said that he was going forward this information, I was just questioning why.

VICE CHAIRMAN RIBBLE: I think it is just something Mrs. Harris is directing your attention to.

MR. SANDERS: Yeah, I understood. I've read that part.

VICE CHAIRMAN RIBBLE: If I could entertain a motion?

MR. SANDERS: That's something he did said to someone who told (could not understand as Mr. Sanders was over talking the Board members).

VICE CHAIRMAN RIBBLE: Thank you, Mr. Sanders. Is anybody else in the room interested in this case?

MR. SANDERS: I know from our side, so you will understand, the people on this side of the room, I think just about everyone here is in support of the Lester's.

VICE CHAIRMAN RIBBLE: This isn't hearsay.

MR. SANDERS: We can ask them.

VICE CHAIRMAN RIBBLE: No. We are not going to poll the --

MR. SANDERS: I just, for clarification, if I'm incorrect, someone can correct me. But I think, generally speaking these people over here.

VICE CHAIRMAN RIBBLE: Ok.

MR. SANDERS: And there are some interested other people here that are not that way, as I understand.

MR. HAMMACK: Ok. Well Mr. Chairman I make a motion we defer this hearing for a month. What was the date, Jane?

JANE KELSEY: Could I suggest February 21, at 10:45 a.m.

MR. HAMMACK: Ok, february 21st at 10:45 and that the appellant will submit his, any legal memorandum he may wish to in writing to the staff within two weeks.

MR. SANDERS: Submit it to Ms. Gwinn.

MR. HAMMACK: Submit it to Ms. Gwinn.

VICE CHAIRMAN RIBBLE: Do I hear a second to the motion?

MRS. HARRIS: Second.

VICE CHAIRMAN RIBBLE: Would anyone in the room like to speak to this deferral. Ok, any further discussion? All those in favor of the motion signify by say aye.

THE BOARD: AYE!

VICE CHAIRMAN RIBBLE: Opposed? The motion carries by a vote of 4-0 and it will be deferred until February 21st.

MR. HAMMACK: Ms. Gwinn will you get us the memorandums as quickly as you can after they come in so we can take a look?

MS. GWINN: As soon as they are filed I will submit them to the Board of Zoning Appeals as well as the County Attorney's Office.

MR. HAMMACK: All right, thank you ma'am.

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Page 91, January 24, 1991, (Tape 2), AFTER AGENDA ITEM:

Approval of Resolutions from January 17, 1991 Hearing

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 92, January 24, 1991, (Tape 2), After Agenda Item:

Approval of Minutes from November 27, 1990 and December 4, 1990 Hearings

Mr. Hammack made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 92, January 24, 1991, (Tape 2), After Agenda Item:

Request for Out of Turn Hearing  
Rockwell International, Inc., VC 91-S-010

Mr. Kelley made a motion to grant the request.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of February 21, 1991 at 11:00 a.m. Mr. Kelley so moved.

The motion carried by a vote of 4-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 92, January 24, 1991, (Tape 2), After Agenda Item:

Request for Out of Turn Hearing  
Robert E. Simon Jr. Children's Center, Inc., SPA 89-C-028-1

Mrs. Harris stated that the Board had discussed the issue at the previous hearing. She made a motion to grant an out-of-turn hearing.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of February 26, 1991 at 10:45 a.m. Mrs. Harris so moved.

Mr. Hammack seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 92, January 24, 1991, (Tape 2), After Agenda Item:

Request for Approval of Reduction in Size of Staff Reports

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a letter of clarification regarding the point the Board had raised regarding the Comprehensive Plan had been submitted to the Board. Ms. Kelsey noted that due to budget reduction the printing has been reduced to a bare minimum. She stated that a sample of the staff report with back to back printing is included in the next Board package.

It was the consensus of the Board that the decision should be deferred until Chairman DiGiulian and Mrs. Thonen could be present.

Mr. Hammack made a motion to defer action on the issue. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 91, January 24, 1991, (Tape 2), After Agenda Item:

Memorandum Regarding Policy for Board of Zoning Appeals' Meetings  
During Inclement Weather

The Board deferred the decision until January 29, 1991.

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Jane Kelsey, Chief, Special Permit and Variance Branch stated that Mrs. Thonen was very ill and reminded the Board that with Mr. Kelley also absent, all the other members would have to attend the January 29, 1991 meeting in order to have a quorum.

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Page 98, January 24, 1991, (Tape 2), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 11:43 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John F. Ribble  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: February 24, 1991

APPROVED: February 24, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massy Building on January 29, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and John Ribbie. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mary Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 99, January 29, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CHAMAN PURI, SPA 87-S-012-1, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-012 for a place of worship to allow change of permittee, change in building design and modification of previously imposed development conditions on approx. 6.95 acres located at 4525 Pleasant Valley Rd., zoned R-C, WS, AN, Springfield District, Tax Map 33-3((1))5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Puri replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the property is located on the east side of Pleasant Valley Road, about 1/4 mile south of Route 50. Ms. Greenlief said that the property is zoned R-C, WSP0D and ANQID, and is currently undeveloped and heavily treed. She said that the surrounding properties are zoned R-C and the Pleasant Valley subdivision abuts the property on its east and north sides. Ms. Greenlief stated that Lot 6, directly to the south, is undeveloped and the lots across Pleasant Valley Road are also undeveloped.

Ms. Greenlief advised that this request was an amendment to an existing special permit which was granted by the Board in May of 1987 to Five Fold Fellowship Church. She said that the church had decided not to construct and that Mr. Puri has a contract to purchase the property. Ms. Greenlief stated that the applicant intends to develop the property with a place of worship; thus, this application was requesting a change in permittee from Five Fold Fellowship Church to Chaman Puri, a change in the building design, and a modification of several development conditions. Ms. Greenlief showed the two plats on the overhead screen. She pointed out that the site development was very similar and briefly compared them for the Board as follows: The size of the proposed building now is approximately 1,500 square feet larger; the number of seats now proposed is 250 compared to 346 proposed previously; the building design previously was a butler, modular type building, and now is proposed to be brick, stone and stucco with domes; and the new proposed building height is 40 feet compared to 18.2 feet previously proposed. She said that the proposed changes to the Development Conditions were discussed on page 10 of the staff report.

Ms. Greenlief advised that staff believed that implementation of the Development Conditions in Appendix 1 would enforce the honoring of the limits of clearing shown, limit the building height to forty (40) feet, and require transportation improvements for Pleasant Valley Road. She said that the use would be in harmony with the Comprehensive Plan and the purpose and intent of the R-C District. Thus, Ms. Greenlief said, staff recommended approval of SPA 87-S-012-1, in accordance with the Development Conditions in Appendix 1.

Ms. Greenlief offered to answer any questions.

The applicant, Chaman Puri, 1356 Snow Meadow Lane, McLean, Virginia, came to the podium to present the statement of justification. Mr. Puri stated that he is a trustee of Rajdhani Mandir, a member of the Hindu community, and a resident of Fairfax County, where he has resided with his family for over twenty (20) years. Mr. Puri said that the Hindu community is proud of Fairfax County but that there is a void in their lives because they do not have a place of worship. He stated that religion is an integral part of their lives and that they need a place where they can go to pray and meditate. Mr. Puri stated that they have been seeking such a place for the past six (6) years. He said that they found the subject property last year and that it is a perfect place to build a temple, made more attractive by the fact that it had been previously approved for a house of worship. Mr. Puri stated that the changes they have proposed are intended to improve upon the previous application. He stated that, since the previous application was approved, some roads in the area have been improved to four lanes, and they are proposing acceleration and deceleration lanes to facilitate ingress and egress to the property. Mr. Puri went on to list many changes which he strongly believed improved upon the previously granted application. Mr. Puri stated that they plan to clear only thirty-five percent (35%) of the property, which would leave ample buffers, as the property is heavily wooded. He said that they also plan to put in evergreen trees for additional screening in the winter and have agreed to use Best Management Practices (BMP's) which will almost eliminate any runoff from the site. Mr. Puri spoke knowledgeably about the environmental issues and zoning requirements and provided figures to emphasize the group's conformance to County standards. He stated that they met or exceeded all of the County requirements.

Chairman DiGiulian asked Mr. Puri why they needed a larger building than what was previously approved. Mr. Puri said that, in their Hindu temples, they are required to reserve an area for the ladies, and that area cannot be used for sitting or any other functions. He said that may be the reason why their proposed building is larger, or it may be because the building is of a different design.

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Mr. Hammack questioned Mr. Puri about his mention of a priest living on premises and asked how many priests actually would be residing on the premises and if they would be residing within the footprint of the building shown on the plat. Mr. Puri stated that they had requested approval for two priests to eventually be on the premises, but they did not have two priests at this time. Mr. Hammack asked if the priests would be unmarried and Mr. Puri stated that, normally, they are unmarried, but it is not a religious belief that they have to be unmarried. Mr. Hammack asked Mr. Puri if the new building would contain living quarters for the two priests and Mr. Puri stated that it would and that was the area where they had agreed to have the noise level at forty-five (45) decibels.

Mr. Hammack asked Mr. Puri if he had read all of the development Conditions and whether he agreed with them, to which Mr. Puri answered yes.

Mrs. Harris asked Mr. Puri whether people would be coming during the week to visit or seek counseling with the priests and Mr. Puri stated that services at the temple would take place on Saturdays and Sundays; however, he stated that the temple is open during weekdays if someone wants to come in and consult the priest.

Mrs. Harris asked Mr. Puri if the priests would own cars and Mr. Puri stated that, normally, they would not, but since they did not yet have that situation locked in, they did not know at this time what the answer would be. Mrs. Harris referred to the fact that the need for residential parking was not included in the application and she was trying to anticipate, in case someone wanted to have their own car or park it somewhere. Mr. Puri stated that they would be providing eighty-seven (87) parking spaces, whereas only sixty-three (63) were required for 250 seats, so they are providing more parking than is necessary, primarily to preclude any parking on the streets. Mr. Puri stated that, after approval, during the design stage, they would look into the priests having one or two parking spaces near their living quarters.

Mr. Hammack asked staff if priests and their families living on site would change the parking requirements in staff's analysis. Ms. Greenleaf stated that two parking spaces would be required for residential use, but the application property is overparked: 63 spaces are required for the church use. If two additional or even four additional spaces were required for two families, there is adequate parking according to the Ordinance.

Chairman DiGiulian asked if there was anyone else to speak in favor of the application and the following people came to the podium: S. Shrivasta, 12712 Kentstone Way, Fairfax, Virginia; Monica Gupta, 12758 Ashleigh Court, Fairfax, Virginia; Shashi Madan, 8901 Magnolia Ridge Road, Fairfax Station, Virginia; Shvetha Murti, 7715 Lear Road, McLean, Virginia; and Atam Dua, 6812 18th Century Court, Springfield, Virginia.

Among the reasons given by these people for speaking in favor of the application are the following: living happily and proudly for a long period of time in the Fairfax area without having a place of worship to meet the spiritual needs of the Hindu community; the need for having a temple very similar to any other place of worship in the area with a schedule of worship, just like any other church; the property has already been approved for a place of worship in the name of Five Fold Fellowship Church; to give their children a sense of belonging, a continuity of their culture and a richness of inheritance; providing a place where the Hindu community can gather to celebrate their functions; having a regular priest and a fixed place of worship to provide their children with a better insight of their cultural heritage and, thus, prepare today's children to be tomorrow's leaders; and the fact that they plan to remain in this area indefinitely because they love this Country and especially Fairfax County.

Chairman DiGiulian asked if there was anyone else to speak in support or anyone to speak in opposition and, hearing no response, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 87-S-012-1, subject to the Proposed Development Conditions contained in the staff report dated January 24, 1991, with two additional development conditions, as reflected in the Resolution by numbers 24 and 25.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-012-1 by CHAMAN PURI, under Section 3-C03 of the Zoning Ordinance to amend SP 87-S-012 for a place of worship to allow change of permittee, change in building design and modification of previously imposed development conditions, on property located at 4525 Pleasant Valley Rd., Tax Map Reference 33-3(1)5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

Page 101, January 29, 1991, (Tape 1), (CHAMAN PURI, SPA 87-S-012-1, continued from Page 100),

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 1991, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS, and AN.
3. The area of the lot is 6.95 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 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 by Harold A. Logan Associates, P.C. dated September 12, 1990 and these development conditions.
5. The maximum number of seats in the main area of worship shall be 250 with a corresponding minimum of 63 parking spaces. The maximum number of parking spaces on site shall be 87. All parking for this use shall be on site.
6. Transitional Screening 2 shall be provided along all lot lines. Existing vegetation may be used to partially satisfy this requirement but supplementation with evergreen trees and shrubs to the satisfaction of the County Arborist shall be provided.
7. The limits of clearing and grading shall be as shown on the special permit plat.
8. The barrier requirement shall be waived.
9. The floor area ratio (FAR) shall be limited to 0.03.
10. There shall be no organized outdoor activity associated with this special permit use.
11. The maximum building height shall be 40 feet to the top of the domes.
12. Best Management Practices shall be provided to the satisfaction of the Director, Department of Environmental Management. The pond shown as a dry pond on the plat shall be designed as a BMP to the satisfaction of DEM which means that it may become a facility other than a dry pond and it shall be of a design that maximizes phosphorus reduction.
13. Right-of-way to 60 feet from the centerline of Pleasant Valley 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 shall be provided to facilitate these improvements.
14. A right turn deceleration land shall be provided to the satisfaction of the Virginia Department of Transportation.
15. The entrance to the site shall be relocated to align with Herndon Avenue at such time as Pleasant Valley Road is improved to a divided facility. If agreement from the adjacent land owner on Lot 6 for the property necessary to locate the church driveway on Lot 6 is not obtained, interparcel access shall be provided to Lot 6 to facilitate future realignment of the church driveway.
16. Any proposed lighting of the parking areas shall be in accordance with the following:

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The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

17. A tree preservation plan 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 tree which may be impacted by construction on the site.
18. If required by the Department of Environmental Management (DEM), a 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 plans and approved measures shall be incorporated into the site plan as determined by DEM.
19. Adequate sight distance shall be provided to the satisfaction of the Virginia Department of Transportation.
20. Due to the potential for asbestos fibers in the soil, if excavation into the bedrock is necessary for construction, appropriate safety measures as determined necessary by DEM and/or the Fairfax County Health Department shall be implemented to protect workers on the site. If naturally occurring fibrous asbestos minerals are present, dust control techniques including but not limited to wet suppression and covered transport shall be implemented as determined necessary by DEM.
21. In order to achieve a maximum interior noise level of 50 dBA Ldn, the temple building, excluding the areas where the priests shall reside, shall have the following acoustical attributes:
  - o Exterior walls and ceilings shall have a laboratory sound transmission class (STC) rating of at least 39.
  - o Doors and windows shall be a laboratory STC of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC as walls.
  - o Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
22. In order to achieve a maximum interior noise level of 45 dBA Ldn, the area of the temple inhabited by the priests shall have the following acoustical attributes:
  - o Exterior walls and ceilings shall have a laboratory sound transmission class (STC) rating of at least 39.
  - o Doors and windows shall be a laboratory STC of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC as walls.
  - o Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
23. If signs are provided, they shall not be lit.
24. There shall be no noise generated off-site by the temple, in accordance with County noise ordinances.
25. There shall be no more than two (2) priests, or one (1) priest with his family, residing on site.

ON FEBRUARY 5, 1991, THE BOARD OF ZONING APPEALS RECONSIDERED ITS DECISION AND CHANGED CONDITION 25 TO READ AS SHOWN IN THE RESOLUTION.

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

Page 103, January 29, 1991, (Tape 1), (CHAMAN PURI, SPA 87-S-012-1, continued from Page 102)

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 which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 103, January 29, 1991, (Tape 1), Scheduled case of:

9:15 A.M. WALTER KORSGAARD, VC 90-P-129, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.03 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 13,858 s.f. located at 2425 Inglewood Ct., zoned R-3, Providence District, Tax Map 40-3((3))91.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Korsgaard replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located at the northeast end of Inglewood Court, north of Venice Street. She said that the property is zoned R-3 and is currently developed with a single family dwelling. Ms. Greenlief stated that the lot is surrounded by similarly developed lots in the Falls Hill Subdivision, which are also zoned R-3.

Ms. Greenlief stated that the applicant was requesting a variance to allow an addition to 8.03 feet from the side lot line. She said that Section 3-307 of the Zoning Ordinance requires a minimum side yard of 12.0 feet in an R-3 District; thus, a variance of 3.9 feet to the minimum side yard was requested.

Ms. Greenlief advised that research of the files in the Zoning Administration Office had indicated that the dwelling on adjacent Lot 90 is located approximately 14.7 feet from the shared property line.

The applicant, Walter Korsgaard, 2425 Inglewood Court, Falls Church, Virginia, presented the statement of justification, stating that he and his wife had acquired the property in 1971. Mr. Korsgaard said that the variance was necessary because the lot is exceptionally narrow, particularly in the front, where it measures only 46.98 feet, with a back line of 176.63 feet, which gives it a pie shape. Mr. Korsgaard said that there are not enough similar lots of this size with a large back and a small front to reasonably make it practical for the Board of Supervisors to formulate an amendment to the general regulation in this matter. He stated they would consider it a hardship if they did not succeed in obtaining a variance because the lot has only a one-car garage attached to the house and, as he showed the Board in a photo, there is hardly room to get into it with only one car in the garage. Mr. Korsgaard stated that he would like to double the garage, which would not only provide room for another car, which is currently being parked on the street, but would also allow room for a hobby shop, which he very much would like to have. He stated that he did a curbside survey throughout his development, the Falls Hill Subdivision, and found that twenty-nine (29) properties already have double garages, forty-one (41) more have large basement garages, and twenty-nine (29) others have walk-in basements which provide for access to the outside for something like a woodworking hobby. Mr. Korsgaard said he believed that not having room for hobbies and such was definitely a hardship not universally shared throughout the development. He said he believed that strict enforcement of the Ordinance would unreasonably prevent him from building the double garage when only a very small corner of the addition required a variance. Mr. Korsgaard stated that he felt the variance would not change the character of the development at all, but would enhance it. He said that the architecture would be exactly like that of the existing garage.

Chairman DiGiulian asked if there was anyone to speak in favor of the application, or anyone to speak in opposition to the application and, hearing no response, he closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-P-129, subject to the Proposed Development Conditions contained in the staff report dated January 21, 1991, for the reasons outlined in the Resolution.

Mrs. Harris stated that she had a suggestion regarding the screening. She stated that, in looking at the pictures, there seemed to be screening in front and in back of the garage, but none in the middle. Mrs. Harris suggested that some screening might be appropriate.

Mrs. Thonen called the applicant back to the podium and asked him if the side of the garage was adequately screened as she could not tell from the photos. Mr. Korsgaard stated that he was planning to do some planting when he was finished with the addition and confirmed to Mrs.

Thonen that he would have no problem with putting screening in the area she pointed out to him. Mr. Korsgaard said he intended to put Chinese Holly trees there.

Mrs. Thonen amended her motion by adding an additional condition requiring additional screening to be provided on the new side of the garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-129 by WALTER KORSGAARD, under Section 18-401 of the Zoning Ordinance to allow addition 8.03 ft. from side lot line, on property located at 2425 Inglewood Ct., Tax Map Reference 40-3(3)91, 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 29, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,858 square feet.
4. The lot is pie-shaped and very narrow in the back; 45 feet is a very narrow area in which to try to construct an addition.
5. Review of the plan does not indicate any other place to locate the addition, except the proposed location.
6. The house was built in 1958 and meets the required standards.

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

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

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

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

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



1. This variance is approved for the addition to the specific dwelling 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.
3. Additional screening to the new side of the garage shall be provided.

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.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 105, January 29, 1991, (Tape 1), Scheduled case of:

9:30 A.M. CAROLYN E. DANIELS, VC 90-A-125, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,507 s.f. located at 11103 LaMessa Dr., zoned R-3, Annandale District, Tax Map 57-3((7))373.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Daniels replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report and stated that the property is located north of Lee Highway and south of Braddock Road. He said that the subject property and the surrounding lots are zoned R-3 and are developed with single family detached dwellings. He said that the request for a variance results from the applicant's proposal to enclose an existing carport to provide an attached garage at a distance 6.7 feet from the side lot line. Mr. Riegler stated that a minimum side yard of 12 feet is required by the zoning Ordinance. He said that, accordingly, the applicant is requesting a variance of 5.3 feet to the minimum side yard requirement. In regard to surrounding uses, Mr. Riegler said that the dwelling on adjacent lot 372 is located approximately 31 feet from the shared side lot line.

The applicant, Caroline Daniels, 11103 LaMessa Drive, Fairfax, Virginia, presented the statement of justification, stating that she was seeking a variance to enclose an existing carport to serve as a garage and storage space. Ms. Daniels said her request was in line with similar structures in the neighborhood and presented a letter of support from one of her neighbors.

Chairman DiGiulian asked Ms. Daniels if she intended to exceed the dimension of the existing structure and she said no.

Chairman DiGiulian asked if there was anyone to speak in favor of the application or in opposition to the application and, hearing no response, closed the public hearing.

Mrs. Harris made a motion to grant VC 90-A-125, subject to the Proposed Developed Conditions contained in the staff report dated January 25, 1991, for the reasons outlined in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 90-A-125 by CAROLYN E. DANIELS, under Section 18-401 of the Zoning Ordinance to allow addition 6.7 ft. from side lot line, on property located at 11103 LaMessa Dr., Tax Map Reference 57-3((7))373, 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 January 29, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,507 square feet.
4. Review of the plat indicates that the house and carport are situated in such a way that there is no other reasonable place to put the enclosed garage on the property.
5. The applicant is simply proposing to enclose an existing structure.
6. The proposed use is not of so general or recurring a nature as to require action by the Board of Supervisors.
7. Strict application of the Ordinance would create a hardship because the foundation is there, the roof is there, and the applicant merely proposes to enclose the area.

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

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

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

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

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

1. This variance is approved for the location 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.

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.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 107, January 29, 1991, (Tape 1), Scheduled case of:

9:45 A.M. WELTON A. AND NELLIE B. QUANDER, VC 90-V-127, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 19.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-407) on approx. 9,229 s.f. located at 2501 Dawn Dr., zoned R-4, Mt. Vernon District, Tax Map 93-1((42))2.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Quander replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property is located east of Route 1 and that the subject property and the surrounding lots are zoned R-4 and are developed with single family detached dwellings. He said that the applicants were requesting a variance because they wanted to build an attached sunroom 19 feet from the rear lot line, and a minimum rear yard of 25 feet is required by the Zoning Ordinance. He said that, accordingly, the applicants were requesting a variance of 6.0 feet to the minimum rear yard requirement. Regarding surrounding uses, he said that the dwelling on adjacent Lot 1 is located approximately 12 feet from the shared side lot line.

Mrs. Harris asked Mr. Riegle exactly where the house is located on Lot 1 and he showed her on the viewgraph approximately where it is located.

The co-applicant, Mrs. Quander, 2501 Dawn Drive, Alexandria, Virginia, presented the statement of justification, stating that the subdivision comprising their neighborhood is new, but they have been living in the house for thirty years or more. Mrs. Quander stated that they had made expensive renovations in order to bring their property into line with the new surrounding houses. Mrs. Quander said they wished to build an attached sunroom to provide shelter from the elements in an area beneath the sunroom and for recreation.

Mrs. Harris asked Mrs. Quander about the reaction of the people on Lot 1 toward the proposed addition. Mrs. Quander stated that she had discussed it with the people on Lot 1 and Lot 3 and they had absolutely no objection. Mrs. Harris asked Mrs. Quander to point out where the house on Lot 1 is located and asked if there was any screening between the houses. Mrs. Quander stated that they had discussed the subject together and planned to work it out together, to the satisfaction of all parties concerned.

Mr. Hammack asked Mrs. Quander what type of materials she intended to use for the proposed addition and she stated that she had a representative of the construction company present, but said it would be glass, screened, with a shed roof.

Chairman DiGiulian asked if there was anyone to speak in support of the application or in opposition and, hearing no response, closed the public hearing.

Mr. Ribble made a motion to grant VC 90-V-127, subject to the Proposed Development Conditions in the staff report dated January 22, 1991, for the reasons outlined in the Resolutions.

Mr. Ribble took this opportunity to remark upon the manner in which the Quander family had distinguished itself in the area, having lived there for a long time and having done a great many good things for the community.

Mrs. Harris pointed out that the addition would contribute to the correction of the problem with water running down the back stairs and into the basement; and Mr. Hammack pointed out that the shape of adjacent Lot 1 is so unusual as to limit the applicants' use and development of their property. Mr. Ribble was in accord with having these two additional findings of fact reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-127 by WELTON A. AND NELLIE B. QUANDER, under Section 18-401 of the Zoning Ordinance to allow addition 19.0 ft. from rear lot line, on property located at 2501 Dawn Dr., Tax Map Reference 93-1((42))2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 1991; and

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

- 1. The applicants are the owners of the land.

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2. The present zoning is R-4.
3. The area of the lot is 9,229 square feet.
4. The rear yard is exceptionally shallow because of the location of the house on the lot.
5. The neighbors do not object to the proposed addition.
6. The applicants and the neighbors have agreed to appropriate screening to be selected to the satisfaction of all parties.
7. The proposed location of the addition may serve to correct a water problem, since it will be located in an area which should prevent the water seepage from going down the back stairs and into the basement.
8. The unusual shape of adjacent Lot 1 creates an extraordinary situation which limits the applicants' use and development of their property.

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

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

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

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

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

1. This variance is approved for the 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.

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.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 109, January 29, 1991, (Tape 1), Scheduled case of:

10:00 A.M. RICHARD A. & SYBIL G. LAIRD, VC 90-M-126, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,960 s.f. located at 4121 Teton Pl., zoned R-3, Mason District, Tax Map 61-4(6)(T)52.

Chairman DiGiulian called the applicants' agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McPherson replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is located at 4121 Teton Place, in Section 3 of the Parklawn subdivision. He said that the area is generally south of Columbia Pike and Glasgow Intermediate School, west of Holmes Run Creek and the Corporate Line for the City of Alexandria, and north of Lincolnia Road. Mr. Jaskiewicz stated that the lot contains 10,960 square feet, is zoned R-3, and is presently developed with a one-story single family detached dwelling with an attached wood deck, a storage shed, and a concrete driveway. Mr. Jaskiewicz said that the applicants were requesting a variance to allow construction of a one-story sunroom addition atop an existing wood deck attached to the existing dwelling and located 9.7 feet from the side lot line. He advised that the Zoning Ordinance requires a minimum side yard of 12 feet, so the applicants were requesting a variance of 2.3 feet to the minimum side yard requirement. Mr. Jaskiewicz noted that the dwelling on adjacent Lot 51 is sited approximately 20 feet from the lot line shared with the applicants and the associated side yard where the proposed variance is located.

William McPherson, 7829 Solomon Seal Drive, Springfield, Virginia, of Patio Enclosures, Inc., represented the applicants.

Mrs. Harris stated that she would like to see some pictures, as she believed there were various other locations on the lot where the sunroom might be constructed without a variance.

Mr. McPherson described existing topographical conditions, stating that areas of the property are sloping in nature and described the existing structure and appendages in detail. He stated that the existing deck had the only sliding glass door leading into the home. Mr. McPherson stated that one hardship was that Mrs. Laird is allergic to bee stings, has been hospitalized three times in the last seven years, and would like to have the sunroom for this reason.

Upon request, Mr. Hammack received confirmation from staff that no variance was required for the new proposed deck.

Mr. Hammack made a motion to deny VC 90-M-126 for the reasons outlined in the Resolution, stating that he shared the same reservations Mrs. Harris had expressed.

Mrs. Thonen said she would have to vote against the motion because, in looking at the topography, she believed that the lot sloped off badly, and that it would be a problem to have to go outside and back inside to get to the sunroom.

Mr. Hammack said that, regardless of the sloping condition, he believed there were other places to build the sunroom without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-126 by RICHARD A. & SYBIL G. LAIRD, under Section 18-401 of the Zoning Ordinance to allow addition 9.7 ft. from side lot line, on property located at 4121 Teton Pl., Tax Map Reference 61-4(6)(T)52, 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 29, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,960 square feet.
4. Placing the sunroom in the proposed location would be strictly a convenience, as there are other locations on the property where an enclosed sunroom could be constructed without requiring a variance.

Page 110, January 29, 1991, (Tape 1), (RICHARD A. & SYBIL G. LAIRD, VC 90-M-126, continued from Page 109)

5. While Mrs. Laird's allergy to bees is worthy of sympathy, the applicants have not made a case of hardship under the Ordinance.

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 which carried by a vote of 4-1; Mrs. Thonen voted 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 February 6, 1991.

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Page 110, January 29, 1991, (Tape 1), Scheduled case of:

10:15 A.M. JACQUELINE K. BOYDEN AND TRACY G. SAVAGE, VC 90-P-128, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.2 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 22,804 s.f. located at 8724 Wolftrap Rd., zoned R-1, Providence District, Tax Map 39-1((4))4.

Mrs. Harris excused herself from participating because of a conflict of interest and left the Board Room.

Chairman DiGiulian called one of the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Boyden replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that the subject property is located at 8724 Wolftrap Road, in an area north and east of the Town of Vienna Corporate Line, and east and south of Route 123. He said that Lots to the west are also zoned R-1 and are developed with single family detached dwellings. Mr. Jaskiewicz said that adjacent lots to the north and east are zoned PDH-3 and are developed with single family detached dwellings.

Mr. Jaskiewicz stated that the applicants, Jacquelyn K. Boyden and Tracy G. Savage, are co-owners of Lot 4 which totals 22,804 square feet and is zoned R-1. He said that the lot is developed with a one and one-half story single family detached dwelling. Mr. Jaskiewicz said that the applicants were requesting a variance to the minimum side yard requirement to permit

construction of a one-story addition 15.2 feet from the side lot line. He said that, since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 District, a variance of 4.8 feet to the minimum side yard requirement was being requested.

Mr. Hammack asked if the porch which was shown in the photograph was going to be removed. Ms. Boyden stated that it was going to be moved because they needed to repair the porch because the footings had been undermined due to a high water table and some soil problems, which they had analyzed and had the report available to the Board. Ms. Boyden stated that the structure had to be torn down and erected again after new footings had been installed. She said that the reason they need the additional 1.4 feet is that she had been advised that the most effective and cost-effective way was to sink new footings next to the existing footings, slightly further out. Ms. Boyden stated that they were also asking to be allowed to construct an addition which was shown on the plat.

Chairman DiGiulian asked Ms. Boyden the length of the existing porch, to which she replied that it is approximately 12 feet long, and the proposed addition would be approximately 32 feet long.

Chairman DiGiulian asked if there was anyone to speak in favor of the application or in opposition to the application and, hearing no response, closed the public hearing.

Mr. Hammack made a motion to grant VC 90-P-128, subject to the Proposed Development Conditions contained in the staff report dated January 22, 1991, because of an extraordinary condition on the property, in that the footings of the existing porch are deteriorating, that they must be completely rebuilt; that the rebuilding requires an additional 1.4 feet from the original development of the property; and that the additional required standards for a variance had been met by the applicants.

Mr. Ribble seconded the motion. Mrs. Thonen stated that she could go along with the minimum variance to repair the porch, but believed that approximately 18 feet of length on the side was too much of a variance and did not believe a hardship existed. For those reasons, Mrs. Thonen said she would vote nay. Chairman DiGiulian stated that he agreed with Mrs. Thonen, in that he could support an additional 1.4 feet closer to the side lot line to repair the footings for the porch, but could not support the proposed addition which would more than double the length of the side wall. The vote was 2-2-1. Chairman DiGiulian and Mrs. Thonen voted nay, Mrs. Harris abstained, the motion failed for a lack of four votes in favor, and the application was denied. Mr. Kelley was absent from the meeting.

Ms. Boyden came back to the podium and asked Chairman DiGiulian if it would be possible, at this point, to amend the request so that it would be granted-in-part; i.e., request the variance to repair the porch and withdraw the request to extend the addition twenty (20) feet back.

Mrs. Thonen made a motion to reconsider the application in order to allow the applicants to amend their request. Mr. Ribble seconded the motion, which carried by a vote of 4-0-1; Mrs. Harris abstained. Mr. Kelley was absent from the meeting.

Mr. Hammack made a motion to grant-in-part VC 90-P-128, to allow repair of the existing porch and foundation, subject to the Proposed Development Conditions contained in the staff report dated January 22, 1991, for the reasons outlined in the Resolution, and with an additional Development Condition requiring that new plats be submitted showing only the proposed reconstruction. Mr. Hammack's motion further stated that the original application be denied.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-128 by JACQUELINE K. BOYDEN AND TRACY G. SAVAGE, under Section 18-401 of the Zoning Ordinance to allow addition 15.2 ft. from side lot line (THE BOARD GRANTED PERMISSION FOR RECONSTRUCTION OF EXISTING PORCH AND FOUNDATION. ADDITION WAS DENIED), on property located at 8724 Wolftrap Rd., Tax Map Reference 39-1((4))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 January 29, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,804 square feet.

Page 12, January 29, 1991, (Tape 1), (JACQUELINE K. BOYDEN AND TRACY G. SAVAGE,  
VC 90-P-128, continued from Page 11 )

4. Testimony indicates that soil and water conditions are undermining the foundation of the porch and the existing porch addition.
5. The proposed addition is excessively large and denying it would not present a hardship.
6. The proposed addition would more than double the length of the side wall.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.
3. New plats shall be submitted to show only the proposed reconstruction.

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.

Mrs. Thonen seconded the motion which carried by a vote of 4-0-1. Mrs. Harris abstained because of a conflict of interest. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board took a short recess at this time.

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Page 113, January 29, 1991, (Tape 2), Scheduled case of:

10:30 A.M. WILLIAM F. AND NANCY CODY, VC 90-C-131, appl. under Sect. 18-401 of the Zoning Ordinance to allow deck 9.4 ft. and addition 18.0 ft. from side lot line (15 ft. min. side yard required for deck by Sects. 2-412 and 3-107 and 20 ft. min. side yard required by Sect. 3-107) on approx. 36,211 s.f. located at 9124 Bois Avenue, zoned R-1, Centreville District, Tax Map 28-4((8))17.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cody replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that the subject property is located at 9124 Bois Avenue in Section 2 of the Spring Lake subdivision. He said that the area is generally north of Old Courthouse Road, east of Wolftrap Creek, and south of the Dulles Airport Access Road and Toll Road. Mr. Jaskiewicz stated that the applicants are co-owners of Lot 17, which contains approximately 36,211 square feet, and is zoned R-1. He said that the property is presently developed with a two-story single family detached dwelling and is wooded. Mr. Jaskiewicz said that the applicants were requesting a variance to allow construction of both a two-story addition to the existing dwelling, located 18.0 feet from the side lot line, and a wood deck, 4 feet high, attached to the existing dwelling and the proposed addition and located 9.4 feet from the side lot line. Mr. Jaskiewicz said that the Zoning Ordinance requires a minimum side yard of 20 feet for single family dwellings and a minimum side yard of 15 feet for decks 4.0 feet in height or less. He said that the applicant, therefore, was requesting a variance of 2.0 feet to the minimum side yard requirement for the proposed building addition and a variance of 5.6 feet to the minimum side yard requirement for the proposed deck.

The applicant, William F. Cody, 9124 Bois Avenue, Vienna, Virginia, presented the statement of justification, stating that the request for a variance was for only a small corner of the proposed addition, necessitated by the position of the applicants' house on the lot in relationship to the lot line. Mr. Cody presented letters of support from some of the neighbors.

Chairman DiGiulian asked Mr. Cody if the property owner on the side where the variance would be located had written one of the letters of support and Mr. Cody said that he had.

Mrs. Harris asked some questions of Mr. Cody which he could only explain by pointing to the viewgraph.

Nancy Cody, co-applicant, came forward to explain to Mrs. Harris that they did not use the stairwell which Mrs. Harris had asked about because it is very dark and dank because of water retention.

A discussion ensued during which Mrs. Cody explained the history of the house and the reason why it was one-story in one area and two-story in another area.

Chairman DiGiulian asked if there was anyone to speak in support of the application or in opposition to the application and, hearing no response, closed the public hearing.

Mr. Ribble made a motion to grant VC 90-C-131, subject to the Proposed Development Conditions contained in the staff report dated January 22, 1991, for the reasons outlined in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-131 by WILLIAM F. AND NANCY CODY, under Section 18-401 of the Zoning Ordinance to allow deck 9.4 ft. and addition 18.0 ft. from side lot line, on property located at 9124 Bois Avenue, Tax Map Reference 28-4((8))17, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 36,211 square feet.
4. An extraordinary situation exists because the position of the house on the lot creates a double front yard and an exceptionally shallow rear yard.

5. The variance is minimal because only a small triangular corner of the addition requires a variance.

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

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

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

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

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

1. This variance is approved for the location and the specific building addition and accompanying deck 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.

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.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 114, January 29, 1991, (Tape 2), Scheduled case of:

11:00 A.M. NATIONAL AMUSEMENTS, INC. APPEAL, A 90-L-025, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that Site Plan #6036-SF-02-1 for Mount Vernon Multiplex Cinemas was submitted to the Department of Environmental Management on October 3, 1989, and therefore is not grandfathered from Zoning Ordinance Amendment #88-164 on approx. 11.88 acres located at 7940 Richmond Highway, zoned C-8 and HC, Lee District, Tax Map 101-2((6))A.

Page 115, January 29, 1991, (Tape 2), (NATIONAL AMUSEMENTS, INC., APPEAL, A 90-L-025, continued from Page 114)

Mr. Hammack made a motion to defer the appeal for two weeks because Mrs. Thonen had received her staff report late and, in addition, had been under the weather and had not had an opportunity to study it sufficiently to vote on it. In order to do justice to all parties, Mr. Hammack said he believed an effort should be made to get as full a Board as possible to vote on the appeal. Mrs. Thonen seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

Chairman DiGiulian asked staff what time on February 12, 1991, was available and Jane Kelsey, Chief, Special Permit and Variance Branch, said that 11:00 a.m. was open.

Chairman DiGiulian asked if anyone else present would like to address the deferral and, hearing no response, scheduled A 90-L-024 for February 12, 1991 at 11:00 a.m.

"

Page 115, January 29, 1991, (Tape 2), After Agenda Item:

Approval of Resolutions from January 24, 1991 Meeting

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

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Page 115, January 29, 1991, (Tape 2), After Agenda Item:

Request for Date and Time for Tony T. S. Yang Appeal  
Clerk suggested April 2, 1991 at 11:00 a.m.

Mrs. Thonen made a motion to approve the suggestion of the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

"

Page 115, January 29, 1991, (Tape 2), After Agenda Item:

Request for Intent to Defer  
The Community of the Poor Clares of Alexandria, Inc., SPA 82-V-052-1

Mr. Ribble said he was puzzled about why Commissioner Byers wanted the case deferred, since there had been a hearing at which both sides had an opportunity to straighten things out. Mrs. Thonen stated that she believed the Planning Commission was in the midst of the Comprehensive Plan hearings and had not been able to schedule this between the Comprehensive Plan hearings and the Chesapeake Bay hearings. Chairman DiGiulian asked when it was scheduled to come back up before the Board and Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it was scheduled for February 5th. She stated that staff had made the applicant aware of the Planning Commission's recommendation that the Board defer this application until some time after the Planning Commission plans to hear it on Wednesday, March 27, 1991, and that the applicant objected to the deferral and was prepared to argue that the following week. Chairman DiGiulian suggested deferring the Request for Intent to Defer until the following week and telling everyone involved to be present and ready to take action. There was some confusion as to what Commissioner Byers had in mind and Mrs. Thonen asked if a motion could go forward to notify the Planning Commission that, if there are overriding issues, someone from the Planning Commission should be present on the following Tuesday and, if not, the Board of Zoning Appeals would go forth with the hearing. Chairman DiGiulian stated that the Board needed to know about the Planning Commission's intentions. Mrs. Harris seconded the motion. Ms. Kelsey said that she understood that the Board wanted her to notify the Planning Commissioner that the Board would take this matter up next week, when it is actually scheduled on the agenda; or, if he feels that there are other circumstances which the Board needs to be made aware of, he should so indicate, prior to next week's hearing, or have someone present at the hearing.

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Page 115, January 29, 1991, (Tape 2), After Agenda Item:

Bad Weather Policy

Jane Kelsey, Chief, Special Permit and Variance Branch, had provided the Board with a copy of a memo outlining the Bad Weather Policy, signed by Chairman DiGiulian. Mrs. Thonen made a motion to adopt the policy. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

BAD WEATHER POLICY

In case of extremely bad weather, the Chief, Special Permit and Variance Branch, will contact the Chairman. If there is a question, the Chief, Special Permit and Variance Branch, will then call Board members to determine whether or not there

Page 116, January 29, 1991, (Tape 2), (BAD WEATHER POLICY, continued from Page 115),

would be a quorum if a meeting were to be held and, if it is not to be held, whether or not to have a make-up meeting on the following Thursday. The Chairman will make the decision as to whether or not to hold the meeting and the Chief, Special Permit and Variance Branch, will call those Board members who indicated they could attend in order to confirm that there will be a Board meeting or that there will be a make-up meeting on Thursday.

The Chief, Special Permit and Variance Branch, will then call Public Affairs in order that a news bulletin can be made on Cable TV and radio.

If the County closes its offices for the day or evening meetings, then the BZA meeting will be automatically cancelled. The Chief, Special Permit and Variance Branch, will try to assure that Public Affairs gets this into the news bulletin as well and that a make-up meeting can be held on Thursday.

In the event the BZA hearing is cancelled, staff will make every attempt to notify applicants and others who have expressed an interest in the applications which are scheduled to be heard. Signs will also be posted.

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Page 116, January 29, 1991, (Tape 2), After Agenda Item:

Reduced Staff Reports

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board for their support in reducing the size of the staff reports. A discussion ensued. Mr. Hammack made a motion to reduce the size of the staff reports. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

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Page 116, January 29, 1991, (Tape 2), Information Item:

House Bill No. 1396

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that House Bill 1396 proposes to require alternates to be appointed to the Board of Zoning Appeals (BZA). The word "require" would make these appointments mandatory. The BZA discussed several problems with allowing alternates to be on the Board of Zoning Appeals on a regular basis, in the absence of a regular member. The BZA discussed the process by which staff would have to notify the alternate and whether or not the alternate would be or could become up-to-date on the applications within a short period of time. The BZA believed this would particularly be a problem with deferred cases where the alternate would not have been present at the original public hearing; or if the alternate attended one meeting and the case was deferred, would be the alternate be required to attend those meetings, since the original member would not be familiar with the case. Since the BZA defers a large number of cases for various reasons, it believed that this would become a problem. For these reasons, the BZA decided that it could not support the Bill and that a letter should be written to the Board of Supervisors urging the Board not to support the Bill. The BZA requested Mr. Hammack to prepare the letter and to coordinate with the other BZA members and Mr. Hammack agreed.

Chairman DiGiulian suggested sending a letter requesting that a simple majority could determine granting or denying. Ms. Kelsey was asked by Mrs. Harris to write a letter with input from the BZA, telling why the BZA thought the Bill was a bad idea. Chairman DiGiulian suggested that the BZA could make a motion on it at the next meeting. Ms. Kelsey said that the Bill was in Committee and the time frame was a concern. Ms. Kelsey said that the BZA might make a motion stating their general feeling and then she could check to see if there was more time to do a more detailed motion. Mr. Hammack suggested a general resolution opposing the Bill, followed up by the BZA working up some detailed language by telephone. Ms. Kelsey stated that she believed that, if the Bill did go forward, they would prefer to see it say that the alternates may be used, rather than shall be or must be, and leave the option up to the County. Mrs. Harris made a motion that the Fairfax County Board of Zoning Appeals indicate its opposition to House Bill No. 1396 for reasons which will be forthcoming in a day or two. Mr. Ribble seconded the motion which, passed by a vote of 5-0. Mr. Kelley was absent from the meeting.

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Page 116, January 29, 1991, (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request  
Sisler, Inc., VC 91-p-013

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of the request, stating that a special exception had already been granted to the applicant, which was contingent upon approval of this variance. Ms. Kelsey suggested March 26, 1991. Mrs. Thonen made a motion to grant the out-of-turn hearing and schedule it for March 26, 1991. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Kelley was absent from the meeting.

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Page 117, January 29, 1991, (Tape 2), ADJOURNMENT:

As there was no other business to come before the board, the meeting was adjourned at 11:30 a.m.

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiuliano  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: March 5, 1991

APPROVED: March 19, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 5, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:05 p.m. and gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 119, February 5, 1991, (Tape 1), Scheduled case of:

8:00 P.M.      RAYMOND P. AND JUDITH V. POWELL, VC 90-S-130, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 12.8 ft. from pipestem driveway (25 ft. min. side yard required by Sect. 2-416) on approx. 10,530 s.f. located at 7011 Cottontail Ct., zoned R-2 (developed cluster), Springfield District, Tax Map 88-4((5))189.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Powell replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject site is located on the east side of Cottontail Court, north of its intersection with Walking Horse Court. The property is zoned R-2 and developed with a single family dwelling under the cluster provisions of the Ordinance. The property is surrounded by other lots in the Orange Hunt Estates West Subdivision, which are zoned R-2 and developed under the cluster provisions of the Ordinance.

Ms. Bettard stated that the research of the files in the Zoning Administration Office indicate that the dwelling on adjacent Lot 186 is located approximately 10.9 feet from the abutting pipestem driveway, which provides access from Cottontail Court to Lot 187. The pipestem abutting the subject site provides access from Cottontail Court to Lot 188. The house location plat for the subject lot indicates that when constructed in 1975, the existing dwelling was originally located 10.9 feet from the western lot line. This was before the adoption of the current Zoning Ordinance in 1978, and before the Zoning Ordinance amendment adopted in 1979, which set forth this requirement for all future construction.

The applicant, Raymond P. Powell, 7011 Cottontail Court, Springfield, Virginia, addressed the Board and stated that the sunroom addition would not extend past the existing house in the direction of the required variance. He presented pictures of the back of the house, a drawing of the proposed addition onto the back of the house, and pictures of an addition that is similar to the proposed addition. He expressed his belief that the proposed addition would provide an aesthetic improvement to the property.

Mr. Powell stated that he would like to build the addition for his aging mother-in-law. He explained that in order to accommodate the 86 year old woman, the room would have to access the backyard without steps. He noted that she would be able to enjoy the sunlight year round, and also enjoy the flower garden which she loves, but is no longer able to cultivate.

Mr. Powell stated that the sunroom would consist of windows with screens for cross ventilation. He noted that he had the neighbors' support, the existing trees and vegetation would screen the addition, and that there is no other location on the property to construct the addition. He stressed the aesthetic value that the professionally engineered, prefabricated addition would add to the existing dwelling.

In response to Mrs. Harris' question as to why the addition could not be located elsewhere, Mr. Powell stated that any other site would require the removal of trees or the installation of steps. He further added that the existing entrance also limited the placement of the proposed addition.

Chairman DiGiulian called for speakers in support of the request.

The representative for Patio Enclosures, Inc., Ed Campbell, 6826 Hill Park Drive, Lorton, Virginia, addressed the Board and stated that his firm would install the sunroom and that he would be glad to answer any questions the Board may have.

There being no further speakers in support and no speakers in opposition to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 29, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-130 by RAYMOND F. AND JUDITH V. POWELL, under Section 18-401 of the Zoning Ordinance to allow addition 12.8 ft. from pipestem driveway, on property located at 7011 Cottontail Ct., Tax Map Reference 88-4((5))189, 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 5, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 10,530 square feet.
4. The application has met the standards necessary for the granting of a variance.
5. An extraordinary condition exists on the subject property in as much as the applicants simply want to add the sunroom behind their house.
6. It would be an extension of the side lot line requirement which was enacted before the current Zoning Ordinance.
7. The addition will not encroach any further into the present setback than the existing house.
8. The addition will not block any view.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 addition to the specific dwelling shown on the plat (dated September 16, 1990) prepared by Kenneth White and submitted with this application.



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

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.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mr. Kelley, Mr. Hammack, and Mr. Ribble voting aye; Mrs. Harris and Mrs. Thonen voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 121, February 5, 1991, (Tape 1), Scheduled case of:

8:15 P.M. B. BROOKE JR. AND SANDRA J. MCCAULEY, VC 90-C-132, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 44C having lot width of 137.66 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 5.00011 acres located at 3111 Hunt Rd., zoned R-1, Centreville District, Tax Map 46-2((1))44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the land use report in Appendix 4 was incorrect, and should have stated that the development has a proposed density of 0.6 which is within the recommendation of the Comprehensive Plan. She also noted that Lot 44A is served by a private well, and Lots 44B and 44C are served by public water. Ms. Bettard said that paragraph 5 of Page 4 should be revised to read, "Staff believes the use of a variance as a tool to subdivide land is inappropriate in instances when subdivision by-right is possible."

Ms. Bettard stated that the subject property is located on the east side of Hunt Road, south of Lapham Drive. The surrounding properties are zoned R-1 and are developed with single family detached dwellings. The surrounding lot sizes vary from one-half acre to 5.0 acres in size. The Fox Vale Estates Subdivision, which is on the opposite side of Hunt Road, was developed as a cluster subdivision and contains lots one-half acre in size, but has substantial open space which has been dedicated to Fairfax County. Lot 45 to the west of Hunt Road was the subject of a variance application for three lots, with one lot having a minimum lot width of 110.4 feet. The lot sizes in this subdivision range from 36,000 square feet to 87,679 square feet. A variance was approved by the Board of Zoning Appeals (BZA) on May 17, 1990. Lot 47, on the west side of Hunt Road contains approximately 5.00 acres and 48, 49, and 50 contain approximately 36,000 square feet.

Ms. Bettard stated that the applicants were requesting a variance to the minimum lot width in order to subdivide the property into three lots with proposed Lot 44C having a lot width of 137.66 feet. Section 3-106 of the Zoning Ordinance requires a minimum lot width of 150.0 feet in the R-1 district. Thus, the applicants are requesting a variance of 12.34 feet to the minimum lot width requirement for proposed Lot C. A variance application must satisfy the provisions of Sect. 18-404, Required Standards for Variances. It was noted that these provisions require a finding that the application satisfies all of the nine (9) enumerated requirements. It was staff's judgment that the applicant had not met all of the Variance Standards, and specifically, the provisions of Variance Standards 2, 4, 5, and 6, as explained on Pages 3 and 4 of the Staff Report.

Mr. Hammack stated that he would abstain from the case as he has had a client/lawyer relationship with the applicant.

The applicants' representative, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board and stated that the variance request was to subdivide a R-1, five acre lot, with one existing house into 3 lots. Lot 44C would have a width of 137.66 feet, approximately 12 feet shy of the 150.0 foot requirement. He noted that Lots 44A and 44B would meet the R-1 requirements. He stated that the three lots equal a density 0.6 dwelling units per acre, which is at the low end of the Comprehensive Plan density range.

Mr. Martin stated that the parcel could be developed into 5 lots with a public street. He expressed his belief that this would create a less than desirable environmental impact on the Difficult Run Stream Valley. He noted that there is a County champion black locust tree located on proposed Lot 44A, which could be put in jeopardy if a public street were required.

Page 122, february 5, 1991, (Tape 1), (B. BROOKE JR. AND SANDRA J. MCCAULEY, VC 90-C-132, continued from Page 121 )

Mr. Martin said that the request was similar to a variance on Parcel 45 that was approved by the Board on May 17, 1990. The variance concerned a 4.1 acre lot which was subdivided into three lots, with one lot having a width of 110.0 feet.

He noted that the application did not involve a pipestem drive. Mr. Martin stated that with the proposed shared driveway on Lot 44B out to Hunt Road, Lot 44A would have sufficient frontage on Fox Den Lane. He stated that the applicant was requesting to have the flexibility, subject to Department of Environmental Management (DEM) and Virginia Department of Transportation (VDOT) approval, to alternately serve Lot 44A with a driveway from Fox Den Lane. Therefore, he requested an additional sentence to Condition 2.

Mr. Martin stated that the application met all the requirements necessary for the issuance of a variance. He said that the property was acquired in good faith in September of 1986. The property has exceptional narrowness, shape, size, and the 5.0 acre parcel is approximately two and one-half times as deep as it is wide. He noted that the abutting properties range in size from 20,200 to 69,346 square feet, with an average of 49,000 square feet. Mr. Martin stated that the amount of road frontage is also exceptionally high for the lot which has a combined road frontage of 576.0 square feet.

Mr. Martin stated that the applicants were requesting a minor variance of 12.0 feet in width. He said that strict application of the Zoning Ordinance would prevent the applicant from realizing the full use of their property without the construction of a public road. In summary, Mr. Martin stated that the variance would be in harmony with the intended spirit and purpose of the Comprehensive Plan.

Mrs. Thonen asked if the property had been purchased for the speculation of dividing the property. Mr. Martin stated that the applicants have lived in the existing house since 1986, and due to the many changes in the area have decided to subdivide the property.

In response to questions from the Board regarding the reconfiguration of the property, Mr. Martin stated that the applicant had opted to request one 12.0 foot variance, rather than two 7.0 foot variances. He noted that a great many variables such as the septic field, the additional standards required if Lots 44A and 44B used a common driveway, and any additional pavement that would be needed had been taken into consideration. He stated that with all these considerations, the proposed subdivision is the most suitable plan for the area.

In response to the Board's question, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she did not know of any Ordinance restricting the distance between driveways. She noted that the preference is to have a driveway 12.5 feet from a lot line, but stated that most of the pipestem driveways in the County are not.

Chairman DiGiulian called for speakers in support of the request and the following citizen came forward.

The neighbor on abutting Lot 6, Francis J. Kenefick, 3113 Hunt Road, Oakton, Virginia, addressed the Board and expressed his and two other neighbors' support for the request. Mr. Kenefick explained that the taxes on the applicants' property have escalated to the extent that the applicants have no other recourse than to subdivide their property.

There being no further speakers in support, and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-C-132 for the reason reflected in the Resolution and subject to the conditions contained in the staff report dated January 29, 1991.

Chairman DiGiulian called for discussion.

After a brief discussion, it was the consensus of the Board not to add a development condition as suggested by Mr. Martin.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-132 by B. BROOKE JR. AND SANDRA J. MCCAULEY, under section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 44C having a lot width of 137.66 ft., on property located at 3111 Hunt Road, Tax Map Reference 46-2(1)44, 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 5, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 5,00011 acres.
4. The application has met the standards necessary for the granting of a variance.
5. The property has exceptional narrowness, shape, and size. It is also much deeper than most of the lots in the area.
6. Looking at the picture of the property, this would be better than having a public road.
7. The applicant has the right to the use of the land.
8. Although they are lacking the frontage, the lot is much larger than the other lots.
9. It is not so general in nature as to cause any rezoning.
10. The strict application of the Zoning Ordinance would result in undue hardship which would not be shared by the other property owners in the area.
11. The Zoning Ordinance will not be changed.
12. There will be no detrimental impact on the neighbors.
13. The citizens have expressed their approval for the request.

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

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

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

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

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

1. This variance is approved for the subdivision of Lot 44 into three (3) lots as shown on the plat prepared by Terry Land Measurement, and submitted with the application dated November 9, 1990.
2. The proposed driveway for Lots 44A and 44B shall meet all applicable standards of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT).

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 this 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

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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.

Mr. Ribble seconded the motion which carried by a vote of 4-1 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voting aye; Mrs. Harris voting nay. Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 124, February 5, 1991, (Tape 1), Scheduled case of:

8:30 P.M. AIRSTON CORPORATION OF VIRGINIA APPEAL, A 90-C-022, appeal of the Zoning Administrator's determination that a freestanding sign erected on subject property is in violation of Par. 9 of Sect. 2-302 and therefore must be removed on approx. 74,783 s.f. located at the intersection of West Ox Rd. and Centreville Rd., zoned R-1, C-5, Centreville District, Tax Map 25-1((1))18F. (DEFERRED FROM 1/17/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian stated that the Board had received a letter from Teresa Barnes, the appellant's agent, stating that the sign had been removed.

Jane Kelsey, Chief, Special Permit and Variance Branch, said that Ms. Barnes had indicated that the appellant would like to withdraw the appeal. She stated that she had requested a written statement to this effect.

Chairman DiGiulian noted that the letter did not mention a withdrawal and expressed his belief that the case should be deferred.

Jane W. Gwinn, Zoning Administrator, stated that although the sign had been removed, the posts were still standing. She noted that the appellant had been advised that the posts, as well as the sign, must be removed.

Chairman DiGiulian suggested that the appellant should either present a letter of withdrawal, or appear before the Board to argue the case at the next Board of Zoning Appeals public hearing.

Mrs. Thonen made a motion to adopt Chairman DiGiulian request. Mrs. Harris seconded the motion which carried by a vote of 6-0.

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Page 124, February 5, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions from January 29, 1991 Hearing

Mr. Hammack referred to the Resolution for Chaman Puri, SPA 87-S-012-1, and stated that the Board had overlooked the fact that the restrictions on the subject lot would only entitle one family to reside on the lot. He noted that staff and the Board had been under the impression that the priests did not have families.

Mr. Hammack made a motion to change development condition 25 to read, "There shall be no more than two (2) priests, or one (1) priest with his family, residing on site."

Mrs. Thonen seconded the motion which carried by a vote of 6-0.

Mr. Kelley made a motion to approve the Resolutions from January 29, 1991, as amended. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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Page 124, February 5, 1991, (Tape 1), After Agenda Item:

Request for Additional Time  
Harvest Assembly Baptist Church, SP 89-V-020  
Tax Map Reference 102-1((1))61

Mrs. Harris made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6-0. The new expiration date is July 28, 1991.

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Page 125, February 5, 1991, (Tape 1), After Agenda Item:

Approval of Minutes from November 29, 1991

Mr. Hammack made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0.

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Page 125, February 5, 1991, (Tape 1), After Agenda Item:

Request for Intent to Defer  
United Land Corporation Appeal, A 90-L-014  
Scheduled for February 12, 1991

Mr. Kelley made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 126, February 5, 1991, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Debra P. and Robert H. Masnik, SP 90-A-079  
Scheduled for February 26, 1991

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a memorandum had been submitted to the Board regarding this request. She noted that this application is the subject of a zoning violation and that numerous complaints from the neighbors had been received by the County. Ms. Kelsey expressed her concern about granting the deferral without consulting the interested neighbors.

After a brief discussion, it was the consensus of the Board that a deferral be granted. They noted that due to a death in the family, that the Masniks' would be unable to prepare for the scheduled hearing.

Mr. Kelley made a motion to issue an intent to defer. Mrs. Harris seconded the motion which carried by a vote of 6-0.

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Page 126, February 5, 1991, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing  
R. L. O'Dell, Jr., VC 91-A-017

In response to Mr. Hammack's question regarding the case load, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the March case load was manageable. She noted that the request was for a yard variance, which did not have to be staffed.

Mr. Hammack made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0.

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Page 126, February 5, 1991, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing  
Centreville Preschool, VC 91-S-016

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a special permit hearing was scheduled for February 26, 1991. She said that the applicant had requested that the variance be heard concurrent with the special permit. Ms. Kelsey stated that the Clerk would send out the notification letters.

Mr. Hammack made a motion to grant the request. Mrs. Harris seconded the motion which carried by a vote of 6-0.

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Page 126, February 5, 1991, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing  
Virginia Power, SP 91-D-001

Mrs. Thonen made a motion to grant the request. Mr. Kelley seconded the motion which carried by a vote of 6-0.

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Page 126, February 5, 1991, (Tape 1), (RECESS)

The Board recessed at 8:55 p.m. and reconvened at 9:10 p.m.

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Page 126, February 5, 1991, (Tapes 1, 2, and 3), Scheduled case of:

9:00 P.M. JANICE K. AND GARY SCAVONGELLI; ANNE-MARIE S. AND DAVID C. CUMMING; JAMES R. AND CECILE BOUCHER; PATRICIA CUNNINGHAM; KATHLEEN DORN; LUCILLE C. RAIFORD; HELEN R. HAYNIE; BRAD RAWLS; SUSAN RAWLS APPEAL, A 90-S-024, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the keeping of a commercial vehicle and the operation of a home occupation use on property located at 9762 Turnbuckle Drive is not in violation of the Zoning Ordinance, on approx. 8,800 s.f., zoned R-3, Springfield District, Tax Map 88-1(7)277.

Chairman DiGiulian stated that the Board had received the appellants' speakers list and suggested that the five speakers be limited to a total of 10 minutes, and any additional speakers be limited to 2 minutes. The Board members accepted the suggestion.

Chairman DiGiulian called for location of the property by staff.

Jane W. Gwinn, Zoning Administrator, addressed the Board and stated that the property is located at 9762 Turnbuckle Drive in the Cherry Run Subdivision. She noted that the property is zoned R-3 and owned by Jonathan and Patricia Glick.

Ms. Gwinn noted that there were two issues regarding this appeal. The first issue concerns whether a Snap-On Tools truck is a permitted commercial vehicle in a residential district. The second issue involved whether the operation of a home occupation by the property owner is in accordance with the Zoning Ordinance provisions.

Ms. Gwinn stated that in regards to the first issue, the vehicle in question is a step-van which measures approximately 23.0 feet in length with a specified empty weight of 6,701 pounds, and a gross weight of 14,000 pounds. She noted that attachment 10 of her memorandum, dated January 29, 1991, was a picture of the subject vehicle which depicted the advertisement for Snap-On Tools.

She stated that by definition of the Zoning Ordinance, the truck is a commercial vehicle. Ms. Gwinn noted that Paragraph 16 of Section 10-102 states that there may be one commercial vehicle per dwelling unit in a residential district. However, there are specified exceptions as set forth in Paragraph 16A which is included in the January 29, 1991 memorandum. She noted that the exclusion included a garbage truck, tractor and/or trailer of a tractor-trailer truck, dump truck, construction equipment, cement-mixer truck, wrecker with a gross weight of 12,000 pounds or more, or similar such vehicles or equipment. Ms. Gwinn expressed her belief that since a step-van is not specifically listed in the list of prohibited vehicle, the issue is whether it should be deemed to be prohibited based upon a determination that it is similar to such vehicle.

Ms. Gwinn stated that based upon a review of the size of this vehicle, the vehicles that are listed in Paragraph 16A as well as the vehicles permitted, it was her determination that the Snap-on Tools truck was a permitted vehicle. For comparison purposes, she stated that set forth in the staff report were pictures of vehicles that are allowed, and pictures of vehicles that are not allowed in a residential district. She stated that upon examination of the types of vehicles that are not allowed in a residential district, it was her judgment that all of the prohibited vehicle had unique body designs and features that are not found in a step-van. She noted that all of the prohibited vehicles are used in connection with heavy industrial and commercial uses. She again stated that the step-van did not have the same distinguishing characteristics as the prohibited vehicles. Ms. Gwinn stated that while she could appreciate the appellants' concern regarding the size and bulk of the step-van, the step-van is similar to many other vehicles allowed in residential areas.

Ms. Gwinn explained that it was her position that all the provisions regarding similar such vehicles had to be taken into consideration, not just wreckers in excess of 12,000 pounds. She expressed her belief that the fact the step-van has an empty gross weight of 14,000 pound was not a basis for determining that it should be prohibited.

Ms. Gwinn said that based on these factors and consideration, it was the staff's judgment that this was not a prohibited commercial vehicle. Therefore, it could be permitted in a residential district.

The second issue addressed by Ms. Gwinn was the Home Occupation Permit obtained by Mr. Glick in May 1989. The permit was to allow a small office, in conjunction with his business as a sales representative for Snap-On Tools, in his home.

Ms. Gwinn stated that the citizens have raised concerns that the operation of the Home Occupation Permit use violates the limitation that there can be no outside storage or display of goods on the premises. She stated that Zoning Enforcement's investigation did not substantiate any alleged violation. She said that one of the concerns voiced was that delivered materials were stored in the driveway, but again, no evidence of violation could be

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found. Ms. Gwinn noted that Mr. Glick had informed the County Inspector that when a delivery was made, the goods were immediately placed onto the truck or taken into the house. She stated that the County Inspector had found no evidence of the garage being used for business storage.

Ms. Gwinn stated that another point regarding this issue was that the storage of tools in the truck itself constituted a violation of the Home Occupation Permit. She referred to other contractors such as painters who store ladders and paint on trucks parked in their driveway, and noted they too have Home Occupation Permits. She stated that it has been a longstanding position that a commercial vehicle parked in a driveway would not be contrary to the Home Occupation Permit.

Ms. Gwinn said the appellants also suggest that the truck itself, because it is a commercial vehicle and has advertising on it, constitutes a sign. She noted that they also contend that it presents exterior evidence that the house is used for purposes other than residential. Ms. Gwinn stated that it has been consistently determined that the Zoning Ordinance allows one commercial vehicle per dwelling unit in conjunction with a Home Occupation Permit. She noted that it has never been ruled that if you obtain a Home Occupation Permit, you lose the right to have a commercial vehicle. Ms. Gwinn noted that the appellants' argument would deny anyone that had a Home Occupation Permit the right to have a commercial vehicle on the residential property. She expressed her belief that this would not be in keeping with the intent of the Zoning Ordinance provisions.

Ms. Gwinn addressed the concerns expressed by the citizens regarding the noise of the Snap-On Tools truck and the routine deliveries of merchandise. She stated that there was no evidence that the step-ven is any noisier than other vehicles allowed in residential neighborhoods. Ms. Gwinn said that while the Glick's may receive weekly deliveries, the County does not regulate deliveries to houses in residential neighborhoods. She expressed her belief that such deliveries would not be out of character with the residential nature and would be consistent with the Zoning Ordinance. Ms. Gwinn stated that based on the County's investigation, there was no evidence that Mr. Glick was in violation of the Home Occupation Permit.

In conclusion, Ms. Gwinn stated that many citizens, that would be affected by the Board's actions, are not aware of the proceeding taking place at the public hearing. She referred to the numerous commercial vehicles that are parked in residential areas by distributors of tools, painters, bakers, snack distributors, and newspaper distributors, and noted that any decision made by the Board would also affect these vehicles. She expressed her belief that a more appropriate form to address the issue would be via an advertised Zoning Ordinance Amendment. Ms. Gwinn stated that this would provide an opportunity for concerned citizens to participate in the proceedings.

Mrs. Thonen stated that she could not understand the Ordinance allowing a commercial vehicle with a sign painted on it in a residential area. She noted that signs are not allowed in a residential area and stated that the discrepancy should be addressed.

Ms. Gwinn stated that the appeal had certainly pointed out that the provisions are inconsistent. She noted that one part of the Ordinance says you can have a commercial vehicle which by definition is something with lettering on it. While the other part of the Ordinance says, you can have a Home Occupation Permit which prohibits the display of signs.

Mrs. Thonen mentioned that one of the allegations was that Mr. Glick received packages from UPS on Saturdays. She said that she had never received a package from UPS on the weekend and wondered how Mr. Glick was able to do so.

Mrs. Harris said that she had concerns regarding the inconsistencies with the Ordinance. She noted that the County, in an effort to preserve residential quality, was very strict in the issuance of Home Occupation Permits.

Mr. Hammack referred to the limitations regarding storage imposed on Home Occupation Permits by the Ordinance, and asked if there was a definition of "premises" in the Ordinance. Ms. Gwinn stated that there was not.

Chairman DiGiulian called for the appellants and the following people addressed the Board.

James Boucher, 9773 Turnbuckle Drive, Burke, Virginia, addressed the Board and stated that the Snap-On Tools truck was not compatible with the residential character of the neighborhood. He stated that the safety of the neighborhood children was jeopardized by the presence of the vehicle and by the deliveries made to the Glick's residence. He stated that Turnbuckle Drive is narrow, with cars parked on both sides of the road. He noted a near accident in front of the Glick's house, and said that a child on a bike darted out from behind the truck and into the road. He expressed his belief that the purpose and intent of the Ordinance promotes the health, safety and general welfare of the public while accomplishing the objective of orderly land development and use. He stated that he did not believe that the Snap-On Tools vehicle lived up to this intent.

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Patricia Cunningham, 9766 Turnbuckle Drive, Burke, Virginia, stated that the Snap-On Tools truck, as well as delivery trucks, posed a safety hazard to the neighborhood. She stated that there are 31 children under 12 years of age living on the street, and expressed her belief that they should be protected.

Lucille Raiford, 9764 Turnbuckle Drive, Burke, Virginia, stated that when she retired six years ago, she had chosen her house because it was on a quiet cul-de-sac. She explained to the Board that the noisy Snap-On Tools truck is parked directly below her bedroom. She stated that the truck was detrimental to the neighborhood and created a safety hazard.

Gary Scavongelli, 9765 Turnbuckle Drive, Burke, Virginia, stated that the Ordinance differentiates what types of vehicles can be parked within a residential area. He expressed his belief that the Snap-On Tools vehicle should be placed under the restricted vehicle category. He stated that the Zoning Administrator's decision was based on an inadequate investigation and an erroneous interpretation of the Ordinance.

In response to the Board's questions as to whether he would oppose a recreational Winnebago being parked on the property, Mr. Scavongelli stated that while the Winnebago was a non-commercial vehicle, he would oppose that too. He noted that the commercial vehicle did advertise and was used every day, while the recreational vehicle did not advertise and was not used frequently.

Chairman DiGiulian called for speakers to the appeal.

Janice Howell, 9703 South Park Circle, Fairfax Station, Virginia, addressed the Board and stated that her children are cared for by a resident on Turnbuckle Drive, and she had concerns regarding their safety. She stated that the size of the vehicle, as well as the difficulty in driving a large vehicle, created a safety hazard for the children.

Mrs. Thonen stated that the Board must base its decision on the Zoning Ordinance, and advised the citizens that the Ordinance did not address emotional issues. She noted that the only issue the Board could address is whether the vehicle should be allowed to park in front of a residence that has been issued a Home Occupation Permit.

Richard Pollard, 9771 Turnbuckle Drive, Burke, Virginia, stated that he was opposed to the vehicle being parked on the property. He expressed his belief that the truck could be parked at another site, where it did not create a safety situation. He said that his main concern was the commercial aspect of the vehicle.

The following citizens expressed their opposition to the appellants.

Lanelle Kyle, 10012 Whitefield Street, Fairfax, Virginia; Donnal Cohen, 9772 Turnbuckle Drive, Burke, Virginia; Lynn Babushl, 9752 Turnbuckle Drive, Burke, Virginia; Kathy DeVries, 9768 Turnbuckle Drive, Burke, Virginia; Charles Galliher, 9757 Turnbuckle Drive, Burke, Virginia; Gary Stephenson, 5551 Sequoia Farms Drive, Centreville, Virginia; expressed their support for the Mr. Glick.

They expressed their belief that he drives safely, that the truck does not create a safety hazard, and noted that many other businesses would be affected by this decision.

Jonathan Glick, 9762 Turnbuckle Drive, Burke, Virginia, addressed the Board and presented a copy of his driving record along with a copy of his dealer agreement with the Snap-On Tools Corporation. Mr. Glick stated that he is not allowed to conduct business outside of the specific district assigned to him by the Corporation. He referred to his driving record and noted that he had all five safe driving points. He expressed his belief that the truck does not create a safety hazard and is not detrimental to the community.

There being no further speakers to the request, Chairman DiGiulian called for comments from Ms. Gwinn.

Ms. Gwinn stated that there was validity in the comparison of the commercial step-van with recreational vehicles. She noted that the argument was to the size of the truck, that it is out of character with what is allowed in a residential district. Ms. Gwinn stated that the size of the permitted recreational vehicles is the same size as the commercial step-van.

Chairman DiGiulian called for rebuttal.

Mr. Scavongelli stated that the board must address the issue of whether the Snap-On Tools truck is a permitted commercial vehicle and if Mr. Glick is in violation of the Home Occupation Permit. He stated that the step-van is the largest vehicle permitted anywhere. He noted the discrepancies within the Ordinance. Mr. Scavongelli stated that the truck constituted an advertisement sign and also a storage area which violates numerous Ordinances.



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Mrs. Harris expressed her belief that a recreational van that was parked in a residential neighborhood, would create just as much of a safety hazard as a commercial vehicle of similar size.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved that in Appeal, A 90-S-024, that the Board uphold the Zoning Administrator. He stated that the Board of Zoning Appeal's determination is whether the vehicle in question is a commercial vehicle that is allowed under the zoning Ordinance. The Zoning Ordinance does not address all of the possibilities of a commercial vehicle. The definition that the Zoning Administrator operates under is not as clearly defined as it could be. The definition clearly excludes vehicles that are industrial heavy equipment vehicles, such as wreckers of higher weights, garbage trucks, tractor trailer, dump trucks, construction equipment, cement mixer, or similar vehicles and equipment.

There is a comparison of the larger more industrial type vehicles. The Zoning Administrator applies the Zoning Ordinance as uniformly as she can for all home occupations in Fairfax County. She has candidly stated that in the memo in support of the determination. The Zoning Administrator has not clearly erred in the determination she has made. She has tried to match the vehicles up with other vehicles that may be permitted. She has distinguished them from the larger industrial type vehicles, and under the circumstances, the Zoning Administrator has not erred. For those reasons, he made a motion to uphold the determination of the Zoning Administrator

Mr. Ribble seconded the motion.

Ms. Harris stated that she would support the motion, but the question that other vehicles such as painters and carpenters' vehicles are allowed did not enter into her thinking. She stated that, if the Board had found the use to be in violation, even though there are other similar vehicles in Fairfax County, she would have voted against it.

Mr. Hammack indicated that there are many inconsistencies in the Zoning Ordinance and some of the use limitations of the home occupation permits are ambiguous. He noted the home occupation limits storage to articles produced on the premises and states that there can be no signs; but, then articles can be stored in a vehicle and there can be signage on a vehicle. He indicated that he would make a separate motion on this issue.

Mrs. Thonen stated that she would reluctantly vote for the motion. She agreed with Mr. Hammack's statement concerning the inconsistencies in the Ordinance. The motion passed unanimously.

Mr. Hammack moved that the Board adopt a Resolution requesting the zoning Administrator to reevaluate the definition of "commercial vehicle", which she had admittedly indicated she and her predecessors have been following for several years. He stated that she should review this definition in terms of impact and the inconsistencies with the use limitations set forth in Article 10-304 of the Zoning Ordinance for Home Occupations. She should also review the definition insofar as the size of the vehicle and signage.

Mrs. Harris seconded the motion which carried by a vote of 5-1 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Hammack and Mr. Ribble voting aye; Mr. Kelley voting nay.

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The Board recessed at 10:28 p.m. and reconvened at 10:43 p.m.

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Page 129, February 5, 1991, (Tapes 3 and 4), Scheduled case of:

9:15 P.M. THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052-1, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 82-V-052 for monastery to allow addition, a mausoleum as an accessory use, and bell tower on approx. 6.4514 acres located at 2501, 2503, and 2505 Stone Hedge Dr., zoned R-2, Mt. Vernon District, Tax Map 93-3((8))(3)1,2,3 and 93-3((1))4. (DEFERRED FROM 12/20/90 FOR ADDITIONAL INFORMATION)

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated the Board had received a request for deferral from the Planning Commission. Ms. Kelsey noted the Board had not issued an intent to defer but had invited the Planning Commissioner, John Byers, to speak to the request.

Chairman DiGiulian asked if Mr. Byers or any member of the Planning Commission was present in the Board Room and there was no response.

Chairman DiGiulian asked the applicant to speak to this request.

The agent for the applicant, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, addressed the Board and stated that the issues of concern had been addressed and asked that the case be heard.

In response to Mrs. Thonen's question as to whether the bell had been tested, Ms. Strobel noted that an additional development condition which would ensure that any noise would be in conformance to the Fairfax County Noise Ordinance requirements had been added. She noted that the condition would also require that additional steps be taken even if the noise of the bell conforms to the requirement, but is annoying to the community. She stated as a final condition, if the community is determined that the bell is objectionable, the bell will be rung on Sundays only, or not rung at all.

Mr. Ribble made a motion to hear the case. Mrs. Thonen seconded the motion.

Mr. Kelley stated that since he had been appointed to the Board, the Board had always honored the Planning Commission's request for deferral.

After a brief discussion by the Board, the motion carried by a vote of 6-0.

Bernadette Bettard, Staff Coordinator, presented the staff report. She noted that the property is located at the southeastern intersection of Stone Hedge Drive and Bertram Lane. The surrounding properties to the north are zoned R-2 and developed with single family detached dwellings. The property to the northeast is zoned R-2 and the property to the southeast is zoned R-8. Both are vacant. The property to the west and south is zoned R-20 and developed with multifamily units.

Ms. Bettard stated that since the last public hearing on December 20th, the Board had received copies of an addendum, which included a copy of a revised plat, revised development conditions, an addendum to the environmental comments, and a letter regarding the use of additional parking spaces.

She noted that the Board had also received copies of a revised affidavit and a letter from John F. Schiller, Land Surveyor, that addressed some environmental concerns raised by the community.

She stated that staff still believed that the proposal would be in conformance with the Comprehensive Plan and with all the applicable standards and requirements of the Zoning Ordinance, subject to the adoption of the revised development conditions.

Ms. Bettard stated that staff would like to make a clarification on Page 5 of the staff report and noted that the proposed FAR is .098 which is less than the .20 FAR that is permitted in the R-2 District.

Ms. Strobel addressed the Board and stated that the application had been deferred in order to allow additional time for the citizens and the applicant to resolve outstanding issues.

Ms. Strobel explained that the Sisters of the Poor Clares is a cloistered order of nuns that devote their time to pray and work. She noted that with the exception of medical visits the nun do not leave the monastery.

She referred to the issue of the problem soils and the water table on the site. Ms. Strobel stated that a Geotechnical Engineering Report, dated June 12, 1990, was prepared by Schnabel Engineering Associated and made specific recommendations regarding the placement of the addition on the site. She said that the architect had designed the building within the guidelines of these recommendations. Ms. Strobel noted that proposed Development Condition 8 required that a geotechnical study be prepared and submitted for approval by the Department of Environmental Management (DEM).

Ms. Strobel stated that in response to the environment assessment issue raised by staff on January 16, 1991, the applicant retained Mr. Schiller. She referred to the January 21, 1991, letter from Mr. Schiller which specifically addressed each issue of concern. She noted that Mr. Schiller, who was present to answer questions from the Board, had concluded that the new topographic map had verified that no slippage of the slope had occurred for the past 26 years. Ms. Strobel stated that Mr. Schiller had also certified that there was no concentration of water leaving anywhere along the west fenced property line to a point beyond the second house fronting along Bertram Lane.

Ms. Strobel stated that in response to citizen concerns, the applicant was not requesting a waiver of the on-site Storm Water Detention Facility. She said that the applicant would work, in conjunction with DEM, to insure that all the Fairfax County Codes were met.

In regard to traffic on the site, Ms. Strobel noted that the sisters do not leave the premises or own vehicles. Although the sisters may receive an occasional visitor, they typically receive visitors twice a year. She explained that since no additional trips would be generated by the addition, that the existing parking would be adequate. Ms. Strobel said

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that, as stated in their letter, St. Louis Church, 2907 Popkins Lane, Alexandria, Virginia, have agreed to let the sisters use their parking facilities, if needed.

Ms. Strobel explained that the proposed mausoleum is very important to the sisters. She expressed her belief that a mausoleum is typical of a monastery, and referred to the numerous examples throughout the County. She noted, as stated in the proposed development conditions, the mausoleum would be for the sole use of the sisters who had lived at the monastery. There would be no exterior entrances, no signage, and would not be open to the public.

Ms. Strobel addressed the concerns regarding the bell tower. She stated that the tower would be completely surrounded by wooden louvers to muffle the sound. She assured the Board that the sisters would work with the community to resolve the issue. She presented to the Board a proposed development condition which would ensure that the sisters adhere to the community's wishes.

She stated that the applicant's architect had conferred with the County Arborist regarding the visual impact. Ms. Strobel stated that the applicant would preserve the existing trees and install additional trees as suggested by the Arborist.

Ms. Strobel referred to the Code of Virginia statute that prohibits a cemetery from being located within 250 yards of any residence without the consent of the owner. She expressed her belief that the intent of the statute is to limit visual impact and protect the ground water supply. Ms. Strobel noted that this statute would not be applicable, because this request involved a mausoleum, not a cemetery.

In response to Mrs. Harris' question as whether there would be an outside entrance to the crypt, Ms. Strobel stated that there would. She stated if the Board required, the applicant would eliminate the entrance.

Mrs. Thonen expressed her concern regarding the size of the addition. She asked if it would be an accessory use to the primary use. Ms. Bettard stated that the Zoning Administrator, Jane W. Gwinn, had ruled that the addition would be an accessory use to the monastery.

There being no speakers in support of the request, Chairman DiGiulian called for speakers in opposition. The following citizens came forward.

Dorothy Murphy, 2511 Stonehedge Drive, Alexandria, Virginia; Cindy Ksenics, 2504 Stone Hedge Drive, Alexandria, Virginia; Tim Berkoff, 7120 Rita Court, Alexandria, Virginia; Peter Ranney, 7121 Rita Court, Alexandria, Virginia; Jacqueline Lavelle, 7120 Rita Court, Alexandria, Virginia; Robert L. Hines, 7232 Ludwood Court, Alexandria, Virginia; Roger Failmezer, 2514 Stone Hedge Drive, Alexandria, Virginia; and David Cybulski, 7230 Ludwood Court, Alexandria, Virginia addressed the Board and voiced their opposition to the request.

They expressed their belief that the addition would have a detrimental affect on the community. They stated that the community strongly objected to the request for the mausoleum on the property. Citing the Code of Virginia regarding the 250 yard restriction imposed on cemeteries, they expressed their belief that a mausoleum could be categorized as a cemetery. The citizen voiced their concerns regarding the environmental aspects of the application, the soil slippage, and the marine clay that exists on the property.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Ms. Strobel stated that the size of the building would be less than one-half of what is allowed in the R-2 District and noted that the proposed FAR is .098. She said that the applicant would work with the community regarding the bell tower and would adhere to the proposed development conditions. She stated that she had sent thirty letters to the neighbors regarding the application, and had only seven people had responded. She expressed her belief that the application would have no detrimental impact, either on the community or on the environment, and would be in harmony with the Comprehensive Plan. Mr. Strobel noted that the application before the Board would be the final phase for the property and no further amendments would be needed.

In response to Mrs. Harris' concern regarding the floor space ratio, Ms. Strobel noted that the property consisted of 6.45 acres with a .098 FAR.

Mr. Hammack noted that there are only fourteen nuns living at the monastery and questioned the reasons for the expansion. Ms. Strobel stated that proposal would include additional work space, the mausoleum, and living space for forty nuns.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to deny SPA 82-V-052-1 for the reasons stated in the Resolution.

Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

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Mrs. Thonen stated that she had looked at the property. She expressed her belief that the building would be too large for the site, would be obtrusive to the area, and would not be harmonious with the community.

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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-052-1 by THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., under Section 3-203 of the Zoning Ordinance to amend SP 82-V-052 for monastery to allow addition, a mausoleum as an accessory use, and bell tower, on property located at 2501, 2503, and 2505 Stone Hedge Drive, Tax Map Reference 93-3((8))1,2,3 and 93-3((1))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 February 5, 1991; 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 6.4514 acres.
4. The addition would be too much for the area in which the concentration of building is.
5. The mausoleum is an accessory use and in this situation is potentially offensive.
6. The issue of the bell tower could possibly be resolved along the lines that Ms. Strobel presented. But all in all, the monastery came into the neighborhood, the neighbors had a certain perception of what was going to be there, it has been added onto already, and it is too much for this little neighborhood.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

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

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, and Mr. Ribble voting aye; Mr. Hammack voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1991.

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Page 132, February 5, 1991, (Tape 4), Scheduled case of:

9:30 P.M. JOYCE P. LEAMON, VC 90-A-121, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 27,480 s.f. located at 4408 Banff St., zoned R-1, Annandale District, Tax Map 70-1((4))15. (DEFERRED FROM 1/24/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Leamon replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board. She stated that the property is generally located south of Route 236 and north of Braddock Road. The subject property is zoned R-1, surrounding lots are developed with single family detached dwellings on property zoned R-1, R-2 or R-3. Development on the parcels zoned R-2 or R-3 are under the cluster provisions of the Ordinance.

Ms. Kelsey said that the application was deferred for clarification of the information submitted by the applicant. She noted that there was a discrepancy between the variance plat and the architectural rendering submitted by the applicant. She said that the applicant has informed staff that the variance plat accurately reflects the proposed garage, and that the architectural rendering was only submitted as a guide.

The applicant, Joyce P. Leamon, 4408 Banff Street, Annandale, Virginia, addressed the Board and said she had nothing further to add.

Page 133, February 5, 1991, (Tape 4), (JOYCE P. LEAMON, VC 90-A-121, continued from  
Page 132)

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Mrs. Harris stated that there had been a discrepancy between the dimensions of the stoop, and a discrepancy between the dimensions of the garage.

Ms. Leamon stated that the plat accurately reflects the proposed dimensions of the addition. She noted that the garage would be 23.0 feet wide and the stoop would be 5.0 feet wide.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 90-A-121 for the reasons reflected in the Resolution and subject to the development contained in the staff report dated January 17, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-121 by JOYCE P. LEAMON, under Section 18-401 of the Zoning Ordinance to allow addition 15.5 ft. from side lot line, on property located at 4408 Banff St., Tax Map Reference 70-1((4))15, 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 February 5, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 27,480 square feet.
4. There is an existing storm drain easement on the property which significantly limits where the garage could be placed.
5. This is the lesser variance. There is also another existing 15.0 foot storm drain easement on that side of the house.
6. The strict application of the Zoning Ordinance would produce undue hardship due to the two easements on the property. There is no place else where the applicant could place the garage.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this 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 134, February 5, 1991, (Tape 4), (JOYCE P. LEAMON, VC 90-A-121, continued from Page 133 )

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mr. Hammack seconded the motion which carried by a vote of 6-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 134, February 5, 1991, (Tape 4), After Agenda Item:

Chairman DiGiulian asked for a date and time for the Airston Corporation of Virginia Appeal which was deferred earlier in the public hearing.

Mrs. Thonen made a motion defer A 90-C-022, Airston Corporation of Virginia, until February 12, 1991, at 11:15 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 134, February 5, 1991, (Tape 4), After Agenda Item:

Chairman DiGiulian asked for a motion to send Mr. Hammack's letter to the Virginia State Legislature. He noted that this letter was in regard to House Bill No. 1396 which addresses the issue of providing alternate members to a Board of Zoning Appeals.

Mrs. Thonen made a motion to send the letter.

After a brief discussion by the Board, Mrs. Harris made a motion to send the letter to the Virginia State Legislature and to grant Mr. Hammack the authority to make the small changes suggested by the Board.

Mr. Ribbie seconded the motion which carried by a vote of 6-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 p.m.

Heleen C. Darby  
Heleen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 3/5/91

APPROVED: 3/19/91

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 12, 1991. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Martha Harris was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:21 A.M. Mrs. Thonen gave the invocation. Chairman DiGiulian, on behalf of the Board, welcomed James Pammel as the newest member of the Board.

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Page 135, February 12, 1991, (Tape 1), Scheduled case of:

9:00 A.M. UNITED LAND COMPANY APPEAL, A 90-L-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of Department of Environmental Management's decision that all building permits must be obtained in order to extend the approval of a site plan, and that the issuance of a Building Permit for the construction of a retaining wall does not extend the approval of the entire site plan on approx. 13.49 acres of land located at 3701 thru 3736 Harrison Lane and 3600 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEFERRED FROM OCTOBER 30, 1990, AT APPLICANT'S REQUEST)

Mrs. Thonen stated that the Board, at its February 5, 1991 meeting, had issued an intent to defer the above-referenced appeal. She then made a formal motion to defer, at the applicant's request, A 90-L-014 to June 11, 1991 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Harris was absent from the meeting.

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Page 135, February 12, 1991, (Tape 1), Scheduled case of:

9:15 A.M. ANTIOCH KOREAN BAPTIST CHURCH, SP 90-M-048, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 4.1981 acres located at 6355 Lincolnia Rd., zoned R-2, Mason District, Tax Map 72-1((1))54. (DEFERRED FROM 11/13/90 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thint replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the staff report dated November 8, 1990, recommended denial of the application because of the high level of development intensity relative to the surrounding residential areas and the recommendations of the Comprehensive Plan. At the November 13, 1990 public hearing, the applicant requested a deferral and had since revised the design and submitted a new plat for staff review.

He stated that the church currently has a 144-seat sanctuary 7,000 square feet in size and 48 parking spaces. The applicant was requesting approval to construct a 38-foot high building 18,000 square feet in size containing a 532-seat sanctuary, which would be connected to the existing church building. The applicant was also requesting 133 parking spaces.

In addition, Mr. Jaskiewicz stated that the applicant was requesting a modification or waiver of the transitional screening and barrier requirement along the southern lot line.

He stated that the remaining staff concerns were addressed by proposing development conditions which (1) require removal of the footbridge over Turkeycock Run Creek; (2) require revegetation of the EQC; and (3) require additional foundation plantings in the front yard to soften the visual impact of the building and screen the parking area from the view from the street and the adjacent residential properties. With the implementation of the Proposed Development Conditions, staff believed the application proposed an intensity which would be compatible with the surrounding uses, would retain the residential character of the general area and would retain the purpose and intent of the R-2 District. In addition, with the protection of the EQC, greater transitional screening yards, and less impervious surfaces and more open space, the use would also be in harmony with the recommendations of the Comprehensive Plan to retain the stable character of the residential neighborhood. It was staff's judgment that with the revised plat and the Proposed Development Conditions the use met the Standards for Special Permit Uses. Therefore, with the implementation of the proposed Development Conditions set forth in Attachment 1 of the Addendum dated February 5, 1991, staff recommended approval of the application.

The applicant's representative, Selwyn Thint, 5510 Cherokee Avenue, Alexandria, Virginia, came forward and showed the Board a display depicting how the site would look with the proposed additions. He stated that he believed the church had worked to address both the staff's and the neighbors' concerns. Mr. Thint stated that the applicant met with the Planning Commission member from that area and the neighbors on February 11, 1991, to address their concerns. He stated that the church had agreed to provide more than the minimum requirement for screening and had removed one of the proposed entrances to the site. He pointed out that there would be no development in the rear of the property because of the Environmental Quality Corridor (EQC). Mr. Thint added that the front of the church sets back

Page 136, February 12, 1991, (Tape 1), (ANTIOCH KOREAN BAPTIST CHURCH, SP 90-M-048, continued from Page 135)

65 feet from the dedicated right-of-way line and the church would dedicate 45 feet for road improvements. He stated that the church has sought to manage the stormwater by providing porous pavement due to the slope of the property; therefore, the church would substitute grass pavers in the parking area and has tried to maintain the existing stone facade. In closing, Mr. Thint stated that he believed that the development would be in character with the neighborhood and the scale of development would be appropriate.

In response to questions from the Board, Mr. Thint replied that the plat before the Board was correct. He added that the applicant agreed with all the development conditions.

Mark Mittereder, 4300 Evergreen Lane, #306, Annandale, Virginia, architect for the church, came forward. He approached the Board and pointed out that they had tried very hard to blend the facade of the addition with the existing building. Mr. Mittereder stated that the site has a low point off of Franconia Road, then slopes up rather steeply, and then drops off towards Turkeycock Run Creek. He stated that he believed that the proposed location of the parking would be less visible from the road because of the topography of the land. Mr. Mittereder explained that a low pitch roof had been chosen to keep the height of the addition to the lowest possible extent.

In response to a question from Mr. Hammack, Mr. Mittereder replied that he agreed with the development conditions.

Chairman DiGiulian called for speakers either in support or in opposition and hearing no reply, the public hearing was closed. He noted that the Mason District Planning Commissioner had requested that the Board defer decision on the application.

Jane Kelsey, Chief, Special Permit and Branch, stated that based on the applicant's comments that the Planning Commissioner no longer believed that a deferral was necessary, she had been trying to contact the Commissioner to confirm those comments.

Following a discussion among the Board members, Mr. Hammack made a motion to defer the application to the end of the agenda. Mrs. Thonen seconded the motion.

Mr. Kelley suggested that perhaps the Board could take action prior to the end of the agenda if Ms. Kelsey could contact the Commissioner. Mr. Hammack accepted the suggestion. The motion carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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**NOTE:** The Resolution approved by the Board of Zoning Appeals can be found in the Minutes following the next case.

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Page 136, February 12, 1991, (Tape 1), Scheduled case of:

9:30 A.M. MARIUS IANAS, SP 90-D-086, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow garage/workshop to remain 2.0 ft. from side and rear lot lines (10 ft. min. side yard and 11.2 ft. min. rear yard required by Sect. 3-407 and 10-104) on approx. 10,075 s.f. located at 6516 Roosevelt St., zoned R-4, Branesville District, Tax Map 40-4((10))B4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate.

Michael K. Sanchez, P.E., 6514 Roosevelt Street, Falls Church, Virginia, replied that it was and requested that the Board grant the applicant a 6 months deferral. He explained that Development Condition Number 5 required that the structure be moved no matter how the Board voted, which negates why the applicant filed the application. He stated that the applicant would like time to continue discussions with Land Acquisitions Division and the Systems Engineering Analysis Division of the Department of Public Works (DPW). He stated that Jerry Jackson, with the Systems Engineering Analysis Division, indicated that the sanitary sewer easement could be relocated. In order to do this, the applicant has to go to the County Attorney's office and make a case before them to obtain the necessary legal documents. He stated that the applicant would then come back to the Board with a suitable Condition Number 5. He stated that it was his understanding that working with the County Attorney's office was a lengthy process. The Board agreed.

Mrs. Thonen made a motion to defer the application for six months. Mr. Hammack seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that the applicant is presently under a Notice of Violation and asked the Board to defer the case to March 26th to allow staff time to talk to DPW and the County Attorney's office.

Mr. Pammel expressed concern about the Board granting the applicant a long deferral since the



applicant had been cited for a violation. Following a discussion among the Board members, Chairman DiGiulian suggested deferring the application to March 26, 1991, at 9:00 a.m.

Mrs. Thonen agreed to amend her motion. Mr. Hammack seconded the amendment which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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Page 137, February 12, 1991, (Tape 1), Scheduled case of:

9:45 A.M. WILLIAM E. & MARY E. CALE, VC 90-D-105, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot A-1-B having a lot width of 12.0 ft. (150 ft. min. width required by Sect. 3-106) on approx. 4.95 acres located at 7321 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 21-3((6))A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Strobel replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He noted that the subject property is currently developed with a single family detached dwelling with attached garage fronting on Georgetown Pike and an old barn located on the rear portion of the site in the approximate location of the proposed future dwelling. He stated that the applicants were requesting a variance to the minimum lot width requirement to allow a subdivision of Lot A into two lots. He stated that proposed Lot A-1-B would only have a lot width of 12.00 feet and would not have access to Georgetown Pike but would actually share adjacent Lot C's ingress/egress access easement and driveway on proposed Outlot A to access Saigon Road. Mr. Jaskiewicz stated that the applicants were requesting a variance of 138.0 feet to the minimum lot width requirement for Lot A-1-B. In closing, he stated that staff believed that the application did not meet Standards 3, 4, 6, and 9 and the applicants have reasonable use of the property since there is an existing dwelling.

In response to a question from Chairman DiGiulian, Mr. Jaskiewicz replied that the applicants own Outlot A.

Lynne Strobel, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., Courthouse Plaza, 13th Floor, 2200 Clarendon Boulevard, Arlington, Virginia, represented the applicant. She stated that the applicants, who now live in North Carolina, wish to subdivide the lot but do not plan to develop the proposed lot at this time. She noted that the tennis court referred to in the staff report is existing and not proposed. Ms. Strobel continued by stating that the property is zoned R-1 and the applicants' request would be in harmony with the existing zoning and the Comprehensive Plan. However, the size of the proposed lots would exceed those in the surrounding area.

Ms. Strobel addressed each of the standards by stating that the subject property was acquired in good faith by the applicants in 1974 and was used as their residence until recently. She stated that the subject property is rather L-shaped with a narrow frontage on Georgetown Pike and over 400 feet in lot width at the rear of the property. Ms. Strobel pointed out that the development immediately adjacent to the subject property has been subdivided into lots that are smaller than one acre. She stated that interparcel access was not provided with the applicants' property, which may have alleviated the need for a variance. Ms. Strobel pointed out that during the evaluation of the application by staff they discovered that Outlot A, which the applicants own and pay taxes on, was previously used for density when Saigon subdivision was created. She stated that she did not know how this happened and there have been numerous discussions with the Department of Environmental Management (DEM). Ms. Strobel stated that it is an unusual situation that Outlot A cannot be recognized by Fairfax County to satisfy any of the development criteria or the Zoning Ordinance requirements and the situation has occurred through no fault of the applicants. She clarified that although the lot is on the plat as a pipestem it would not be used for access purposes as access would be provided through Outlot A and not on Georgetown Pike. Ms. Strobel referenced the tax map and stated that there are very few lots in the area similar in acreage and it is very unlikely that the request would create some recurring condition. She stated that strict application of the Zoning Ordinance would produce undue hardship as it would prevent a subdivision of the existing lot. She stated that the granting of the variance would not be a substantial detriment to adjacent properties, the existing roadway and egress/ingress is already in place, the surrounding properties would not be impacted by the granting of the variance, the neighbors have no objections to the request, and the character of the zoning district would not be changed. Ms. Strobel stated that, with the recordation of a trail easement, the applicants have already provided a trail on the south side of Georgetown Pike and the creation of a pipestem lot would not set an undesirable precedent for future land use in the immediate vicinity. In closing, Ms. Strobel stated that the applicants agree with the development conditions and asked the Board to grant the request.

In response to questions from the Board, Ms. Strobel replied Outlot A cannot be combined with Outlot A-1-B because Outlot A was used in the density calculations for Saigon subdivision; therefore, the County will not recognize the density from that parcel for Outlot A-1-B. She stated that Outlot A will be used to provide access to the proposed lot.

Page 138, February 12, 1991, (Tape 1), (WILLIAM E. & MARY E. CALE, VC 90-D-105, continued from Page 137)

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The Board and Ms. Strobel discussed the sale of land to Mr. Cumble and the creation of the Saigon subdivision. Ms. Strobel stated that the applicants were not involved in the creation of the Saigon subdivision.

William E. Cale, 7321 Georgetown Pike, McLean, Virginia, came forward and outlined the history of the property. He stated that he and his wife purchased approximately 10 acres from Mr. Webb that included Outlot A and the 5 acres that they sold to Steve Cumble. Mr. Cale stated that they had not created Outlot A; it existed when they purchased the property. He said that just within the last month he became aware that Outlot A had been used in the density calculations for Saigon subdivision.

Ms. Kelsey submitted a copy of the Saigon subdivision plat recorded in 1955 to the Board for review. Ms. Strobel submitted a copy of the access easement to the Board.

Ms. Strobel stated that the question was whether or not the owner of the proposed lot would maintain access as an easement has already been granted to Mr. Cumble. She stated that there is a perpetual access easement that has been recorded and paragraph 2 of the document does anticipate that the easement will serve a maximum of three residential lots, 2 lots to be subdivided from Lot B and 1 lot subdivided from Lot A.

Mr. Cale stated that he and Mr. Cumble agreed to maintain the 5 acre lots rather than develop on 1 acre lots or smaller.

Mr. Ribble asked if Mr. Cumble would be willing to sign an agreement to ensure access to the proposed lot. Ms. Strobel answered that she saw no problem since Mr. Cumble was in support of the variance.

The Board discussed with Ms. Strobel why the applicants had not pursued subdividing the lot under the Subdivision Ordinance rather than through a variance. Ms. Strobel stated that the applicant would still be required to meet the minimum lot width requirement which was why the applicants had filed the variance.

In response to Mr. Hammack's comments with respect to the hardship being self created, Ms. Strobel replied that she believed that there was a hardship because of the issue of Outlot A being calculated into the Saigon subdivision; in addition, when the surrounding parcels were subdivided, interparcel access had not been provided to the applicants.

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

Mr. Ribble stated that he would like to see further documentation on the easement and give the applicant time to get together with the adjoining property owner to work out an agreement on the easement so the applicants could use the easement over Outlot A. He stated that the whole issue regarding Outlot A concerned him a great deal as he did not understand how it came about. Mr. Ribble then made a motion to defer decision for two weeks.

Mr. Hammack stated that he would like to see a copy of the deed when the applicants originally purchased Outlot A. Chairman DiGiulian stated that he would like to see something in writing from whomever on the County staff had the authority to determine that Outlot A cannot be used as part of Lot A-1-B since it was used in the density calculation for Saigon subdivision.

Ms. Kelsey suggested March 5, 1991, at 9:45 a.m. Mr. Ribble so moved. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Page 138, February 12, 1991, (Tape 1), Scheduled case of:

ANTIOCH KOREAN BAPTIST CHURCH, SP 90-M-048

The Board had deferred decision on this case earlier in the public hearing to allow staff to contact the Mason District Planning Commissioner. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had contacted the Planning Commissioner who indicated he now supported the application with the addition of three development conditions. (Staff submitted a copy of the conditions to the Board.)

Chairman DiGiulian reopened the public hearing.

Mr. Hammack made a motion to grant SP 90-M-048 subject to the development conditions contained in the staff report addendum dated February 5, 1991 with three additions.

16. There shall be no loudspeakers associated with activities outside of the building.
17. The applicant shall plant a staggered row of evergreens, 10 feet in planted height, not to include white pines, between the parking lot and the Environmental Quality Corridor (EQC).

Page 139, February 12, 1991, (Tape 1), (ANTIOCH KOREAN BAPTIST CHURCH, SP 90-M-048, continued from Page 138)

18. A gate or staggered opening shall be provided at a point along the fence adjacent to the northern lot line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-048 by ANTIOCH KOREAN BAPTIST CHURCH, under Section 3-203 of the Zoning Ordinance to allow church and related facilities, on property located at 6355 Lincolnia Road, Tax Map Reference 72-1((1))54, Mr. Hamneck moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 4.1981 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 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 the church sanctuary shall be limited to a total of 532 seats.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 133 spaces. All parking shall be on site.
7. Transitional Screening 2 (35') and Barrier F shall be provided along the northwestern and southeastern property lines generally as indicated on Sheet 2 of the Special Permit plat dated December 10, 1990. The existing vegetation may be used to partially satisfy this requirement provided it is supplemented to meet the equivalent of Transitional Screening 2. Barrier H and additional foundation plantings shall be installed along the northeastern property line and around the proposed church addition. Existing vegetation may be used to partially satisfy this requirement if the vegetation is supplemented to be equivalent to Barrier H to the satisfaction of the County Arborist. Pursuant to Par. 3 of Sect. 13-304, along the northwestern property line the existing vegetation shall satisfy the transitional screening and barrier requirements provided the EQC is preserved in accordance with Development Condition 8.
8. Pursuant to the Virginia Code Section 10.1 - 1700 et seq, the applicant shall at the time of site plan approval, record among the land records of Fairfax County, an Open Space Easement to the Board of Supervisors. The Open Space Easement shall run for the life of this special permit. The easement shall include that land which was

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defined by the Fairfax County Staff on the Special Use Permit Plat dated December 10, 1990, as Environmental Quality Corridor (EQC). The exact location of the boundary shall be determined at the time of site plan review by the Department of Environmental Management (DEM) in coordination with the Office of Comprehensive Planning (OCP). There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading. Furthermore, the proposed bridge shown on the plat dated December 10, 1990 shall be removed and that area between the edge of the EQC and the existing natural treeline shall be replanted with native trees and shrubs in a naturalistic pattern as determined by the County Arborist.

9. To facilitate the movement of stormwater into the ground, porous or grid paving shall be provided in those areas of the parking lot indicated as porous paving on the Special Permit Plat dated December 10, 1990. If stormwater management detention facilities are deemed necessary by DEM at the time of Site plan review, such facilities shall be located outside of the EQC. The specific type of paving treatment and its construction shall be designed in accordance with the methods recommended by the Metropolitan Washington Council of Governments' (COG) Manual entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs. The final design shall be subject to the review and approval by the Department of Environmental Management. Furthermore, should this option be deemed feasible and appropriate, the applicant shall be responsible for routine maintenance of the porous pavement, to include but not limited to:

Vacuum sweeping. The pavement surface shall be vacuum swept at least four times per year, followed by high-pressure jet hosing to keep the pores free from clogging.

Inspection. The pavement surface shall be inspected several times in the first few months after construction, and annually thereafter except when surface ponding occurs after heavy rains indicating clogging.

Snow Removal. Sand and/or ash shall not be used for snow removal purposes, and signs shall be posted stating these restrictions. Such signage shall also include warnings prohibiting the use of standard paving sealing compounds on the porous pavement.

If grid paving techniques are used, conventional paving shall be allowed in the travel aisles and at the entrance to the site.

10. Limits of clearing and grading shall protect the existing vegetation that will be supplemented for transitional screening purposes in accordance with Condition 7 above.
11. Right-of-way to 45 feet from existing centerline of Lincolnia 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 shall be provided to facilitate these improvements.
12. The entrance to the property and the right turn lane on Lincolnia Road shall be constructed to the Virginia Department of Transportation (VDOT) standards.
13. 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.
14. A tree preservation plan and 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 tree which may be impacted by construction on the site.
15. If required by the Department of Environmental Management (DEM), a 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 plans and approved measures shall be incorporated into the site plan as determined by DEM.
16. There shall be no loudspeakers associated with activities outside of the building.

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17. The applicant shall plant a staggered row of evergreens, 10 feet in planted height, not to include white pines, between the parking lot and the Environmental Quality Corridor (EQC).
18. A gate or staggered opening shall be provided at a point along the fence adjacent to the northern lot line.

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 use shall not be legally established 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. Thonen seconded the motion which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 141, February 12, 1991, (Tape 1), Scheduled case of:

10:00 A.M. VALE UNITED METHODIST CHURCH, SPA 73-C-187-1, appl. under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend SP 73-C-187 for church and related facilities to allow construction of addition, additional parking spaces, temporary use of trailer, and modification of the dustless surface requirement on approx. 5.9757 acres of land, located at 11528 Vale Rd., zoned R-1, Centreville District, Tax Map 36-4((1))19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Haas replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the applicant was seeking approval of a special permit amendment to allow construction of a building addition, temporary use of a trailer, additional parking, and a modification of the dustless surface requirement. He stated that the existing church was originally constructed in 1895 and in 1973, the church received Special Permit, S-187-73, to allow a building addition and a waiver of the dustless surface requirement for the parking lot.

He stated that the proposed 6,810 square foot building addition would contain a fellowship hall and Sunday school classrooms, and would be connected to the existing church building, approximately 3,851 square feet in size, which contains the 100-seat sanctuary. The current gravel parking area would be reconstructed with 53 spaces being added for a total of 73 parking spaces. The temporary trailer for Sunday school use would be located to the west of the existing church along the cemetery fence line. Mr. Jaskiewicz stated that the applicant was requesting modifications to the required transitional screening yards and waivers of stormwater management requirements and pedestrian trail provisions.

Mr. Jaskiewicz stated that staff had found that the applicant's request would not create an intensification of use on the property beyond that which could be mitigated through the implementation of the Proposed Development Conditions. With the Proposed Development Conditions, the proposal would be in keeping with the purpose and intent of the R-1 Zoning District and would be in harmony with the Comprehensive Plan's recommendation for this area. He stated that staff had met numerous times with the applicant in order to work out the outstanding issues associated with this application; the final conversation resulted in a revised set of Proposed Development Conditions, dated February 11, 1991, which only included changes to Condition #19. Therefore, it was staff's judgment that if the revised proposed Development Conditions were implemented, the use would then meet all the applicable Zoning Ordinance standards and staff recommended approval.

Ken Haas, 2499 Essie Street, Oakton, Virginia, Chairman, Building Committee for the church, came forward and thanked staff for their assistance in the processing of the application. He stated that the church believed the staff report to be fair and that the church concurred with all the development conditions, with the exception of condition number 16 which required that the trailer be relocated. Mr. Haas explained that the church would prefer the trailer be located behind the church as shown on the plat, which would allow the children to go from the church to the classrooms in the trailer without entering the parking lot. He expressed concern with the children's safety walking through the parking lot during the construction

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phase. Mr. Haas stated that the location behind the church would not be detrimental to the neighborhood since space for the trailer already exists and no trees would have to be removed to accommodate the trailer. He added that no neighbors live within the sight line of the trailer, half of the trailer would be located behind the church and would not be visible, the elevation of the land where the trailer will sit is approximately 12 to 14 feet above Fox Mill Road making the bottom one-third of the trailer not visible from the road, and there are several large oak trees measuring up to 48 inches in diameter on the site.

In response to a question from Mr. Kelley, Mr. Haas replied that the applicant agreed with all the development conditions even the trail. He added that it was his understanding that along Fox Mill Road and the church's cemetery the distance is so narrow that a trail cannot be located there. Mr. Haas added that the church has to dedicate 45 feet on the Vale Road side and the trail, if required, will be within the 45 feet.

Alice A. Doherty, 11526 Vale Road, Oakton, Virginia, owner of Lot 13, came forward and stressed the fact that a stormwater management system was necessary because of the runoff problem.

Danny Kesner, 12101 Wayland Street, Oakton, Virginia, pastor of the church, came forward to support the request for the trailer. He stated that the trailer would give the church an opportunity to provide christian education to the community. He asked that the church be allowed to keep the trailer behind the church.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated February 5, 1991 with the deletion of numbers 12, 19, and 20, and the conditions renumbered accordingly.

Mr. Hammack suggested that the last two sentences of Development Condition Number 16 be deleted. Mr. Kelley accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 73-C-187-1 by VALE UNITED METHODIST CHURCH, under Sections 3-103 and 8-901 of the Zoning Ordinance to amend SP 73-C-187 for church and related facilities to allow construction of addition, additional parking spaces, temporary use of trailer, and modification of the dustless surface requirement, on property located at 11526 Vale Road, Tax Map Reference 36-4(1)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 February 12, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.9757 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-915 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.

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Page 143, February 12, 1991, (Tape 1), (VALE UNITED METHODIST CHURCH, SPA 73-C-187-1, continued from page 142)

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 for the church sanctuary shall be limited to a total of 100 seats.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM and shall be a maximum of 71 spaces. All parking shall be on site and within the gravel parking area.
7. Transitional Screening 3 (50') shall be provided along the northwestern, northeastern, and southwestern lot lines abutting residentially-used properties. The northern corner of the drainfield may extend into this screen yard as shown on the Special Permit plat. Existing vegetation may be used to partially satisfy the transitional screening requirement provided it is supplemented to meet the equivalent of Transitional Screening 3, to the satisfaction of the County Arborist.
8. Along the southeastern property line existing vegetation shall be retained and supplemented by the proposed vegetation as shown on the Special Permit plat as well as other supplemental vegetation as required by the County Arborist to meet the equivalent of Transitional Screening 1 and to minimize the adverse impacts of the parking area and building mass on adjacent residences.
9. Foundation plantings shall also be provided around the proposed addition to minimize the adverse visual impacts on the adjacent residences to the satisfaction of the County Arborist.
10. Should a structural stormwater management pond be required by DEM and the Department of Public Works at the time of Site Plan review, it shall be located as shown on the Special Permit plat and shall not intrude into the transitional screen yard.
11. At the time of site plan review, a tree preservation plan and 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. Furthermore, limits of clearing and grading shall protect the existing vegetation that will be supplemented for transitional screening purposes in accordance with Conditions 7 and 8 above.
12. The entrance drive to the property from Vale Road shall align with the pipestem driveways on the southeast side of Vale Road, shall be constructed to the Virginia Department of Transportation (VDOT) standards, and shall be configured and constructed to minimize adverse impact on the existing deciduous trees identified on the plat which are to be used for screening purposes. The entrance drive shall be paved to the entrance and exit of the parking area. The interior portion of the vehicular turnaround shall not include parking spaces but shall include a landscaped island.
13. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
14. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of this waiver of the dustless surface shall be in accordance with the provisions of the zoning Ordinance.
  - 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.

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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.

15. The temporary trailer shall be approved for a period of five (5) years from the final approval date of SPA 73-C-187, and shall only be used for Sunday School purposes.
16. Additional plantings and trailer skirting shall be provided along all sides of the temporary trailer to soften the impact of this building mass upon the adjacent residential uses located to the east and south. The species, location, planted height and number of plantings shall be reviewed and approved by the County Arborist.
17. The Architectural Review Board shall review the application prior to site plan approval to ensure that the proposed use will be compatible with the existing church structure.

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 which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:40 a.m. and reconvened at 10:50 a.m.

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Page 144, February 12, 1991, (Tapes 1-2), Scheduled case of:

10:15 A.M. DONALD J. PARKS, SP 90-V-085, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow deck to remain 10.5 ft. from side lot line (20 ft. min. side yard required by Sects. 3-807 and 2-412) on approx. 31,188 s.f. located at 5833 River Dr., zoned R-E, Mt. Vernon District, Tax Map 122-2((2))25. (CONCURRENT WITH VC 90-V-133)

10:15 A.M. DONALD J. PARKS, VC 90-V-133, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-807) on approx. 31,188 s.f. located at 5833 River Dr., zoned R-E, Mt. Vernon District, Tax Map 122-2((2))25. (CONCURRENT WITH SP 90-V-085)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thomas replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicant was requesting approval of a special permit based on error in building location to allow the existing deck to remain 10.5 feet from the side lot line. Based on the deck's height, no extension is permitted, and the Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 9.5 feet was requested. It was staff's judgment with the implementation of the development conditions the request met the applicable standards for approval with the implementation of the development conditions. He pointed out that the conditions require the preservation of the existing vegetation on the eastern side lot line.

Mr. Riegle stated that the applicant was also requesting a variance to allow an existing carport to be converted to an attached garage 10.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the applicant was requesting a variance of 9.5 feet. He noted that the dwelling on adjacent Lot 26 is approximately 30 feet from the shared lot line.



Tom Thomas, attorney with the law firm of Pagelson, Schonberger, Payne & Deichmeister, 401 Wythe Street, Alexandria, Virginia, represented the applicant and stated that the applicant had not realized there was a problem when he purchased the property. He stated that the error was pointed out to Mr. Parks when he went to the County to obtain a building permit to enclose the existing carport. Mr. Thomas stated that a variance was granted to the previous owner in the '50's. He stated that there are trees approximately 250 years old in the front yard and to place a garage there would require the removal of those trees. He pointed out that the applicant was only requesting approval to enclose an existing carport.

In response to questions from the Board, Mr. Thomas replied that there is already a concrete slab, the proposed structure would be no closer to the lot line than the existing carport, the existing vegetation will be left intact, and there are no objections from the neighbors.

Mr. Hammack questioned Mr. Thomas about the roof lines. Mr. Thomas stated that the existing carport's siding stops short of the end of the concrete slab, but to enclose that would make a very constrained interior. He assured the Board that the existing vegetation would be left intact and the garage would be no closer to the side lot line than the existing carport. Mr. Thomas added that the house was constructed in the '50's but the previous owner began a major renovation in 1987 which included the carport.

Mr. Pammel stated that he had in his possession a copy of the original Zoning Ordinance that was adopted in 1941 and in effect at the time the applicant's house was constructed. He stated that at that time the Ordinance required a 25 foot side yard and the plats indicate that one side yard measured 24.7 feet at the time the house was constructed. Mr. Pammel stated that it appeared that the house was in conformance with the Code at the time of its construction.

In response to a question from Mr. Hammack, Mr. Thomas approached the Board and showed them how the plans of the addition will look when completed.

There were no speakers to address the application, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request subject to the development conditions contained in the staff report dated February 5, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-V-085 by DONALD J. PARKS, under Section 8-914 of the zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow deck to remain 10.5 feet from side lot line, on property located at 5833 River Drive, Tax Map Reference 122-2((2))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 February 12, 1991; and

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

The Board has determined that:

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

Page 146, February 12, 1991, (Tapes 1-2), (DONALD J. PARKS, SP 90-V-085 and VC 90-V-133, continued from Page 145)

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

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

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and not transferable to other land.
2. The existing vegetation along the western property line shall be preserved at the density depicted in the photos submitted to the Board of Zoning Appeals as a part of this application.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated February 5, 1991.

Chairman DiGiulian asked that another development condition be added with respect to screening. Mr. Hammack accepted the amendment.

Mr. Riegle suggested that perhaps the Board would like to use the same condition in the variance condition that was used in the special permit. Mr. Hammack agreed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-133 by DONALD J. PARKS, under Section 18-401 of the Zoning Ordinance to allow addition 10.5 feet from side lot line, on property located at 5833 River Drive, Tax Map Reference 122-2((2))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 February 12, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 31,188 square feet.
4. The application meets all the standards, in particular, that the lot is narrow.
5. The carport has been on the property for a number of years.
6. There is no opposition from the neighbors.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified structure shown on the plat submitted with this application and 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 existing vegetation along the western property line shall be preserved at the density depicted in the photos submitted to the Board of Zoning Appeals as a part of this application.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 147, February 12, 1991, (Tape 2), Scheduled case of:

10:30 A.M. THE KOREAN ORTHODOX PRESBYTERIAN CHURCH, SPA 85-D-070-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 85-D-070 for church and related facilities to allow change in permittee on approx. 1.4332 acres located at 6519 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 22-3((1))4B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Frey replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the applicant was requesting an amendment to a special permit for a church and related facilities to allow a change in permittee from McLean Church of Christ to The Korean Orthodox Presbyterian Church. She stated that there will be no physical changes to the site and the number of seats and the amount of parking spaces will remain as previously approved in SP 85-D-070.

Ms. Bettard stated that in staff's judgment all standards and requirements under Sect. 8-006, General Standards for All Special Permit Uses, have been met in SP 85-D-070. She explained that the application was for a change of permittee only and the applicant was not requesting any physical modification, additions or change in the number of seats or parking spaces, or an intensification of any kind. Thus, staff believed that with the incorporation of the

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previously approved Development Conditions, the application would meet the General Standards, thus, staff recommended approval.

The applicant's representative, John T. Frey, attorney with the law firm of Frey & Autry, P.C., 6503 Sydenstricker Road, Burke, Virginia, stated that the request is for a change in permittee only, there will be no construction changes and no increase in intensity. He stated that the original approval was for 1,250 seats, which will not be increased, and there will be no increase in parking. Mr. Frey asked the Board to grant the request.

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

Scott Goldschein, 360 Maple Avenue, West, Suite C, Vienna, Virginia, came forward to represent the adjacent neighbor. He stated that the neighbor was concerned with the impact from the larger church and the increased traffic and noise. Mr. Goldschein stated that the previous church had not met the barrier and transitional screening requirements set forth in the Zoning Ordinance and he asked the Board to increase the requirements. He asked that the church be required to repair the fence that is between the church property and the neighbor.

Chairman DiGiulian pointed out to Mr. Goldschein that the request was for a change in name only.

The next speaker was J. Howard Flint, Jr., 1114 Dead Run Drive, McLean, Virginia. Mr. Flint was also concerned with the increased traffic and pointed out the unsafe road conditions in front of the church property. He stated that he believed that the previous church had acted illegally in selling the property without discussing the sale thoroughly with the parishioners.

The Board told the speaker that his concern with the legality of the sale should be taken up in the courts. Mr. Flint asked the Board to delay acting on the application in case that was necessary.

During rebuttal, Mr. Frey stated that the request was only for a change in permittee. He stated that staff had reviewed the application and was satisfied that the screening requirement had been met. Mr. Frey pointed out that the neighbor on Lot 4A was aware of the fact that a church was on the property when they purchased their property. He stated that there is currently a Montessori school that generates traffic on Georgetown Pike Monday through Friday.

In response to a question from Mr. Kelley about the fence, Mr. Frey replied that there are some slats missing from the fence and it has not been painted in a long time. He assured the Board that the church would repair the fence.

Chairman DiGiulian asked if the Special Permit that was before the Board in 1986 dealing with the deletion of land had created Lot 4A. Jane Kelsey, Chief, Special Permit and Variance Branch, answered that it had.

Mr. Pammel stated that he would like to see Development Condition Number 11 modified to reflect that the propane tanks had to be inspected by Fire and Rescue Services for certification.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated February 5, 1991. She accepted the change to Condition Number 11 as suggested by Mr. Pammel and revised Conditions Numbers 4 and 7 as reflected in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-D-070-1 by THE KOREAN ORTHODOX PRESBYTERIAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 85-D-070 for church and related facilities to allow change in permittee, on property located at 6519 Georgetown Pike, Tax Map Reference 22-3((1))4B, 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 12, 1991; and

Page 149, February 12, 1991, (Tape 2), (THE KOREAN ORTHODOX PRESBYTERIAN CHURCH,  
SPA 85-D-070-1, continued from Page 148 )

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.4332 acres.
4. The Board did not rule on whether or not the applicant could have a special permit, only on the fact that they have the right name.
5. They have met the conditions for a change in permittee.

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:

The following development conditions incorporate all applicable conditions of the previous approval. No new conditions have been added. The development condition requiring site plan approval has been deleted since no new structures or improvements or changes to the existing facility or use are proposed.

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 purpose(s), structure(s) and/or uses(s) indicated on the special permit plat (dated November 5, 1990), by Kenneth W. White and approved with this application, as qualified by these Development Conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. There shall be a maximum of two hundred twenty-five (225) seats with a corresponding minimum and maximum of fifty-seven (57) parking spaces. All parking associated with the use shall be maintained on site.
5. Handicapped parking spaces shall be provided in accordance with all applicable State and County regulations.
6. Transitional Screening 1 shall be modified as follows:
 

Transitional Screening 1 shall be waived along the eastern lot line adjacent to the parking area. Transitional Screening 1 shall be provided along the eastern lot line between Georgetown Pike and the parking area.

Along the rear lot line, existing vegetation shall be retained and supplemented to provide Transitional Screening 1 except that the width of the planting area may be reduced to the approximately fourteen (14) feet existing in that location.

Transitional Screening 1 shall be provided along the entire western lot line.

Transitional Screening 1 shall be modified along the front lot line provided additional landscape plantings are installed which will screen the parking and play area from Georgetown Pike. The size, type, and location shall be approved by the County Arborist.
7. The solid barrier shall be maintained in good condition along the southern and eastern lot lines between the parking lot and the lot lines.
8. If parking lot lighting is installed, such lighting shall not exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.
9. Signs shall be in accordance with the provisions of Article 12, Signs.
10. The propane tanks located on the property shall be checked by Fire and Rescue Services to make certain that the applicant complies with all federal, state, and local regulations pertaining to the installation, use, and removal of the tanks.

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

Page 150, February 12, 1991, (Tape 2), (THE KOREAN ORTHODOX PRESBYTERIAN CHURCH, SPA 85-D-070-1, continued from Page 149)

Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 150, February 12, 1991, (Tape 2), Scheduled case of:

10:45 A.M. ARTHUR W. JR. & BERNICE KROP, VC 90-D-117, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 3 having a lot width of 151.90 ft. (200 ft. min. lot width required by Sect. 3-EO6) on approx. 6.004 acres located at 910 Utterback Store Rd., zoned R-E, Dranesville District, Tax Map 7-3(1)30. (DEFERRED FROM 1/24/91 PER APPLICANT'S REQUEST)

Chairman DiGiuliano called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Conroy replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the applicants are the owners of Lot 30 which is zoned R-E, contains approximately 6.004 acres, and is developed with a single family detached dwelling, a shed, and a garage located on the southern portion of the property. The remainder of the property is undeveloped, with the western portion of the property planted with coniferous trees.

He explained that the applicants are requesting a variance to the minimum lot width requirement to allow a subdivision of Lot 30 into three lots. Proposed Lot 1 and Lot 2 would meet the minimum lot width requirements, whereas proposed Lot 3 would have a lot width of 151.90 feet. Since the Zoning Ordinance requires a minimum lot width of 200 feet in the R-E zoning district, the applicants are requesting a variance of 48.10 feet to the minimum lot width requirement for proposed Lot 3.

In reviewing the current application against the standards for a variance as set forth in the Zoning Ordinance, staff believed that the application did not meet all of the standards, specifically Standards 2, 3, 4, and 6, as discussed on pages 5 and 6 of the staff report. In this instance, staff believed that the applicants have reasonable use of their property either with the existing dwelling or due to the fact that two lots could be platted by right, without the need for a variance. Mr. Jaskiewicz indicated that staff believed that the development of three lots through a variance to the minimum Zoning Ordinance requirements could set an undesirable precedent in an area characterized by similarly situated large lots.

James J. Conroy, III, Esq., P.O. Box 297, 10370 Main Street, Fairfax, Virginia, stated that the applicants have owned the subject property since 1977 and bought it for their son, who since that time has cultivated the land grown Christmas trees. He stated that since 1977 the applicants have also purchased parcels 35, 38, 43, and recently parcel 42 with a combined acreage of 22 acres. He stated that in 1977 the applicants built a house for their son and in 1983 the applicants applied for a variance which would allow the subdivision of the property into three lots similar to the present request. Mr. Conroy stated that the staff report in 1983 opposed the subdivision for the same reasons set forth in the staff report for VC 90-D-117 but the Board voted 5-1 to approve the variance, which inadvertently expired. He stated that he looked at the area to see what changes had taken place since 1983 to determine if the applicants' request was violently in opposition to what has occurred and it is not. Mr. Conroy stated that five of the lots contain less than 2 acres and stated that he called that to the Board's attention because it is one of the issues raised in the staff report. He pointed out that the applicants' request is for less frontage than permitted in the zoning district and that there are six existing lots that do not meet the lot frontage requirement. Mr. Conroy disagreed with the frontage noted in the staff report and stated that it should be "159.9." He stated that the applicants have no intention to build on the lots at present but had added the proposed dwelling and septic fields because it was a requirement for the filing of the variance. Mr. Conroy stated there is a tremendous tax burden on this property and the applicants are concerned that some time in the future they may have to sell part of the land.

In response to questions from the Board, Mr. Conroy replied that the applicants purchased Lot 35 in 1985. He explained that Lot 35 could be consolidated with Lot 36 but that would require a land swap in order to maintain Lot 2, since it is exactly 2 acres. (Mr. Conroy used the viewgraph to show how the two lots would have to be reconfigured.) He stated that the applicants did own Lot 27 at one time.

Mr. Krop came forward and explained that he purchased Lot 27 because there was an abandoned shack on it that had been an eyesore in the neighborhood. He purchased the property, tore down the shack, and constructed another house.

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Mr. Pammel asked the total acreage that the applicants own and Mr. Conroy answered approximately 22 acres. Mr. Pammel suggested that perhaps the applicants could look into agricultural zoning that might possibly give them some relief on taxes.

Chairman DiGiulian called for speakers in support of the request.

Mr. Krop came back to the podium and stated that he and his wife own the property, and his son lives on the property. He stated that presently he and his wife are holding up the operation since it is not a paying operation and said it is a struggle to try and make ends meet. Mr. Krop stated that they were right on the verge of deciding whether to keep it agricultural or sell it and "get the dickens" out because they are losing money on it. He stated this is the most obvious area to sell off as it would not affect the operation since they need to keep as much of the land as possible to make the Christmas tree operation work.

A discussion took place between the Board and Mr. Krop about possibly taking 40 feet from Lot 35 to enlarge the subject property to alleviate the need for a variance.

Chairman DiGiulian called for speakers in opposition to the request.

Richard Peters, Co-Chairman, Planning and Zoning Committee, Great Falls Citizens Association, P. O. Box 443, Great Falls, Virginia, came forward and endorsed what he believed to be a very good staff report. He stated that the Association did not believe that a variance was justified under the variance criteria. He added that the Association was very disturbed about the potential effect of an undesirable precedent which would maximize density through a variance in an area where there are many undeveloped large lots. Mr. Peters outlined the Association's opposition as follows: 1) reasonable use of the land is not prevented by the denial of the variance; and, 2) it is not a case to relieve hardship but merely to maximize density and presumably maximize gain eventually, if not now. Mr. Peters stated that there appeared to be considerable possibility that the necessary frontage for the additional lot can be achieved without a variance, through consolidation with one or more of the three lots owned by the applicants, two adjoining the subject property. He emphasized the fact that the inability to consolidate in a satisfactory way is not of itself sufficient cause to justify the granting of the variance. Mr. Peters pointed out that the applicants bought the lot exactly as it is in 1975, presumably aware that the lot's road frontage would not yield three 2-acre lots since the lots dimensions are the same today as they were then. He stated that it cannot be said that the inability to get three lots under the Ordinance was created by the adoption of the present Ordinance because the preceding Ordinance had exactly the same requirement. Mr. Peters stated that density was an important factor since criteria Number 9 requires that a variance be in harmony with the spirit and purpose of the Ordinance and not contrary to the public interest. He called the Board's attention to paragraphs 4 and 6 of the applicants' statement of justification which makes the assertion that the Board of Supervisors in establishing the R-E District intended that every lot in R-E should be exactly a 2 acre lot. Mr. Peters noted for the record under the Ordinance 2 acres is the minimum lot size in R-E; therefore, the granting of a variance, and not its denial, would seem to go against the Board of Supervisors' intent. He stated the only exception that the Association took with the staff report was the proposed 35 foot dedication along the public road, which they presumed was suggested by the Office of Transportation.

During rebuttal, Mr. Conroy stated that the intent of the zoning Ordinance is shown precisely in the subdivision to the north of the subject property and that means that the numbers that are given are not "etched in concrete." He stated that the largest lot in that subdivision is 2.18 acres and if the County was trying to achieve what Mr. Peters indicated, they would insist on larger subdivisions. Mr. Conroy stated that the plat shows what has happened in the area.

Mr. Ribble made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Thonen stated that she would support the motion because the applicants owns Lots 30, 35, 38, and 43 and those lots could be consolidated and divided without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-117 by ARTHUR W. JR. AND BERNICE KROP, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 3 having a lot width of 151.90 feet, on property located at 910 Utterback Store Road, Tax Map Reference 7-3((1))30, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is 6.004 acres.
4. The Board voted on a similar application many years ago but certain things have changed since then.
5. The applicants have not met the nine standards required for a variance.
6. The applicants have other possible ways to go.
7. The denial of the variance will not be unreasonable or deny the applicants unreasonable use of their land.
8. The applicants could find ways to consolidate the lots and come back with a better plan.

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991.

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The Board recessed at 12:07 p.m. and reconvened at 12:17 p.m.

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Page 152, February 12, 1991, (Tapes 2-3), Scheduled case of:

11:00 A.M. NATIONAL AMUSEMENTS, INC. APPEAL, A 90-L-025, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that Site Plan #6036-SP-02-1 for Mount Vernon Multiplex Cinemas was submitted to the Department of Environmental Management on October 3, 1989, and therefore is not grandfathered from Zoning Ordinance Amendment #88-164 on approx. 11.88 acres located at 7940 Richmond Highway, zoned C-8 and EC, Lee District, Tax Map 101-2((6))A. (DEFERRED FROM 1/29/91 FOR BOARD TO HAVE MORE TIME TO REVIEW)

Mr. Pammel abstained from participating in the public hearing due to a business relationship with the law firm representing the appellant.



Page 53, February 12, 1991, (Tapes 2-3), (NATIONAL AMUSEMENTS, INC. APPEAL, A 90-L-025, continued from Page 52)

Jane Gwinn, Zoning Administrator, stated that the issue on appeal is whether a proposed expansion of the use on the subject property was grandfathered from Zoning Ordinance Amendment 88-164, which increased the parking requirement for theaters. She stated that the property is currently developed with the Mount Vernon Multiplex Cinema, and the current development on the site was built pursuant to a site plan approved in 1985, the Non-Residential Use Permit was issued in 1986. She stated that in June 1988 the bonds were released, a Certificate of Completion was issued by her Office in August 1988, and in September 1988 the Board of Supervisors adopted the Zoning Ordinance Amendment 88-164, which among other things revised the parking requirements for theaters.

Ms. Gwinn stated that the previous standard had been 1 space per 4 seats plus 1 space per 2 employees and it was revised to be 0.3 spaces per seat. In conjunction with that amendment, Ms. Gwinn stated that the Board of Supervisors also approved the grandfather provision, which provided that uses and parking shown on site plans approved prior to September 20, 1988, would be grandfathered. In addition, revisions to such previously approved site plans could be approved provided a revision was not such that it would increase the parking requirement, and provided the bond had not been released for the site plan. The grandfather provision also included a provision which grandfathered site plans filed prior to September 20, 1988.

Ms. Gwinn stated that according to the Department of Environmental Management's (DEM) records, a site plan revision for the property was filed or submitted in June 1989 and was returned 10 days later noting that the bond had been released the preceding June, and a new site plan submission was required. Based on DEM's records, on October 3, 1989, a new site plan was submitted and based on that date, 13 months after the adoption of the Zoning Ordinance Amendment, Ms. Gwinn stated that she ruled that the proposed expansion was subject to the current parking requirements and was not grandfathered.

She stated that the appellant was contending that a site plan was submitted to the County on September 19, 1988, which was prior to the September 20, 1988 date specified in the grandfather provision. Ms. Gwinn stated that DEM's records do not reflect that this plan was submitted; however, the appellant had a copy of the transmittal slip, which was attachment 10 to the staff report. She stated that she did verify that the signature of the person who signed for the plat was a member of the DEM staff; however, the transmittal slip also says that it was a revision, and would not have been a proper submission since the bond had been released. Ms. Gwinn stated that under Paragraph 3 of Sect. 17-109, a site plan cannot be revised once the bond has been released. She noted that, even if the bond had not been released on the project, the revision would still not have been covered by the grandfather provision, as the revision concerned adding two theaters and an additional 434 seats, which increased the parking requirement. Ms. Gwinn stated that type of revision was not included in the grandfather provision for the Amendment. She stated that it appeared that the appellant was arguing that the plan that was submitted in September 1988 should be deemed by the Board to have been a new site plan. Ms. Gwinn stated that was not what was filed, the transmittal slip says revision, the County does not have a copy of the September 1988 submission; therefore, she had no way of knowing whether or not the plan met all the requirements for a new site plan, but no fee was paid which is a requirement for the submission of a new site plan.

In closing, Ms. Gwinn stated that there is no basis on which to deem the plan to have been a new site plan and as a revision it was not properly filed; therefore, it was her position that the proposal to add seats and enlarge the project is subject to the current Zoning Ordinance.

In response to a question from Mrs. Thonen, Ms. Gwinn replied that based on what the appellant submitted to staff it appeared that someone in DEM did sign for a plat, but it was not entered in the DEM computer system. She stated that what she believed happened was that the plan may have been forwarded to the Water Authority and the Fire Marshal for review but staff does not have a copy.

Marianne Bundren, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, represented the appellant. She stated that the appellant is a national theater chain which has developed various theater complexes in the area, including Mount Vernon, one on Lee Highway, for which the Board of Supervisors recently approved two additional theaters, and the theater in the Reston Town Center. Ms. Bundren introduced Bob Roth, of John Meyer Consulting, National Amusements Engineer, and Jack Yonthank, with Metropolitan Associated Permit Services and Maps, the firm hired to process the plans through the County given the complicated procedure.

She stated that the appellant did not begin constructing indoor theaters in the area until the earlier 1980's, this being the first one developed. Ms. Bundren stated that when the appellant built the complex, they built fewer theaters than they might otherwise have built, because they were unsure of the market and they reserved the right later on to expand the theaters. She explained that the theater were built on a prior drive-in site and they disturbed the existing asphalt only where buildings or landscaping would be put in and simply retopped the asphalt and restriped the parking, which resulted in approximately 200 spaces in excess of what the Ordinance required. The appellant then began to operate the theaters, which met with great success, and decided to expand the theaters in 1988. She stated that a site plan was prepared and initially submitted to Plan Control Branch by Adena Patterson, a

Page <sup>154</sup> February 12, 1991, (Tapes 2-3), (NATIONAL AMUSEMENTS, INC. APPEAL, A 90-L-025, continued from Page <sup>153</sup>)

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planner in the law firm, in June 1989. At that time, the law firm received several comments from the Plan Control Branch regarding the cover sheet and other materials, including the fact that the plan ought to be revised to be deemed a revision as opposed to a new site plan because it was still under bond. Ms. Bundren stated that those revisions were made, and in the interim, a company by the name of Maps was hired to review the plans, and the plans were finally submitted on September 19, 1988, and that acceptance is before the Board. She stated that the plans were reviewed by the Water Authority and then forwarded to the Fire Marshal with another series of comments, including an exchange between Audrey Clark in Building Permits regarding the type of construction of the facility, which resulted in an upgrading. Ms. Bundren stated that the plans were then returned to the Water Authority as approved by the Fire Marshal for the Water Authority's approval and once both those agencies had approved the plans, they were then returned to the Site Review Branch. She stated that after 10 months, Site Review then noted that the bond had been released and the plan should be recharacterized as a site plan. Revisions were then made to the cover sheet to recharacterize the plan as a site plan and that was eventually filed and logged in to the DEM computer on October 3rd. Ms. Bundren argued that the October 3rd date should not be viewed in a vacuum, since that plan was the 6th or 7th resubmission of a plan that was submitted on September 19, 1988 and that had actually been in the works well before that. She argued that the plan is grandfathered and contained all the information outlined in Sect. 17-105 of the Ordinance and a checklist was submitted to the Board detailing all the information contained on the plat. Ms. Bundren stated that she believed that the appellant met the second criteria since the plan was submitted prior to the grandfathering date with all the required information and the appellant did diligently pursue their request. She stated that the appellant had every intent to build what was shown on the plans that were originally submitted and those plans as originally submitted never changed, which is the number of seats in the theater. Ms. Bundren stated that the only changes were done to address County comments generally regarding the width of travel lanes. Ms. Bundren stated that the appellant is still required to go to the Director, DEM, to get a parking study approved and prove to the Director that the excess parking that was originally constructed is not needed any longer or for the new addition.

In response to a question from Mr. Hamack, Ms. Bundren replied that the letter containing the information that the bond had been released to the business entity and it apparently took awhile for the information to filter down to the correct people.

Chairman DiGiulian called for speakers and there was no reply.

Ms. Gwinn agreed that it was a unfortunate occurrence and may well have been caused unintentionally by someone not being aware of the system or not realizing the transpiring of dates. She noted that the checklist that Ms. Bundren referenced was prepared by the appellant's engineer and although it may be checked off does not mean that the County was in agreement. Ms. Gwinn stated that she still did not believe that there was assurance that the September 1988 submission met all the requirements for a new site plan. She stated that perhaps the plan was forwarded to the Water Authority by Maps or by the appellant's engineer and if DEM had forwarded the plan it would have been logged in and perhaps someone would have been aware of the problem. Ms. Gwinn stated that she believed that there needs to be a concern about a precedent in terms of whether something that was submitted as a revision can be deemed a new site plan a couple of years later.

Mr. Kelley stated that it appeared that Ms. Gwinn was relying a lot on the plan not being entered into the DEM computer. Ms. Gwinn agreed and stated that she had discussed this with DEM and it had been explained that to be officially accepted by DEM it has to be entered into the system and it is logged in, date stamped, and cross checked. Mr. Kelley pointed out that he did not believe that it was an applicant's responsibility to make sure that the information is entered in the computer. Ms. Gwinn stated that she was not taking that position, but wondered if it had been logged in, perhaps it would have been caught earlier in the process.

Mrs. Thonen noted that at one time many applicants tried to "get the jump" on their plans by hand carrying them to the Water Authority and to the Fire Marshal and that could have been done without logging them into the system. Ms. Gwinn agreed and stated that is what she believed happened in this case.

Mrs. Thonen stated that the only thing that the Board could rule on was whether or not the use was grandfathered. She stated that she would agree with the appellant that there was sufficient parking.

In rebuttal, Ms. Bundren stated that the plan was submitted directly to DEM for a number to be assigned and then forwarded to the Water Authority and to the Fire Marshal. She stated that it was long enough ago that the process was different and the procedure now is that the appellant does forward copies to the other two agencies. Ms. Bundren stated that the first correspondence from John Meyer, after the plans were revised to meet the Water Authority's comments, was directed to DEM.

Chairman DiGiulian closed the public hearing.

Page 155, February 12, 1991, (Tapes 2-3), (NATIONAL AMUSEMENTS, INC. APPEAL, A 90-L-025, continued from Page 154)

Mr. Hammack stated that he had reviewed all the information supplied to the Board and it seemed that the appellant had made a mistake. He stated that perhaps the mistake was compounded by the County, but he had a difficult time in ruling against the County when the appellant did not provide its own engineer with the proper information. He stated that he believed that it was a new site plan, the bond had been released, the appellant had tried to file a plan erroneously, and that he did not believe that the appellant could try to "boot strap" it in as grandfathered. Mr. Hammack stated that the appellant had to show that the Zoning Administrator was clearly in error in her decision and the appellant had not done so. He then made a motion to uphold the Zoning Administrator in A 90-L-025. Mrs. Thonen seconded the motion.

Mr. Kelley stated that he could not agree with Mr. Hammack's motion as he believed that the transmittal sheet showed it all. Mr. Hammack stated that if the bond is released the appellant cannot come in with a revision, they have to submit a new plan. He stated that the appellant's attorney is no more sure of how the plans were forwarded to the Water Authority and the Fire Marshal than the Zoning Administrator, and the burden of proof is on the appellant and he was not going to speculate. Mrs. Thonen stated that they perhaps did submit a plan, but it was a revision and it had to be a new site plan. Mr. Kelley told Mr. Hammack that he was very convincing.

Chairman DiGiulian stated that all the appellant had to do was make a few changes on the transmittal letter.

Following further discussion, the motion carried by a vote of 5-0-1 with Mr. Pammel abstaining.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 155, February 12, 1991, (Tape 3), Scheduled case of:

11:15 A.M. AIRSTON CORPORATION OF VIRGINIA APPEAL, A 90-C-022, appeal of the Zoning Administrator's determination that a freestanding sign erected on subject property is in violation of Par. 9 of Sect. 2-302 and therefore must be removed on approx. 74,783 s.f. located at the intersection of West Ox Rd. and Centreville Rd., zoned R-1, C-5, Centreville District, Tax Map 25-1(1)18F. (DEFERRED FROM 1/17/91 AT APPLICANT'S REQUEST)

Mrs. Thonen made a motion to allow the appellant to withdraw the above-referenced appeal. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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Page 155, February 12, 1991, (Tape 3), Scheduled case of:

Approval of Resolutions from February 5, 1991

Mrs. Thonen made a motion to approve the resolutions as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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Page 155, February 12, 1991, (Tape 3), Scheduled case of:

Approval of December 20, 1990 Minutes

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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Page 155, February 12, 1991, (Tape 3), Scheduled case of:

Waiver of the 12-Month Limitation for Claude and Jacqueline Greger  
SP 90-A-071

Mrs. Thonen made a motion to waive the 12-month time limitation for filing a new application. Mr. Hammack seconded the motion for purposes of discussion. The motion failed by a vote of 1-5 with Mrs. Thonen voting aye; Chairman DiGiulian, Mr. Hammack, Mr. Kelley, Mr. Pammel and Mr. Ribble voting nay. Mrs. Harris was absent from the meeting.

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Page 156, February 12, 1991, (Tape 3), Scheduled case of:

Request in Change of Name from Reston Area Child Care Center, SP 89-C-028  
to Robert E. Simon Jr. Child Care Center

Mr. Hammack moved to grant the applicant's request. Mr. Pammel seconded the motion. The motion carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/9/91

APPROVED: 4/18/91

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 21, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hennack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 57, February 21, 1991, (Tape 1), Scheduled case of:

9:00 A.M. JOHN W. EDGEWOND, VC 90-P-099, appl. under Sect. 18-401 of the zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 1 having a lot width of 115.0 ft. and proposed Lot 2 having a lot width of 40.0 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 2.8311 acres located at 11256 Waples Mill Rd., zoned R-1, Providence District, Tax Map 46-4((1))27. (DEF. FROM 11/29/90 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin, the applicant's agent, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the site consists of 2.8 acres, is presently developed with a single family detached dwelling; is located on the east side of Waples Mill Road, slightly north of I-66; is adjacent to the Fairfax Farms subdivision; is zoned R-1; and is planned for residential development at a density of .1-.2 dwelling units per acre.

Mr. Riegle stated that the applicant proposes to subdivide the existing 2.8 acre parcel into two new lots, with proposed Lot 1 having a lot width of 115 feet and proposed Lot 2 having a lot width of 40 feet; whereas, in the R-1 district, a minimum lot width of 150 feet is required. The applicant, therefore, was requesting a variance of 35 feet for proposed Lot 1 and a variance of 110 feet for proposed Lot 2. Mr. Riegle said that the proposed subdivision would yield a density of .7 dwelling units per acre, which significantly exceeds the density recommendations of the Comprehensive Plan.

Mr. Riegle referred to the analysis on page 7 of the staff report, stating that it was staff's opinion that the application did not meet all of the nine required standards; the physical hardship required by standards 2, 5 and 6 had not been demonstrated; and any physical hardship appears to be shared by numerous other lots in the vicinity. He said that review of the surrounding residential development indicated that the size and shape of the subject property is generally consistent with that found in the adjacent Fairfax Farms development.

Mr. Riegle said that it is staff's concern that the apparent lack of an extraordinary circumstance or physical hardship could result in arguments presented in support of this application being applied to other similarly shaped lots in the area, and that this situation created potential for the application to set a precedent for similar lot width variances which could result in property other being developed at a density not possible within the lot width requirements of the R-1 District.

Mr. Riegle pointed out that the proposed density is more than three times that recommended by the Comprehensive Plan, and staff believed that this was contrary to public interest; therefore, variance standard 9 was not satisfied.

Mr. Riegle noted one point of clarification for the record: Reference was made in the staff report to the effect that there were no other lot width variances granted along Waples Mill Road; however, there was one granted by the Board of Zoning Appeals in 1979 for a lot width variance on parcel 18 to the north and copies of the plat, the minutes, and the resolution were available, if the Board was interested in reviewing them.

Keith C. Martin, Esquire, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, represented the applicant and presented the statement of justification, pointing out that the property is almost five times deeper than it is wide and that the applicant was requesting two variances because of the 115 foot width of Lot 1 and 40 foot width of Lot 2. He said that the lots comprise over 1-1/3 acres and meet all of the zoning Ordinances of the R-1 District. Mr. Martin stated that the application had previously been deferred and staff proposed a development condition for a combined driveway instead of the originally proposed two driveways off Waples Mill Road. Mr. Martin stated that the applicant complied with staff's request and had an easement across Lot 1, serving Lot 2, and using the existing driveway entrance on Waples Mill Road.

Mr. Martin stated that this request was similar to one which staff had referenced: VC 82-P-219, on Lot 18, just across Waples Mill Road. He said that variance was for a 140 lot width and a 10 foot lot width on 2.75 acres and almost identical in shape. Mr. Martin believed that the application met all of the standards for a variance and that strict application of the Ordinance would cause undue hardship. He said that, when Mr. Edgewond bought this property, it was his intention to share it with his brother, this being the reason for the application for the variance. Mr. Martin believed that denial of the variance would deny reasonable use of the property.

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Mrs. Thonen referred to the photos submitted and said the house looked new, which Mr. Martin confirmed. Mrs. Thonen asked if the applicant bought this house for speculation. Mr. Martin said no; when the applicant bought the house, he saw an opportunity for future subdivision, with a second lot for his brother. Mrs. Thonen remarked that it appeared that the house did not appear to have been finished. Mr. Martin said that the applicant had finished the house and had done a lot of clearing and landscaping, with a huge berm along the Route 66 frontage, providing a sound barrier and visual barrier. Mrs. Thonen asked to see a photo of this and Mr. Martin provided one.

Mr. Pammel asked Mr. Martin if he had a Health Department test on the ability to provide additional on-site sewage disposal. Mr. Martin said that the perk had been looked at by the Health Department and said that the additional house or lot would perk.

Jack Shafron, Route 2, Box 97, Leesburg, Virginia, said he was a property owner on Waples Mill Road, just down the street from the subject site, and that he was in support of the applicant's request, complimenting the applicant on the job he had done with the property.

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

Mrs. Thonen made a motion to deny VC 90-P-099, for the reasons set forth in the Resolution.

Mr. Martin requested a waiver of the twelve-month restriction on rehearing an application, the granting of which is also outlined in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 90-P-099 by JOHN W. EDGEWORTH, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 1 having a lot width of 115.0 ft. and proposed Lot 2 having a lot width of 40.0 ft., on property located at 11256 Waples Mill Rd., Tax Map Reference 46-4((1))27, 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, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.8311 acres.
4. Raising the density on this lot brings up a number of issues previously not addressed.
5. Headwater is a concern.
6. The proposed use should comply more with what is built at Fairfax Farms, which it does not and, thus, impacts more upon the community.
7. The application does not meet the standards for a variance.
8. The transportation outlook is not good.
9. Building two lots on this property is not good.
10. There is no existing condition not shared by everyone else and there is no 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 so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

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

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Mrs. Thonen made a motion to waive the twelve-month limitation on rehearing. Mr. Ribble seconded the motion, which carried by a vote of 4-2 with Mrs. Harris and Mr. Pamael voting nay. Mr. Hammack was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991.

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Page 159, February 21, 1991, (Tape 1), Scheduled case of:

9:15 A.M. FAIRFAX COVENANT CHURCH, SPA 87-S-075-2, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for church and related facilities to allow addition of land area, reconfiguration of parking area and building footprint, and deletion of landscaping on approx. 16.9103 acres located on Ox Road, zoned R-C and WS, Springfield District, Tax Map 68-3((1))pt. 6 and 68-1((1))pt. 20. (OTH GRANTED. DEP. FROM 11/29/90 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Reifsnnyder, the applicant's agent, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the site is located on the western side of Route 123; is zoned R-C, WSP0D; and is planned for residential development in the range of .1 to .2 dwelling units per acre.

Mr. Riegle said that the surrounding uses include the Country Club of Fairfax to the north, the Bo Rin Sa Buddhist Temple to the east, and single family detached dwellings along the remaining property lines.

Mr. Riegle said that the property is presently undeveloped; however, the site is the subject of an approved special permit use which the BZA approved in 1987 to allow construction of a 1200 seat church accompanied by 305 parking spaces.

Mr. Riegle said that, in general, the property is heavily wooded and an area in the north central portion of the site has been determined to be an Environmental Quality Corridor by the Environmental and Heritage Resources Branch of the Office of Comprehensive Planning.

Mr. Riegle said that the application is an amendment to the 1987 special permit approval, to allow four proposed minor changes to the design of the building and the site: (1) Changes to the footprint involved the addition of a notch and a canopy, having no effect on the Floor Area Ratio which remains .041. (2) The reconfiguration of the parking areas, since the originally approved parking area extended closer to the southern and western lot lines and the current application essentially pulls the spaces closer to the building. The number of spaces is not proposed to increase from that originally approved. (3) The addition of land in the northern portion of the property, adjacent to the Country Club of Fairfax, is designed to allow the septic fields to be relocated from the southern portion of the site. (4) The requested screening modification is along the lot line which abuts Lot 6A, where a row of supplemental plantings were originally proposed, and the applicant wishes to modify in favor of preserving natural vegetation.

Page 160, February 21, 1991, (Tape 1), (FAIRFAX COVENANT CHURCH, SPA 87-S-075-2, continued from Page 159)

Mr. Riegle said that, at the time of the initial approval of the special permit in 1987, Lot 6A was developed residentially; whereas, Lot 6A is now used as a place of worship by the Bo Rim Sa Buddhism Corporation and no transitional screening is required by the Zoning Ordinance along the lot lines abutting the temple.

Mr. Riegle said that the changes to the building do not affect the overall intensity at which the property is developed, nor do they affect the previously-imposed requirements relating to providing a minimum of Transitional Screening 2 to be provided along the lot lines which abut residential development.

Mr. Riegle said that the Comprehensive Plan states that, in the R-C district, preserving land in a natural undeveloped state is a primary planning objective to preserve open space necessary for the use to be in harmony with recommendations of the Plan and allow open space to compliment the structural Best Management Practices. He said that, in response to the recommendation, the applicant has agreed to commit to the limits of clearing and grading shown on the plat.

Mr. Riegle stated that, with the implementation of the Proposed Development Conditions, staff had no outstanding issues and concluded that the application met the applicable standards for approval.

The applicant's agent, Sarah Reifsnnyder, Esquire, with the law firm of Blankingship & Keith, 4020 University Drive, Fairfax, Virginia, stated that Mr. Riegle had done such a good job and she had very little to say. She said that there is no proposed intensification, there is no proposed increase in the number of trees, the number of parking spaces, or decrease in the area. She said that the main driving force of the application is to add the additional one-half acre to the special permit property for the septic fields.

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

Mr. Riegle made a point of clarification relating to the Development Condition concerning the number of proposed parking spaces, correcting the number from 306 to 305, in keeping with the original approval.

Mrs. Harris made a motion to grant SPA 87-S-075-2, subject to the revised Proposed Development Conditions dated February 12, 1991, for the reasons set forth in the Resolution. Mrs. Harris noted the change in Development Condition 6, changing the number of parking spaces from 306 to 305.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-075-2 by FAIRFAX COVENANT CHURCH, under Section 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for church and related facilities to allow addition of land area, reconfiguration of parking area and building footprint, and deletion of landscaping, on property located on Ox Road, Tax Map Reference 68-3((1))pt. 6 and 68-1((1))pt. 20, 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 February 21, 1991; and

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

1. The applicant is the owner of the land
2. The present zoning is R-C and MS.
3. The area of the lot is 16.9103 acres.
4. The proposed plan is much better than the previous one.
5. The proposed parking will be much further away from the southern lot line.
6. The circulation of traffic will be better.
7. The change in the footprint is minimal.
8. The intensity has not been changed.
9. The number of parking places is the same.
10. Trying to work within this heavily wooded area is commendable on the part of 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 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 by Bengtson, DeBell, Elkin & Titus, Ltd. dated October 18, 1989, last revision dated December 19, 1990, printed January 3, 1991, 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 following transportation improvements shall be implemented:
  - Temporary ancillary easements as necessary for public street purposes shall be provided along the site frontage of Ox Road.
  - Site access shall be provided from a single entrance at the intersection of Ox Road and Zion Drive.
  - Interparcel access shall be provided to adjoining Lot 6A.
  - The right turn lane from Ox Road into the site shown on the plat shall be provided in accordance with VDOT specifications.
  - The traffic signal at the intersection of Ox Road and Zion Drive shall be improved from a three (3) way signal to a four (4) way signal at the applicant's expense.
  - An intersection analysis showing the adequacy of the intersection of Ox Road and Zion Drive to handle the Special Permit use shall be provided before the site plan is approved. The recommendations of this analysis, if any, shall be implemented at the applicant's expense as may be deemed appropriate by the Department of Environmental Management (DEM) in consultation with the County Office of Transportation and the Virginia Department of Transportation (VDOT).
6. There shall be a maximum of 1200 seats in the main place of worship and a corresponding minimum of 300 parking spaces and a maximum of 305 parking spaces including all required handicap parking spaces. All parking for this facility shall be on site.
7. There shall be no free standing spire on site.
8. Any sign or other method of identification shall conform with Article 12 of the zoning Ordinance.
9. The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat. There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs. There shall be no structures located in the EQC area except for those allowed on page I/C - 74 of the section titled "Open Space" in the Environmental Recommendations of the Comprehensive Plan.
10. Stormwater Best Management Practices shall be provided as determined by DEM. If a structural detention pond is required, the stormwater management best management practice pond shall be generally located as shown on the Plat. This pond shall not be located in the area of the site designated as an EQC and shall not be located closer than 38 feet from the western lot line. Additional stormwater detention measures may be required by the Director, DEM at the time of site plan review.
11. No expansion of the main place of worship either temporary or permanent may occur without approval by the BZA of an amendment to the approved Special Permit.
12. In order to minimize adverse impacts on the surrounding residential communities, hours of operation of activities and meetings or services shall be limited to those associated with normal church activities.

13. Limits of clearing and grading shall be as shown on the special permit plat. Any grading plans shall conform to the limits of clearing and grading shown on the special permit plat. Transitional Screening shall be provided as depicted on the special permit plat with the following modifications and additions:

A minimum of Transitional Screening 2 shall be provided along the western and southern lot lines. Existing vegetation may be used to fulfill transitional screening requirements provided that this vegetation is supplemented as necessary to provide a density and type of plantings equivalent to Transitional Screening 2 as determined by the County Arborist.

Along the eastern lot line existing vegetation shall be preserved as shown on the plat. Supplemental plantings shall be provided at the density shown on the plat. Species of all supplemental plantings shall be reviewed and approved by the County Arborist at the time of site plan review.

All additional landscaping in the parking areas and along the driveway and travel ways shall be provided at the density shown on the special permit plat. The species of trees shall be by the County Arborist at the time of site plan review.

14. The Barrier requirement shall be waived.
15. The poles for outdoor lighting shall not exceed twelve (12) feet in height and shall be located, oriented, and shielded so as to prevent light or glare from projecting onto adjacent properties.
16. Any conferences on site shall not exceed the seating capacity of 1200 without prior BZA approval.
17. Public water shall be supplied to the site at no cost to Fairfax County.
18. Approval of a septic system must be granted in writing by the Health Department prior to the issuance of any building permit. Approval of this special permit use shall not be construed to imply approval of any septic system nor obligate the county to provide public sewer to the site.
19. The forty (40) foot ingress-egress easement shown on the plat shall be recorded in the land records as a permanent easement in the deed of the property. Any revocation of this access easement shall immediately render SPA 87-S-075-1 null and void.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 162, February 21, 1991, (Tape 1), Scheduled case of:

9:30 A.M. HIE C. KIM & WON KIL PAIK, TRUSTEES OF THE VIRGINIA PRESBYTERIAN CHURCH, SP 90-L-050, appl. under Sects. 3-103 and 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 2.452 acres located at 6021 Franconia Rd., zoned R-1, R-2, and R-C, Lee District, Tax map 81-4(2)5, 5A, 6A, 7. (DEF. FROM 10/18/90 AT APPLICANT'S REQUEST. DEF. FROM 11/29/90 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lawson, the applicant's agent, replied that it was.

Denise James, Staff Coordinator, presented the staff report, stating that the subject property is located on the south side of Franconia Road, between Higham Drive and Beulah

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Street, and the 2.45 acre parcel is subject to split zoning with the northern 1.24 acres zoned R-2 and the southern 1.21 acres zoned R-1. Ms. James said that the surrounding properties are developed with a variety of residential and non-residential uses, and there are a number of other churches along this section of Franconia Road. She said that the Comprehensive Plan indicates that the site is planned for residential use at two to three dwelling units per acre and cites the importance of retaining environmental amenities on developed or developing sites; specifically, the amenity of the County's tree cover.

Ms. James said that the applicants were requesting approval of a special permit to allow construction of a church and related parking spaces on the site. She said that the present application, after several revisions, now proposed a church sanctuary containing 250 seats and a total of 100 parking spaces. Ms. James said that the church building will contain a total of 6,125 square feet with an actual building height of 26 feet, a steeple height of 50 feet, and an overall proposed Floor Area Ratio of 0.06. She said that the applicants proposed primarily Sunday use only, with Wednesday evening Bible study. Ms. James stated that the proposed number of employees is one minister and nine volunteer teachers.

Ms. James said that Transitional Screening 1 is proposed around the eastern, southern and western lot lines, along with a berm on the eastern and southern lot lines, with Transitional Screening 1 modified along the front lot line to accommodate dedication of right-of-way, and with a board on board fence provided along a portion of the southern lot line. Ms. James said that stormwater management would be achieved by conveying runoff through an underground system; however, space is reserved for a dry pond if it is determined necessary by Department of Environmental Management (DEM).

Ms. James stated that the application had been heard by the Planning Commission on November 29, 1990, at which time the applicants submitted a revised plat in response to community concerns for adequate parking on the site. The Planning Commission deferred decision at that time in order for staff to evaluate the applicants' proposal to provide additional parking far in excess of the requirement, which resulted in the elimination of a large central island of trees.

Ms. James stated that the applicants' revised plan was addressed in the Addendum to the staff report dated January 9, 1991. She said that, on January 24, 1991, the Planning Commission recommended approval of the application, subject to the Proposed Development Conditions, also dated January 9, 1991 and attached to the Addendum.

Ms. James stated that there are presently no outstanding issues in connection with the application; it remains in conformance with the Comprehensive Plan and applicable Zoning Ordinance provisions; and it was staff's understanding that the applicants understand and agree to all the Proposed Development Conditions. She said that the revised Conditions reflect new conditions related to tree preservation and incorporate those conditions proposed by the applicant in response to community concerns. Ms. James said that staff continued to recommend approval of this application, subject to the Proposed Development Conditions dated January 9, 1991.

Mrs. Thonen asked Ms. James if the applicants had agreed to all of the conditions that the Lee District Land Use Task Force had asked for. Ms. James stated that it was her understanding that they had.

The applicants' representative, William B. Lawson, Jr., 4141 N. Henderson Road, Plaza Suite 5, Arlington, Virginia, confirmed agreement with all conditions set forth, stating that the applicants were before the Board with the endorsement of staff, the neighbors, the Lee District Land Use Task Force, and the Fairfax County Planning Commission. Mr. Lawson chronicled the path of the application up to the point of the meeting, stating that he believed the plan before the Board had been well-thought-out and reflected an understanding that the applicants had negotiated a few problems along the way, such as a Lee District recommendation of denial, which subsequently was reversed through negotiation. Mr. Lawson referred to community concern for additional parking and described how the applicants solved the problem through a combination of reducing their membership and providing additional parking. Mr. Lawson said that many problems were solved by working with Ms. James, who he said did a wonderful job, and he praised the entire staff for their willingness to work with the applicants. In addressing community concerns, he said that the applicants had agreed to provide fencing and a berm; they also agreed to add parking, pipe storm drainage runoff, and build a deceleration left turn lane. Mr. Lawson praised the willingness of the neighbors to work with the applicants. He praised the architects and the engineers for their efforts; he praised Planning Commissioner Carl Sell, and the members of the Lee District Task Force for volunteering their time.

Mr. Lawson presented a typed statement to the Clerk for the record, signed by the applicants, to the effect that they acknowledged and agreed "...to be bound by the Development Conditions dated January 9, 1991,...."

Mrs. Harris asked Mr. Lawson if the applicants had any plans for foundation plantings between the concrete walk and the church and he deferred to Ms. James, who cited a Development Condition covering this issue.

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Jacquelyn R. Donnelly, 6066 Estates Drive, Alexandria, Virginia, introduced herself as a resident of Fairfax County and referred to "an old home on the property" which she said she understood was going to be destroyed. She said she had spoken with the attorney and the architect and wanted to express, for the record, her intention to pursue the possibility of moving the subject building to an adjacent property before the new church is built.

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

Mr. Ribble made a motion to grant SP 90-L-050, subject to the Proposed Development Conditions dated January 9, 1991, stating that the applicants worked diligently with staff to smooth out the details of the application.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-050 by HIE C. KIM & WON KIL PAIK, TRUSTEES OF THE VIRGINIA PRESBYTERIAN CHURCH, under Sections 3-103 and 3-203 of the Zoning Ordinance to allow church and related facilities, on property located at 6021 Franconia Rd., Tax Map Reference 81-4(2)5, 5A, 6A, 7, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1, R-2, and HC.
3. The area of the lot is 2.452 acres.
4. The applicants worked diligently with staff to smooth out the details of the application.

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

THAT the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 prepared by Huntley, Myce and Associates, P.C., dated July, 1990 (revised January, 1991) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The seating capacity in the main worship area shall be a maximum of two hundred and fifty (250) seats. The number of parking spaces provided shall be one hundred (100). All parking shall be on site.
6. Transitional Screening One shall be provided around the eastern, southern and western lot lines. A berm, a minimum of four (4) feet and a maximum of five (5) feet in height shall be placed within twenty-five (25) feet of the eastern and southern boundaries of the site (within the transitional screening yard) as shown on the special permit plat. Transitional Screening 1 shall be modified along the site frontage on Franconia Road in favor of the landscaping plan dated July, 1990, (revised January, 1991) submitted with the application and subject to approval of

the County Arborist. In order to soften the impact of a non-residential building and blend the development in with the surrounding residential area, the landscape plan submitted for review and approval by the County Arborist shall depict a combination of hedges, flowering and evergreen shrubs and ornamental tree plantings along the site frontage and building foundation landscape plantings to the satisfaction and approval of the County Arborist. Landscaping and screening plant materials that die shall be replaced as soon as possible, depending upon plant availability and weather permitting.

7. A tree preservation plan for safeguarding and preserving the large mature trees on the property to the greatest extent possible shall be provided to the County Arborist for approval at the time of site plan submission. The tree preservation plan shall also include revised limits of clearing and grading in order to achieve maximum preservation of existing trees on the site. The tree preservation plan shall include the trees in the area of the proposed dry pond which shall be preserved to the extent deemed feasible by the County Arborist. Minor changes to the location or size of parking lot islands shall be permitted only to accommodate tree preservation and only at the request of the County Arborist. This condition shall not preclude the removal of those trees which are not appropriate for preservation as determined by the County Arborist.
8. Barriers shall be provided as shown on the special permit plat dated July, 1990 (revised January, 1991). The barrier requirement along the northern lot line shall be waived.
9. Stormwater management shall be provided as determined by DEM at the time of site plan review and all findings and recommendations for control of stormwater management shall be implemented to the satisfaction and approval of DEM. Subject to the acquisition of appropriate easements and subject to the approval of the Department of Public Works, the stormwater run-off from the eastern portion of the site shall be conveyed by an underground system from the southern lot line to the existing storm sewer adjacent to and serving Kathmoor Drive. If the area reserved for a stormwater management dry pond is not required for the construction of a dry pond by DEM, that area shown on the special permit plan shall remain in open space.
10. The existing trail along the site frontage on Franconia Road, if disturbed, shall be replaced with a trail and public access easement as determined by the Director, DEM, at the time of site plan approval in accordance with the Countywide Trails Plan and Article 17.
11. Right-of-way to seventy (70) feet from the existing centerline of Franconia Road shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to fifteen (15) feet behind the right-of-way dedication.
12. Future interparcel access to Parcel 4 to the immediate west, presently owned by Franconia United Methodist Church, shall be provided with an appropriate public access easement at such time as Franconia Road is improved and the median break opposite the existing entrance to the Franconia Methodist Church is closed.
13. The church steeple shall not exceed fifty (50) feet in height from the average ground elevation around the perimeter of the church.
14. Parking lot lighting, if installed, shall be of the low-intensity type on standards not to exceed twelve (12) feet in height and shall be shielded in order to prevent light or glare from projecting onto adjacent residential properties.
15. Subject to approval by the Virginia Department of Transportation (VDOT), a left turn deceleration lane shall be provided on Franconia Road at the entrance to the site and shall be constructed to VDOT standards.
16. In the event that more than one worship service is held on Sunday, there shall be a minimum of one-half hour between the conclusion of the earlier service and the commencement of the later service.
17. The Church shall take appropriate steps to ensure that the parking lot adequately provides for necessary parking and that church parking does not spill over into the surrounding neighborhood streets. If a problem is detected, then the Church shall implement one, or a combination of the following steps:
  - a. Car pooling;
  - b. Announcements by the Church Pastor requesting car pooling after a problem is detected or for special events or services for which a large turn out is expected;

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- c. Staggering of church services, or holding more than one Easter and Christmas service;
- d. Arranging for parking at an appropriate alternate facility and providing transportation from such facility to the Church;
- e. Any other measures necessary to prevent parking from spilling over into the residential neighborhood.

The overseeing of this parking program shall be the responsibility of the Church Pastor or Church Trustees who will coordinate with and work with the concerned/interested neighbors.

- 18. Trees which are designated to be preserved by the County Arborist under the Tree Preservation Plan and which are damaged or destroyed during the construction process shall be replaced by trees of a similar species at 3.5 inches in caliper as determined by the County Arborist.
- 19. The following minimum measures for tree preservation shall be implemented prior to any preliminary clearing and grading on the site subject to the review and approval of the County Arborist:

All roots shall be cleanly cut at the limits of clearing using equipment such as a cable puller or rock saw in order to minimized damage to root zones.

Four (4) foot high chain link tree protection fencing shall be utilized at limits of clearing prior to any site development.

Root zones shall be properly fertilized in late fall or early spring.

Root zones areas shall be mulched where applicable as determined by 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, 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 which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 166, February 21, 1991, (Tape 1), Scheduled case of:

- 9:45 A.M. DUNCAN TURNBULL & DEBORAH A. BERGER, SP 90-L-077, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of side yard requirement based on error in building location to allow existing dwelling to remain 13.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 15,004 s.f. located at 7020 Ridge Rd., zoned R-2, Lee District, Tax Map 92-2((19))135A. (CONCURRENT WITH VC 90-L-118) (DEF. FROM 1/10/91 IN ORDER FOR THE APPLICANTS TO MEET THE NOTICE REQUIREMENT)
- 9:45 A.M. DUNCAN TURNBULL AND DEBORAH A. BERGER, VC 90-L-118, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 13.0 ft. from side lot line and addition 24.7 ft. from front lot line (15 ft. min. side yard and 35 ft. min. front yard required by Sect. 3-207) on approx. 15,004 s.f. located at 7020 Ridge Road, zoned R-2, Lee District, Tax Map 92-2((19))135A. (CONCURRENT WITH SP 90-L-077) (DEF. FROM 1/10/91 IN ORDER FOR THE APPLICANTS TO MEET THE NOTICE REQUIREMENT)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Berger replied that it was.

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Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located at the intersection of Spring Drive and Ridge Road, west of Route 1, contains 15,004 square feet; is zoned R-2; and is developed with a single family detached dwelling.

Ms. Greenlief said that the applicants were requesting approval of a special permit based on error in building location to allow the existing dwelling to remain 13 feet from the side lot line. She said that the existing dwelling consists of the main part of the dwelling constructed in 1951 and an addition constructed sometime between 1977 and 1980 by a prior owner. Ms. Greenlief said that the plat associated with the building permit for the 1951 structure showed a side yard of 13.0 feet, but staff could not find any evidence that the requirement was not 25 feet at that time; therefore, the application was changed to include the original dwelling, along with the addition. Ms. Greenlief said that the applicants were requesting a modification of 12.0 feet to the 1951 side yard requirement of 25 feet. She said that the addition was constructed sometime between 1977 and 1980, when the requirement was 15.0 feet; therefore, the applicants were requesting a modification of 2.0 feet to the requirement for the addition.

Ms. Greenlief said that the applicants also were requesting a variance to the minimum side and front yard requirements to allow a second story to be added to the dwelling and to allow a front porch to be added. She said that the second story would be 13 feet from the side lot line, since the original dwelling is 13 feet away; thus, necessitating a variance of 2.0 feet. Ms. Greenlief said that the front porch would be 24.7 feet from the front lot line, where the minimum requirement is 35 feet; thus, the applicants were requesting a variance of 10.3 feet to the minimum front yard requirement.

Applicant Deborah Berger, 7020 Ridge Road, Alexandria, Virginia, said that they would like to make substantial improvements to their house. She described the structure and stated that, when their daughter was born three years ago, they realized they needed more space; and that they needed more space for the additional reason that they planned to have her elderly parents move in with them. Ms. Berger stated that the proposed second story would not change the footprint of the house.

Addressing the special permit application, Ms. Berger could not explain the reason why the house was built in violation of yard requirements forty years ago for the obvious reason of not having been involved at that time. She said she believed that having to comply with the present setback requirements would obviously entail the hardship of moving the house; thus, their request for the special permit. Ms. Berger could only guess about who had built the addition, based on the reator's input and testimony from the neighbors.

Ms. Berger expressed the need for a variance to accommodate the growing needs of her family by adding a second story, requiring a variance of 2.0 feet to the minimum side yard requirement on the south side of the property. She said that the sloping topography of the lot and the fact that the only access to the house was located in the area of the proposed addition precluded them from building in any other location. Ms. Berger cited other applications in the area which had been approved and stated that all of the neighbors who had been informed of their plans were supportive. She also stated that there were other homes in the neighborhood with second story additions; specifically, Lot 134 had a second story added in 1988. Regarding the construction of a porch, Ms. Berger presented some photographs to the Board to show that the porch would not obstruct the view of motorists but would enhance the design of the house. Ms. Berger went on to describe other advantages which she attributed to the variance.

Mrs. Harris asked where the east concrete driveway would come into the present house and Ms. Berger answered her by pointing to the viewgraph. Ms. Berger answered other questions from the Board by using the viewgraph, photographs, and the plat.

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

Mr. Kelley made a motion to grant SP 90-L-078, subject to the Proposed Development Conditions contained in the staff report dated December 31, 1990.

Mr. Kelley praised the applicant on her presentation and for touching upon all the elements and points in which the Board was interested.

Mr. Kelley made a motion to grant VC 90-L-118, subject to the Proposed Development Conditions contained in the staff report dated December 31, 1990, because of the exceptional narrowness of the lot and the exceptional topographical conditions.

Mrs. Harris stated that she believed part of the variance was justifiable, but believed the justification for a front yard variance for the porch was purely emotional and that too much of a variance was being requested. Mr. Kelley disagreed, stating that the applicant's presentation on the way the addition would look, and the fact that there were other similar situations in the neighborhood, supported the applicant's request.

Mrs. Thonen stated that she did not feel there was a hardship issue, although she had listened very carefully, and that there was a possibility of overcrowding on the property which might create a safety hazard because of the winding road. Mr. Kelley stated that he believed that the applicant pointed out in the photographs that there would not be a safety

hazard and he believed there would not be a safety hazard. Mr. Kelley stated that he did not believe the dwelling would look very good without the porch. Mr. Ribble stated that he believed the porch fit in architecturally and would be harmonious with the design.

Mr. Pammel stated that this situation was unusual because it concerned a corner lot which normally is larger when subdivided to provide for the two frontages; however, in this case, it is clear from looking at the plat that the lot is exceptionally deep and narrow and does not have the typical configuration of a corner lot and, based upon that, he would support the motion that this was an unusual situation.

Chairman DiGiulian said he did not believe the lot was even typical of the interior lots in the subdivision; and that it appeared that there were instances of two lots developed with one house; so the lot appeared to be one of the narrower lots in the subdivision. Mr. Ribble said he believed the unusual situation was compounded by the position of the house on the lot. Mrs. Thonen said that she was now convinced that there was a hardship factor.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-077 by DUNCAN TURNBULL & DEBORAH A. BERGER, under Section 8-914 of the Zoning Ordinance to allow reduction of side yard requirement based on error in building location to allow existing dwelling to remain 13.0 ft. from side lot line, on property located at 7020 Ridge Rd., Tax Map Reference 92-2((19))135A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1991; and

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

The Board has determined that:

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

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

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

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and not transferable to other land.
2. A building permit shall be obtained for the addition if determined necessary by the Department of Environmental Management after an inspection of the addition.



Page <sup>169</sup> February 21, 1991, (Tape 1), (DUNCAN TURNBULL & DEBORAH A. BERGER, SP 90-L-077 and VC 90-L-118, continued from Page <sup>168</sup>)

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-118 by DUNCAN TURNBULL & DEBORAH A. BERGER, under Section 18-401 of the Zoning Ordinance to allow addition 13.0 ft. from side lot line and addition 24.7 ft. from front lot line, on property located at 7020 Ridge Rd., Tax Map Reference 92-2((19))135A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,004 square feet.
4. The lot has exceptional narrowness and exceptional topography.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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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Page 170, February 21, 1991, (Tape 1), (DUNCAN TURNBULL & DEBORAH A. BERGER, SP 90-L-077 and VC 90-L-118, continued from Page 169)

1. This variance is approved for the location and the specified structure shown on the plat submitted with this application and 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.

Mr. Ribble seconded the motion which carried by a vote of 5-1; Mrs. Harris voted nay. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 170, February 21, 1991, (Tape 1), Scheduled case of:

10:00 A.M. GEORGE A. CHRISTENSEN & STEVEN G. KOTRCH, SP 90-A-087, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 0.71 ft. from rear lot line and 2.33 ft. from side lot line (12 ft. min. side yard and 11.7 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 10,504 s.f. located at 5302 Old Castle Lane, zoned R-3, Annandale District, Tax Map 70-4(8)(12)7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Messrs. Kotrch and Christensen replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and stated that the property is located southwest of the intersection of Queensberry Avenue and Drayton Lane. She said that the property is zoned R-3, is developed with a single family detached dwelling, and is surrounded by lots also zoned R-3 and developed with single family detached dwellings.

Ms. Dickey stated that, based on the shed's height of 11.0 feet, the Zoning Ordinance requires a minimum rear yard of 11.0 feet and a modification of 10.29 feet was, therefore, being requested. She added that the Zoning Ordinance requires a minimum side yard of 12.0 feet and a modification of 9.67 feet was also being requested. Ms. Dickey said that, with the implementation of the proposed development conditions, it was staff's judgment that the request met the applicable standards for approval. She noted that the conditions require the installation of columnar-style plantings within 6 months of BZA approval and preclude the shed's stoop from being used for storage.

In regard to surrounding uses, Ms. Dickey stated that the dwelling on adjacent Lot 6 is approximately 12.8 feet from the shared side lot line.

Ms. Dickey said that there was one change in Development Condition 2, amending the time limit for the plantings installation to six months because staff believed that six months was sufficient time to comply with the Condition.

Mrs. Harris stated that there appeared to be two other sheds on neighboring lots which seemed to be closer than the subject shed and asked if those property owners had also received notices of violation. Ms. Dickey stated that there were actually three sheds in close proximity, and the shed closest to the property line was on adjacent Lot 6; however, because of its size and height, it was not in violation. She stated that the reason the subject shed was in violation was that it exceeded the eight-foot height allowed without obtaining a variance.

Mrs. Harris asked about the shed on Lot 21 and Ms. Dickey stated that she had no information about that shed having received notice of violation.

Applicant George A. Christensen, 5302 Old Castle Lane, Springfield, Virginia, presented the statement of justification, stating that the shed was constructed in 1984 and that the applicants were unaware until early this year that it was in violation. He stated that the topography of the lot precluded placing the shed elsewhere on the property, as well as the fact that there formerly was an apple tree which would have prevented the shed from being placed further away from the rear lot line. Mr. Christensen stated that the apple tree had been removed four years ago. He stated that he had letters of support from two adjacent neighbors who would be most impacted by the location of the shed.

Mr. Ribble asked the applicants if the shed was permanent and if it was on a concrete slab. Mr. Kotrch replied that it was not on a concrete slab, but had concrete posts.

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

Mrs. Thonen made a motion to deny SP 90-A-087 for the reasons set forth in the Resolution.

Mrs. Harris stated that she did not believe that the applicants could possibly screen the shed to the degree needed to alleviate its impact on neighboring property owners. She said that, now that the apple tree was gone, perhaps the applicants could move the shed to a more appropriate location, where it would not be in violation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-A-087 by GEORGE A. CHRISTENSEN & STEVEN G. KOTRCH, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 0.71 ft. from rear lot line and 2.33 ft. from side lot line, on property located at 5302 Castle Lane, Tax Map Reference 70-4((8))(12)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 February 21, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,504 square feet.
4. The application does not meet the standards for a special permit.
5. The structure is absolutely too large for the area.
6. The Board should not impact upon a neighborhood to such a degree as they would by granting the special permit.

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

THAT the applicant has not presented testimony indicating compliance with 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 DENIED.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991.

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The Board took a short recess at this time.

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Page 171, February 21, 1991, (Tape 1), Scheduled case of:

10:15 A.M. RONALD A. & ELIZABETH G. EGER, VC 90-V-135, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 5.0 ft. from side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412) on approx. 10,850 s.f. located at 8617 Bluedale St., zoned R-3, Mt. Vernon District, Tax Map 111-1((6))(28)7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Eger replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located north of the George Washington Memorial Parkway and the subject property and the surrounding lots are zoned R-3 and are developed with single family detached dwellings. Ms. Dickey stated that the request for a variance resulted from the applicants' proposal to construct a carport at a distance 5.0 feet from the side lot line; whereas a minimum side yard of 7.0 feet is required by the zoning Ordinance and, accordingly, the applicants were requesting a variance of 2.0 feet to the minimum side yard requirement. She stated that the dwelling on adjacent Lot 6 is located approximately 28.0 feet from the shared side lot line, with an existing attached carport approximately 16.6 feet from the shared lot line.

Applicant Ronald G. Eger, 8617 Bluedale Street, Alexandria, Virginia, presented the statement of justification, stating that the subject lot is narrow and angled at the back, precluding them from building a carport anywhere in the back yard. He went on to describe the various reasons why the proposed location was the only place where the carport could reasonably be placed. Mr. Eger stated that there was an existing concrete slab which had been poured by the builder twenty-eight years ago, where they currently park their cars, and which would serve as a foundation for the carport. Mr. Eger claimed it was a hardship to have their autos exposed to damage from falling tree limbs and such, with no cover. Mrs. Eger stated that the reason they had not built a carport previously was that a neighbor objected. She said they believed the neighbor's objection was unreal and totally lacking in substance because their carport would be abutting the carport next door, with a line of trees between the two lots. Mrs. Eger said that there are other homes in the neighborhood with similar carports and showed the Board photos to support the fact. Mrs. Eger offered some reasons why the proposed carport would have no negative impact on the neighbors, and stated that they had five letters of support from neighbors.

Mr. Kelley asked the applicants if they could make do with a twelve-foot wide carport, which they could build by right. Mr. Eger said that, if they did that, they would have to move an existing driveway in order to make it look right. Mr. Eger said that there were numerous other similar carports in the neighborhood. Mr. Kelley asked staff if they knew if variances had been granted to accommodate them. Ms. Dickey stated that there were numerous variances granted in the neighborhood going back to the 1950's, but there are four or five properties near the applicants' property for which variances have been granted in the 70's and 80's for carports and garages.

Mrs. Harris asked the applicants if they were going to leave the shed attached to their house and Mr. Eger stated that the shed would be taken down.

Chairman Digiulian asked about the stoop which protrudes 4 feet into the area which would comprise the carport, which he said he assumed would leave them really only 10 feet of space, which Mr. Eger acknowledged was true.

Mr. Pammel asked about the neighbor's carport, which Mr. Eger said is screened in at various times of the year by the neighbor. Mr. Pammel asked how close that carport came to the common property line. Ms. Dickey stated that the attached carport on the next-door property is approximately 16.6 feet from the lot line.

Mrs. Harris asked if the applicants were going to build another slab to level out the area. Mr. Eger stated that they intended to take the shed out, pour concrete into that area, thereby enlarging the slab to fourteen feet. A discussion ensued concerning the stoop, the shed, the azalea bush, and the end result.

Speaking in support of the application, Warren Hecker, 8616 Bluedale Street, Alexandria, Virginia, said he lived directly across the street from the applicants, and that he and all the neighbors with whom he had spoken believed that, if the Egers built a carport tastefully and in conformance with the architecture of the neighborhood, it could not help but enhance the value of all of their properties.

Mr. Brintzer, 2321 Wittington Boulevard, Alexandria, Virginia, President of the Civic Association at Stratford Landing, stated that the applicants had asked the Civic Association to take a look at their application and he was there to support the applicants. He said he knew of only one property owner who was in opposition to the application, the immediate neighbor to the right, which opposition the Civic Association does not consider to be meritorious. He said the Association considers the applicants to be extremely reliable, that they will do a good job, and that the application is in the best interest of all concerned.

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

Mr. Hammack made a motion to grant VC 90-V-135, subject to the Proposed Development Conditions contained in the staff report dated February 14, 1991, for the reasons set forth in the Resolution.

Mr. Pammel pointed out that the Ordinance requires that the side yard be no less than five feet, which is true in this case, and Mrs. Harris pointed out that adequate screening exists.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-135 by RONALD A. & ELIZABETH G. EGER, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 5.0 ft. from side lot line, on property located at 8617 Bluedale St., Tax Map Reference 111-1(6)(28)7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

Page 173, February 21, 1991, (Tape 1), (RONALD A. & ELIZABETH G. EGGER, VC 90-V-135, continued from Page 172)

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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 February 21, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,850 square feet.
4. The lot has exceptional narrowness.
5. Testimony revealed that the applicants have a four-foot stoop with steps going into the kitchen, and the carport addition would not extend beyond the existing slab on which they park.
6. It is not unreasonable to grant the variance.
7. Granting the variance would not be detrimental to 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 carport 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.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 174, February 21, 1991, (Tape 1&2), Scheduled case of:

10:30 A.M. CHOI MING WU AND MAGDALEN Z. WU, VC 90-1-123, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot A having lot width of 9.0 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 41,417 s.f. located at 6005 Old Rolling Road, zoned R-3, Lee District, Tax Map 81-4((1))80. (DEFERRED FROM 1/24/91 FOR RENOTIFICATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Wu replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located on the east side of Old Rolling Road, north of Franconia Road; it contains approximately 41,417 square feet; is zoned R-3; and is developed with a single family detached dwelling.

Ms. Greenlief said that the applicants were proposing to subdivide the property from one lot into two lots, with proposed Lot A having a lot width of 9 feet, requiring a variance to the minimum lot width requirement of 80 feet; thus, the applicants were requesting a variance of 71 feet to the minimum lot width requirement.

Ms. Greenlief said that this application was deferred from January 24, 1991, to allow time for re-advertising. She said that the applicant had revised the plat and the proposed changes were discussed in the addendum which had been given to the Board the previous week.

Ms. Greenlief referred to three letters which had been included in the Board's package, which she proceeded to clarify. She said that all of them discussed a drainage issue in the neighborhood; that staff had discussed the issue with the Department of Public Works; and that there was a project planned for the area which would channel water into Old Rolling Road from the subject site, as well as all of the abutting properties. She stated, however, that funding was not available at this time. Ms. Greenlief said that the plan shows piping along the north side of the subject lot, which would collect waters from the surrounding lots which are at higher elevations. She said that a representative from the Department of Public Works was present to answer any questions.

Ms. Greenlief referred to a letter that the Board had received from Mr. Wools, referencing two plat attachments which were too large to copy but which were available for review. She said that Mr. Wools' letter also stated that the acreage of the site was incorrect; that there was a discrepancy between the acreage shown on the application (0.9058) and that shown on the plat (.9508) when the application was filed. Ms. Greenlief said that staff used the acreage on the plat because it had been certified by the engineer; however, in checking the real estate records, the correct acreage was actually found to be 0.9058, which was shown on the application; thus, the plat showed the wrong acreage. Ms. Greenlief said that staff did not believe that the advertisement would create a problem because it showed approximate acreage.

Ms. Greenlief said that staff believed that the application failed to meet several of the standards for variance approval, as discussed on page 3 of the staff report and within the addendum. In highlighting, Ms. Greenlief said that staff noted that the lot is similar in size and shape to many other lots along Old Rolling Road and staff was concerned about the precedent which might be set by the approval of this variance. She said that one variance application for a pipestem lot had been approved for property directly north of the site, and one was denied to the south; so there is precedent for both actions in this neighborhood.

Chairman DiGiulian asked if the parcel which was denied to the south was Parcel 79 and Ms. Greenlief stated she believed it was Parcel 72. Chairman DiGiulian asked about the property immediately adjacent to the applicants' property and Ms. Greenlief stated that, to her knowledge, it was not involved in any action.

Mrs. Harris asked if the piping process in the driveway to Lot A would be in conflict and Joseph Bekhors of the Department of Public Works (DPW) stated that the pipe DPW was proposing would be on the north property line of the site. He said the pipe itself would be on Lot 81-B, the Shahidi property, but an easement would be required to construct the pipe. Mrs. Harris asked if it would be above or below ground and Mr. Bekhors stated that the pipe would be underground.

Applicant Magdalen Z. Wu, 6708 Hackberry Street, Springfield, Virginia, presented the statement of justification and referred to the letters from two neighbors who had a water problem, stating that it was caused by other neighbors' water draining onto the applicants' property. Mrs. Wu stated that their engineer had told them that perhaps they could build an earth berm around their property so that the water from their property would not drain onto their neighbors' property.

Chairman DiGiulian asked if there was anyone to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition, which elicited the following response.

Speaking in opposition to the request were: Gordon Hobbs, 6019 Sumner Road, Springfield, Virginia; and Robert Otte, 5409 Nedra Avenue, Springfield, Virginia. The concerns expressed related to the drainage problems, changing the character of the area, and the parking situation.

Page 175, February 21, 1991, (Tape 1&2), (CHOI MING WU AND MAGDALEN Z. WU, VC 90-L-123, continued from Page 174)

Mrs. Wu's rebuttal addressed the drainage situation, stating that Mr. Woods said that Mr. Otte had illegally built a drain on his property, causing his water to drain onto the Shahini property and then onto the applicants' property. Mr. Ribble said that Mr. Otte's testimony indicated that the County had built the drainage facility.

Mrs. Thonen made a motion to deny VC 90-L-123 for the reasons set forth in the Resolution.

Mr. Pammel made an observation on the storm drainage problem to the effect that it could only be solved by viewing the affected properties as a whole and not on a piecemeal basis.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-123 by CHOI MING WU AND MAGDALEN Z. WU, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot A having lot width of 9.0 ft., on property located at 6005 Old Rolling Road, Tax Map Reference 81-4((1))80, 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, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 41,417 square feet.
4. The applicants have not met standard number 2 because the lot is not exceptionally narrow or shallow and is no different from other lots in the area; any existing hardship is shared by other property owners in the area.
5. The Board is not supposed to grant any request that might be so recurring in nature that it would even change the zoning of the lot.
6. The existing character of the area should be strengthened by permitting the existing vacant lot property to develop with single family dwellings.
7. Granting the variance would impact upon the traffic and make it horrendous.
8. Denying the variance would not prevent reasonable use of the property, and no hardship exists.

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.

Page 176, February 21, 1991, (Tape 1&2), (CHOI MING WU AND MAGDALEN E. WU, VC 90-L-123, continued from Page 175)

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1991.

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Page 176, February 21, 1991, (Tape 2), Scheduled case of:

10:45 A.M. KENNETH LESTER APPEAL, A 90-S-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the storage of dump trucks and construction equipment and the stockpiling of mulch, gravel, and sand and the associated delivery business on the subject property are not permitted uses in the R-C District on approx. 7.1950 acres located at 7815 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 95-2((1))6 and 6B. (DEFERRED FROM 1/24/91 FOR APPLICANT TO PREPARE LEGAL STATEMENT)

The appellant's agent, H. Kenneth Sanders, Esquire, advised the Board that he would extend the courtesy of relinquishing his turn on the agenda to allow the case subsequent to his to be heard before his, because he had been led to believe that it would only take a short amount of time; whereas, Mr. Sanders expected his appellant's case would take an extensive amount of time to be heard.

Mr. Kelley made a motion to hear the case scheduled at 11:00 a.m. before hearing the case scheduled at 10:45 a.m. Mrs. Harris seconded the motion, which carried unanimously.

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Page 176, February 21, 1991, (Tape 2), Scheduled case of:

11:00 A.M. ROCKWELL INTERNATIONAL, INC., VC 91-S-010, appl. under Sect. 18-401 of the Zoning Ordinance to allow 8.0 ft. high fence with 3 strands of barbed wire on top portion of fence (barbed wire prohibited by Sect. 10-103) on approx. 68.03 acres located on Sully Road, zoned I-3, I-5, Springfield District, Tax Map 43-2((1))pt. 13. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Fifer, the applicant's agent, replied that it was. A few moments later, Mr. Fifer stated that he had just discovered there was an addition to the affidavit which occurred late Friday and which would be confirmed in writing. The addition was a new partner in the Richmond Office, Thomas C. Gordon, Jr.

Mr. Pammel stated that he had a business relationship with the law firm involved; thus, he would abstain from participating.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located west of Sully Road at the east end of Conference Center Drive; is zoned I-3 and I-5; is currently undeveloped, and is surrounded by other lots that are zoned and developed for industrial use. She said that this request for a variance resulted from the applicant's proposal to add three strands of barbed wire within the top portion of the eight-foot fence, which had been approved pursuant to VC 90-S-109. Ms. Dickey said that the Zoning Ordinance prohibits barbed wire fences in the I-3 and I-5 Districts, except to enclose storage areas, swimming pools or other similar industrial or commercial uses; accordingly, the applicant was requesting a variance of the fencing requirement to allow barbed wire in the locations shown on the submitted plat. (It is noted that the proposed use is for an office.)

Carson Lee Fifer, Jr., Esquire, with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, represented the applicant and referred to the statement of justification previously submitted. Mr. Fifer described the fence as dark in color, located well within wooded, landscaped area, and practically invisible from the outside. He had exhibits which he offered to support his description, although the fence in the exhibits was in another location, he said the location was similar to that of the applicant.

Mrs. Harris said she was not present for the hearing involving the eight-foot fence, so she asked to see the exhibits and Mr. Fifer complied. Mr. Fifer said there would be security patrol inside the fencing. He said that the difference between the photos he submitted at the hearing for the fencing was that they had chain link where the two feet of barbed wire



was now being shown. Mr. Fifer described the fencing in detail. He said that Rockwell had been working with Department of Environmental Management (DEM) concerning a program to relocate trees while fencing was installed, so that they could be put back again. He said it is a tree relocation program of a grander scale than ever has been attempted before in Fairfax County, so particular care and deliberation was going into preserving existing landscaping.

Mrs. Harris expressed a basic aversion to barbed wire and doubted that it would keep out a casual burglar. She stated a belief that anyone who seriously wanted information would probably walk in the front door wearing a white shirt and tie. She believed the barbed wire marred the beauty of the area. Mr. Fifer pointed out that Westfields and its architectural committee had approved the fencing because they believed that it would be made, more or less, invisible. Mr. Fifer went on to explain that the barbed wire was only one of many elements contributing to security, and stressed the degree of difficulty and the time element necessary to scale the fence. He assured Mrs. Harris that the applicant considered the fencing critical to their use of the site, that the nature of their work demanded it, and that it is an absolute requirement and not optional. Mr. Fifer stated that the applicant would be precluded from use of the site without the fencing being included in their security system. Mrs. Harris believed that barbed wire created a junk yard atmosphere and Mr. Fifer assured her that would not be the case. A discussion ensued between Mrs. Harris and Mr. Fifer regarding the potential for barbed wire being used on other sites in the area, and the influence of barbed wire on white collar espionage, among other things, culminating with Mr. Fifer again stating that the fencing was not optional but absolutely necessary.

Mrs. Thonen referred to other past situations which reflected a lack of proper facilities to insure security, with unfortunate consequences; and said that an applicant with so much property to keep secure should not be left without the means to protect the security of the Country; emphasizing that she felt very strongly about this issue.

Mr. Fifer asked the Board to waive the eight-day waiting period if the Board decided to act favorably on this application, as was done on the previous application.

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

Mrs. Harris made a motion to grant VC 91-S-010, subject to the Proposed Development Conditions contained in the addendum to the staff report dated February 12, 1991, for the reasons set forth in the Resolution.

Mrs. Harris added that she hoped every effort would be made to screen the fencing for aesthetic purposes.

Mr. Ribble interjected his belief that this approval was in no way precedent-setting for possible subsequent applications in the area. He said it was strictly the nature of the business of the applicant which caused him to support granting this request.

Mr. Hammack made a motion to grant a waiver of the eight-day waiting period. Mrs. Harris seconded the motion, which carried by a vote of 6-0-1; Mr. Pammel abstained because of a conflict of interest.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-010 by ROCKWELL INTERNATIONAL, INC., under Section 18-401 of the Zoning Ordinance to allow 8.0 ft. high fence with 3 strands of barbed wire on top portion of fence, on property located on Sully Road, Tax Map Reference 43-2(1)pt. 13, 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 February 21, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is I-3 and I-5.
3. The area of the lot is 68.03 acres.
4. There is no doubt that the property is of exceptional size.
5. The applicant has stated that, without the variance, reasonable use of the property cannot be achieved because of the high level of security which is necessary.

Page 178, February 21, 1991, (Tape 2), (ROCKWELL INTERNATIONAL, INC., VC 91-S-010, continued from Page 177)

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

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

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

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

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

1. This variance is approved for the location of the specific fence shown on the plat included with this application prepared by Dewberry and Davis, entitled "Variance Plat/Westfields", dated September 20, 1990, and is not transferable to other land. This fence, including the barbed wire strands, shall not be greater than eight (8) feet in height.

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.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1; Mr. Pammel abstained because of a conflict of interest.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1991; 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 178, February 21, 1991, (Tape 2), Scheduled case of:

10:45 A.M. KENNETH LESTER APPEAL, A 90-S-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the storage of dump trucks and construction equipment and the stockpiling of mulch, gravel, and sand and the associated delivery business on the subject property are not permitted uses in the R-C District on approx. 7.1950 acres located at 7815 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 95-2(1)6 and 6B. (DEFERRED FROM 1/24/91 FOR APPLICANT TO PREPARE LEGAL STATEMENT)

This case had been called earlier and deferred at the request of the applicant.

At the request of Chairman DiGiulian, Jane W. Gwinn, Zoning Administrator, located the property at 7815 Wolf Run Shoals Road.

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H. Kendrick Sanders, Esquire, with the law firm of Gilliam, Sanders & Brown, 3905 Railroad Avenue, #200N, Fairfax, Virginia, represented the appellant and stated that, when last before the Board, he had suggested to the Board that the proceedings should be heard in another forum, to which the Board responded by requesting that Mr. Sanders file a memorandum of law within a couple of weeks and present it to the Board. Mr. Sanders stated that he did submit such a memorandum to the Clerk, a few days late, for public dissemination, but had not heard anything in response as yet. Mr. Sanders said he knew that the County Attorney had responded to his memorandum and submitted same to the Board. He said he also understood that the County Attorney's Office had indicated that Mr. Sanders was not entitled to see the response, which was confidential because of attorney-client privilege. Chairman Digiulian indicated that the Board had received the response from the County Attorney's Office that morning. Mr. Sanders disputed the opinion of the County Attorney's Office that he should not receive a copy of the response, citing reasons why he felt that way.

Mr. Kelley and Chairman Digiulian also questioned why Mr. Sanders should not be allowed to see the response from the County Attorney's Office and several members of the Board questioned whether the County Attorney Office was, in fact, their attorney. A discussion ensued.

Jan L. Brodie, Assistant County Attorney, stated that, although the County Attorney's Office could not make a copy of the response available to Mr. Sanders, the Board (as the client) could waive attorney-client privilege and make a copy available to Mr. Sanders.

Mrs. Thonen informed the Board of her standard policy regarding legal material. She stated that, if she did not get the material in sufficient time to read it thoroughly, she did not take it into consideration at all. Mrs. Thonen acknowledged receiving the response that morning and said that there was not sufficient time to read it while hearing cases. Under the circumstances, Mrs. Thonen stated that she would not vote on this matter.

Mr. Hammack referred to instances during his years on the Board when the County Attorney's Office sometimes represented the Board and sometimes represented the zoning Administrator; he believed that the County Attorney's Office represented the Board in this instance. He agreed with Mr. Sanders that Mr. Sanders was entitled to see the reply brief which the Board had requested the County Attorney's Office to prepare, in order that Mr. Sanders could be in a position to debate the reply.

Mr. Hammack made a motion to waive attorney-client privilege with respect to the memorandum so that Mr. Sanders could have a copy of it. Mrs. Harris seconded the motion.

Mr. Kelley pointed out that there were likely to be other documents prepared on this matter and asked Mr. Hammack if his motion included any other future documents. Mr. Hammack replied that he believed this was the only document covered by attorney-client privilege at this point and that he would rather deal with any other documents if and when they were generated, pointing out that the staff report was public information. Mrs. Harris agreed with Mr. Hammack.

The motion carried by a vote of 7-0, and a copy of the document was given to Mr. Sanders.

Mr. Kelley expressed concurrence with Mrs. Thonen's position on the lack of adequate time to review the reply from the County Attorney's Office and recommended deferral of this matter. He stated that the reason he had questioned whether Mr. Hammack's motion included future documents of the same nature was that he would not like to see additional documents arriving every week and having the case deferred ad infinitum.

Chairman Digiulian stated that, if the case were deferred, the Board should set a deadline by which any additional written testimony must be submitted, prior to the hearing.

A discussion ensued regarding the submission of documents, availability to the appellant, time frame, etc.

Mrs. Thonen stated that she would require to see any written material at least one week prior to any scheduled proceedings. Chairman Digiulian stressed that the material would need to be in the hands of the Board members a week in advance, not in the hands of staff.

Ms. Gwinn outlined the chronology of events leading to the reply from the County Attorney's Office being delivered to the Board that morning and, all circumstances considered, there appeared to be no blame to lay, just an unfortunate set of events which included a holiday.

Mr. Sanders outlined the standard procedure to be followed at this juncture, asking Mr. Hammack to offer concurrence. He stated that, in order not to prolong the matter, he would simply reply in brief, or probably not reply at all, to the submission by the County Attorney's Office, and that would be the end of the matter. He stated that the standard procedure was a memorandum from the plaintiff and the defendant, ending with the plaintiff's response. Mr. Hammack concurred with Mr. Sanders' outline of standard procedure. Mr. Sanders said that a couple of weeks should be enough time to complete the process.

Page 180, February 21, 1991, (Tape 2), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 179)

Mr. Kelley expressed concern that the procedure still could be prolonged, to which Mr. Hammack responded by stating that Mr. Sanders could simply respond directly to the County Attorney's Office and, between them, they could argue the case, followed by the Board making a decision.

Further discussion ensued regarding the time wasted on deferrals caused by having the Board receive material too late to act upon a case.

Mrs. Thonen made a motion to defer this case until whatever time all concerned would be prepared to furnish all necessary information to the Board one week in advance of the hearing. Chairman DiGiulian suggested that, perhaps, a night meeting would be more appropriate a time to hear this case.

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that she had just received notice that the Board of Supervisors (BOS) might need to use the Board Room on the night of March 19, when the Board of Zoning Appeals (BZA) had a meeting scheduled. Ms. Kelsey asked if the Board would approve moving the BZA hearings to the Judicial Center on that evening, to which Chairman DiGiulian replied that it would be fine.

Ms. Kelsey then said that the Lester Appeal could be scheduled for 8:45 p.m. on March 19, 1991.

Ms. Kelsey stated that she was having someone check on whether or not the Judicial Center would be available for the BZA meeting on March 19, 1991. In the event that the Judicial Center was not available, the meeting would have to be rescheduled.

Chairman DiGiulian asked Ms. Kelsey if the people present who were interested in the Lester Appeal could give her their names, addresses, and telephone numbers, so that they could be notified when it was determined where the meeting would be held, which was done.

Mr. Hammack seconded the motion to defer this case to 8:45 p.m. on March 19, 1991. The motion carried by a vote of 7-0.

Mr. Kelley asked Mr. Sanders if he could reasonably assure him that he did not anticipate any further delay due to procedural matters. Mr. Sanders said he did not anticipate any further reason for delay.

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Page 180, February 21, 1991, (Tape 2), After Agenda Item

Approval of Minutes for January 8, 1991

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried unanimously.

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Page 180, February 21, 1991, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Gerri B. Bepko  
Gerri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/9/91

APPROVED: 4/18/91

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 26, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:30 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 181, February 26, 1991, (Tape 1), Scheduled case of:

9:00 A.M. MRS. DOROTHY V. BEACH APPEAL, A 90-V-019, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that a mobile home located on appellant's property is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance and therefore must be removed on approx. 3.9219 acres located at 10725 Old Colchester Road, zoned R-E, Mount Vernon District, Tax Map 117-1((1))5. (DEFERRED FROM 12/11/90 AT APPLICANT'S REQUEST)

Mrs. Harris made a motion to allow the withdrawal of A 90-V-019. She noted that the Board had received a letter requesting a withdrawal of the appeal. She stated that the letter indicated that Mrs. Beach had obtained a Building Permit to construct a house and no longer wished to retain the mobile home.

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 181, February 26, 1991, (Tape 1), Scheduled case of:

9:30 A.M. CENTREVILLE PRESCHOOL, INC., SP 90-S-091, appl. under Sects. 3-103 and 8-914 of the Zoning Ordinance to allow child care center, nursery school, and waiver of dustless surface requirement on approx. 1.07 acres located at 13916 Braddock Rd., zoned C-8, R-1, HC, WS, SC, Springfield District, Tax Map 54-4((1))32. (OTH GRANTED. CONCURRENT WITH VC 91-S-016)

9:30 A.M. DENNIS HOGGE AND CENTREVILLE PRESCHOOL, INC., VC 91-S-016, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 31.8 ft. from front lot line (40 ft. min. front yard required by Sect. 4-807) on approx. 1.07 acres located at 13916 Braddock Rd., zoned C-8, R-1, HC, WS, SC, Springfield District, Tax Map 54-4((1))32. (CONCURRENT WITH SP 90-S-091)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smith replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the property is located on the east side of Braddock Road, south of its intersection with Mount Gilead Road. It is abutted on the north, south, east, and west by properties that are zoned for or planned for development with commercial uses.

Ms. Bettard stated that the applicants were requesting approval of a special permit in order to operate a child care center and nursery school within an existing single family dwelling at 13916 Braddock Road. She noted that a waiver of the dustless surface requirement for the parking area and drive was also requested. In addition, she said that the applicants were requesting a variance to the minimum front yard requirement to allow a structure to remain 31.8 feet from the front lot line.

Ms. Bettard said that Section 4-807 requires a minimum front yard of 40.0 feet. Therefore, the applicants were requesting a variance of 8.2 feet to the minimum front yard requirement. She noted that the child care center and nursery school would service a maximum daily enrollment of sixty-six (66) students in two sessions, with no more than thirty-three (33) present during any one session. The hours of operation would extend from 8:50 a.m. until 11:35 a.m. for the first session, and from 12:30 p.m. until 3:15 p.m. for the second session, Monday through Friday. Ms. Bettard stated that the daily maximum number of employees would be seven (7), with no more than six (6) present at any given time.

Ms. Bettard stated that staff's primary concern with the application involved the transportation issues as stated on pages 5 and 6 of the staff report. She expressed staff's belief that the application would be in conformance with the C-8 District requirements provided the variance is approved by the Board. Therefore, staff recommended approval of SP 90-S-091 subject to the development conditions contained in the staff report dated February 19, 1991.

In response to Mrs. Harris' question regarding the clearing and grading line on the plat, Ms. Bettard stated that she did not know why there was a line showing an overlap of the play area and the two-way driveway. She stated that she knew of no reason the notation "limits of clearing and grading" should be in that area of the plat.

The applicant's agent, Donald D. Smith, 5618 Wharton Lane, Centreville, Virginia, addressed the Board and commended staff for the help and cooperation they had extended on this

Page 182, February 26, 1991, (Tape 1), (CENTREVILLE PRESCHOOL, INC., SP 90-S-091, and DENNIS HOGGE AND CENTREVILLE PRESCHOOL, INC., VC 91-S-016, continued from Page 181 )

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He noted that the Western Fairfax County Citizen Association had expressed their support for the application.

He stated that the applicants were in full agreement with staff's recommendations, and with all but two of the conditions stated in the staff report. Mr. Smith explained that the applicants had decided that an addition would not be financially feasible; therefore, they would like to reduce the student enrollment. He asked that Condition 5 be changed to reflect the maximum daily enrollment not to exceed sixty-six (66) children, with a maximum of thirty-three (33) students permitted in each session. Mr. Smith referred to Condition 11 and asked that the special permit be approved for a period of five years, with the Zoning Administrator empowered to approve extensions thereafter.

He stated that the property was acquired in good faith and is exceptionally narrow. Mr. Smith explained that the 70 year old structure which was built before the Zoning Ordinance was instituted, could not be moved. He expressed his belief that the application would be in harmony with the intended spirit and purpose of the Ordinance and that it met all the requirements necessary for a variance.

In response to Mrs. Harris' question regarding the plat, Mr. Smith stated that the line should not have been drawn on the plat and that there were no limits of clearing on that section of the property. He stated that although there was an existing drive, grass had grown over it and the area would have to be cleared and new gravel installed.

It was the consensus of the Board that a new plat should be submitted.

There being no speakers to the requests, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-S-091 subject to the development conditions contained in the staff report dated February 19, 1991, with the changes in Conditions 5 and 11 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-091 by CENTREVILLE PRESCHOOL, INC., under Sections 3-103 and 8-914 of the Zoning Ordinance to allow child care center, nursery school, and waiver of dustless surface requirement, on property located at 13916 Braddock Road, Tax Map Reference 54-4((1))32, 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 26, 1991; and

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

1. The applicant is the lessee of the land.
2. The present zoning is C-8, R-1, HC, WS, and SC.
3. The area of the lot is 1.07 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law: THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-305, 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat dated February 4, 1991 by Basham & Associates, Inc. and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

Page 183, February 26, 1991, (Tape 1), (CENTREVILLE PRESCHOOL, INC., SP 90-S-091, and DENNIS HOGGE AND CENTREVILLE PRESCHOOL, INC., VC 91-S-016, continued from Page 182 )

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 daily enrollment of children in the nursery school, child care center shall not exceed sixty-six (66) children, a maximum of thirty-three (33) students shall be permitted in each of the morning and afternoon sessions.
6. The maximum number of employees shall be limited to seven (7).
7. Hours of operation for the child care, nursery school sessions shall be limited to 8:50 a.m. until 11:35 a.m. and 12:30 until 3:30 p.m., Monday through Friday. Occasional after-hour meetings related to school activities may be held provided all parking for such meetings can be accommodated on site.
8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of nineteen (19) spaces. All parking shall be on site and be designed according to the Public Facilities Manual (PFM) requirements. Compliance with the requirements shall be determined at site plan review by the Director of DEM.
9. Transitional Screening 1, and the Barrier requirement D, E, or F shall be waived along the southernmost lot line, within the area abutting land zoned R-1. Evergreen landscaped plantings shall be provided completely around the play area to screen this play area from the adjacent properties. Trees which are appropriate for parking lot landscaping shall be provided within and around the perimeter of the parking area. The size, type, and location of the plantings shall be approved by the County Arborist.
10. Ancillary easements shall be provided along the southern and western boundary lines to facilitate the future realignment of Braddock Road and the future extension of Leland Road at the time of site plan approval. The easements shall be provided as determined by the Virginia Department of Transportation (VDOT) and the Director of the Office of Transportation.
11. This Special Permit is approved for a period of five (5) years with the Zoning Administrator empowered to approve three (3) one (1) year extensions. At such time as the proposed Leland Road is constructed, the applicant shall file for an amendment to the existing special permit to show the redesign of a northern two-way entrance, closure of the southern entrance, and a redesign of the interior driveways which would allow for safe entrances and circulation which will not conflict with the traffic on Leland Road and Braddock Road. This redesign of the entrances on the applicant's property shall be coordinated with the construction of Leland Road.
12. The entrance drives shall be located a minimum of 12.5 feet from the northernmost and southernmost property lines and shall be adequately signed with standard traffic directional signs that are in conformance with the requirements of VDOT and the Department of Environmental Management (DEM).
13. The gravel surfaces for the parking lot shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall run for the period of time specified in the Zoning Ordinance.
  - 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.
14. The nursery school and child care center shall comply with the requirements of Chapter 30 of the Fairfax County Code, "Minimum Private School and Child Care Facility Standards," and all other applicable regulations as determined by the Fairfax County Health Department.
15. If the application for a variance is not approved to allow the existing structure to remain in the required front yard, this Special Permit shall be null and void.

Page 184, February 26, 1991, (Tape 1), (CENTREVILLE PRESCHOOL, INC., SP 90-S-091, and DENNIS HOGGE AND CENTREVILLE PRESCHOOL, INC., VC 91-S-016, continued from page 183 )

16. Best Management Practices (BMP's) shall be provided on site to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) 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 legally established 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 legally 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. Pammel seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 91-S-016 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 19, 1991 with the addition of Condition 3 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-016 by DENNIS HOGGE AND CENTREVILLE PRESCHOOL, INC., under Section 18-401 of the Zoning Ordinance to allow structure to remain 3.18 feet from front lot line, on property located at 13916, Tax Map Reference 54-4((1))32, 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 26, 1991; and

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

1. The applicant is the lessee of the land.
2. The present zoning is C-8, R-1, HC, WS, and SC.
3. The area of the lot is 1.07 acres.
4. The application has satisfied the nine requirements necessary for the granting of a variance.
5. There is an unusual situation or condition in use of the subject property in that it is zoned to be C-8, R-1, HC, WS, and SC.
6. The property is zoned for future commercial use.
7. The structure is a historic building that existed before the present zoning Ordinance; therefore, the granting of the variance is justified.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to 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 specified structure shown on the plat submitted with this application and 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 the special permit use has been established 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. New plat shall be submitted to show the limits of construction, rather than the limits of clearing and grading.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 185, February 26, 1991, (Tape 1), Scheduled case of:

9:45 A.M. DEBRA P. & ROBERT H. MASNIK, SP 90-A-079, appl. under Sect. 8-917 of the zoning Ordinance to allow 4 dogs (12,500 s.f. min. lot size required for 3-4 dogs by Sect. 2-512) on approx. 11,606 s.f. located at 8915 Victoria Rd., zoned R-3, Annandale District, Tax Map 69-4((5))247. (INTENT TO DEFER ISSUED 2/5/91)

Chairman DiGiulian noted that the Board had issued an intent to defer on February 5, 1991.

Mr. Pammel stated that, although he was sympathetic to the applicants' problems, the case involved a violation of the Zoning Ordinance and several complaints have been filed. He said that the application should be deferred for a period not to exceed sixty days.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that due to the Board's schedule the case be deferred to May 7, 1991 at 9:00 a.m.

Mr. Pammel made a motion to defer SP 90-A-079 to the suggested date. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

After a brief discussion, it was the consensus of the Board that staff convey to the applicants that they must be ready to present their case at the May 7, 1991 hearing.

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Page 185, February 26, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions from February 21, 1991 Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the Clerk had a question on a findings of fact for VC 90-P-099.

Page 186, February 26, 1991, (Tape 1), (APPROVAL OF RESOLUTIONS FROM FEBRUARY 21, 1991 HEARING, continued from Page 185)

Mrs. Thonen stated that Number 9 in the findings of fact should read, "Building two lots on this property is not good."

Mr. Kelley made a motion to approve the Resolutions with the revision of the findings of fact in VC 90-P-099. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 186, February 26, 1991, (Tape 1), After Agenda Item:

Approval of Minutes from December 11, 1990,  
January 10, January 17, and January 24, 1991 Hearings

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 186, February 26, 1991, (Tape 1), After Agenda Item:

Approval of Revised Resolution for Special Permits  
for Modification of a Building Built in Error

Chairman DiGiulian noted that there had been only one change on the Resolution.

Jane Kelsey, Chief, Special Permit and Variance Branch, said a statement indicating that the application had met all the necessary standards had been added.

Mrs. Harris made a motion to approve the revision. Mr. Pammal seconded the motion which carried by a vote of 7-0.

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Page 186, February 26, 1991, (Tapes 1 and 2), Scheduled case of:

10:00 A.M. ZANE MASON APPEAL, A 90-S-020, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of the Department of Environmental Management's decision to disapprove a gift lot subdivision of property shown on Plat #7796-RP-01-3 for Louise R. Mason and Plat #7796-RP-02-3 for Zane S. Mason on approx. 8.525 acres located on Braddock Road, zoned R-C, Springfield District, Tax Map 67-2((1))15A. (DEFERRED FROM 12/20/90)

10:00 A.M. LOUISE MASON APPEAL, A 90-S-021, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of the Department of Environmental Management's decision to disapprove a gift lot subdivision of property shown on Plat #7796-RP-01-3 for Louise R. Mason and Plat #7796-RP-02-3 for Zane S. Mason on approx. 5.0 acres located on Braddock Road, zoned R-C, Springfield District, Tax Map 67-2((1))15B. (DEFERRED FROM 12/20/90)

Chairman DiGiulian called the appellants' attorney to the podium and asked if he was ready to present the case. Robert A. McGinnis, 120 North Lee Street, Falls Church, Virginia, stated that he was.

Chairman DiGiulian called for the location of the property by staff.

Dennis King, Chief, Site Review Branch, Springfield East and Dranesville District, Department of Environmental Management (DEM), addressed the Board and stated that the properties are located on Tax Map References 67-2((1))15A and 67-2((1))15B in the Springfield District. He noted that on the plans accompanying the applications there was a vicinity map that also depicted the location of the property.

Mr. McGinnis stated that the appeal was timely filed. He said that it was the practice of the County to assign each plat a specific number when it is filed. He explained that the plat disapproved in September had been filed under Number 7796-RP-0103.

In response to Chairman DiGiulian's question, Mr. McGinnis said that he would provide a copy of the plat to the Board.

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The Board recessed at 10:10 a.m. and reconvened at 10:20 a.m.

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Mr. McGinnis presented the plats to the Board and stated that there had been some confusion with the numbers on the plats. He expressed his belief that staff knew that the appeal had been based on the plat submitted in September under Number 7796-RP-0103.

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After a lengthy discussion, it was the consensus of the Board that the appeal had been timely filed. The Board members expressed their belief that staff was using a technicality to challenge the legitimacy of the appeal. They also expressed their belief that staff had an obligation, when they reviewed the applications, to inform the citizens of any errors that may have been made.

Mr. Kelley made a motion to proceed with the hearing. Mr. Hammack seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she did not believe that DEM should be given the authority to change a plat or an application. Mr. Kelley stated that he too did not want staff to have the authority to change an application. He expressed his belief that when a citizen has made an error on a plat or on an application, staff has the obligation to point out the error.

John Winfield, Deputy Director, Design Review, DEM, addressed the Board and stated that in the December staff report the discrepancies had been pointed out; therefore, the applicant had the opportunity to correct the application.

(At the May 14, 1991, Board of Zoning Appeals public hearing, the Board voted to amend the February 26, 1991, Minutes and to insert the following:

Chairman DiGiulian reiterated that the County has an obligation to look at the entire appeal, not just pick and choose what they want to address.

Mr. Hammack asked Mr. King whether he believed he had any obligation to look at the third disapproval date. Mr. King stated that he didn't think so, that Mr. McGinnis was a competent attorney and he would think he would have the data down and submit it correctly.

Mr. Hammack asked if that was the policy of DEM and Mr. King responded that DEM's reasons were laid out in the staff report.

Mr. Hammack stated that many times the County makes a mistake and then wants the BZA to correct it in their favor, that Mr. McGinnis appeal does reference the September disapproval date. He stated that he did file the plat that shows the September disapproval date and DEM chose to not even consider it and that DEM was standing behind a technicality.

Mr. Kelley said that Mr. King has acknowledged that it was an incorrect submission and that Mr. King knew it was incorrect and did nothing to correct the error.)

The motion carried by a vote of 5-2 with Chairman DiGiulian; Mr. Hammack; Mr. Kelley; Mr. Pammel; and Mr. Ribble voting aye; Mrs. Harris and Mrs. Thonen voting nay.

Mr. King presented the staff report. He stated that the Zoning Ordinance sets forth, under Section 18-301, that any person that is aggrieved by any decision of the Zoning Administrator, or any other officer of the County, can file an appeal within a thirty day time limitation. He noted that it continued to be staff's position that the appeal was not timely filed.

He referred to Irving Birmingham, Director, DEM's, memorandum dated December 17, 1991, and noted that the application did not meet the requirements in Sections 2-401, 3-C01, 3-C06, and 3-C08, of the Zoning Ordinance; or Section 101-2-8 of the Subdivision Ordinance. Mr. King explained that the subdivision would not meet the conventional subdivision minimum lot width requirement of 200.0 feet, or the density requirement of one (1) dwelling unit per five (5) acres. He stated that a gift lot subdivision must comply with the Subdivision Provision of the County Code and with all applicable requirements set forth in the Zoning Ordinance.

Mr. King stated that the subject property has an area of 8.525 acres, is zoned R-C, Residential-Conservation District, with a maximum permitted density of one (1) dwelling unit per five (5) acres, or 0.2 dwelling units per acre. He stated that the proposed subdivision of Lot 15A would result in the creation of two lots, each with an area less than five (5) acres, thereby, exceeding the density required by the Zoning Ordinance.

Mr. King stated that the appeal stemmed from the Director, DEM's, disapproval of the appellants' plat, therefore, denying the owner the right to have a family split of the property for the purpose of sale or gift to one of his children. He said that although the appellants have the right to subdivide under the Virginia Code 15.1-466 (k) and (kl), any such subdivision must also meet the current County Zoning Ordinance.

Mr. King explained that the appellants' justification was that the disapproval of the plat was based on the County Zoning Ordinance which is more stringent than the Virginia State Code; therefore, it is unconstitutional and unenforceable. He stated that there was no basis for this contention and that the County Zoning Ordinance was properly applied in the disapproval of the proposed subdivision plat. Mr. King expressed his belief that the jurisdictional power to rule on the constitutionality of the County Ordinances lies with the courts, and not with the Board of Zoning Appeals.

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In summary, Mr. King referred to the case of Crestar Bank v. Martin, where the Supreme Court of Virginia ruled that a "gift lot" or "family" subdivision, such as the one proposed by the appellants, did not exempt the subdivider from complying with the requirement of the Zoning Ordinance. He noted that the proposed subdivision did not meet the Zoning Ordinance requirements, and asked that the Board uphold the decision of the Director, DEM.

In response to Mrs. Thonen's question as to whether the appellants were appealing the constitutionality of the County Zoning Ordinance, Mr. King said they were. Mrs. Thonen stated that under Section 15-1-495, the BZA was granted the right to hear and decide appeals from any orders, decisions, or determinations made by any administrative office in the administration or enforcement of the Zoning Ordinance. Mr. King explained that the Zoning Ordinance is a separate Ordinance from the Subdivision Ordinance and is derived differently. He further stated that the process for Subdivision Ordinance appeals is through the County Executive, the Board of Supervisors, and the courts. Chairman DiGiulian stated that if this were true, the Zoning Administrator should not have accepted the appeals.

In response to Mrs. Harris' question as to whether DEM used the Zoning Ordinance as a basis for rejecting all three plats, Mr. McGinnis stated that it was the appellants' position that the Zoning Ordinance does not apply. He noted that in the case of Crestar Bank v. Martin, the judge ruled that family subdivision, which were exempt from compliance with Subdivision Ordinances, were nevertheless subject to land use control. He stated that this ruling meant that the County could not circumvent the Virginia State Law in the subdivision of property. Mrs. Harris asked if the reason DEM had disallowed the plats was that they had followed the requirements in the Fairfax County Ordinance, and Mr. McGinnis said it was.

Mrs. Harris stated that it was her understanding that Mr. McGinnis was asking the Board to determine whether the Zoning Ordinances were correct. Mr. McGinnis stated that the application of the Zoning Ordinance created a hardship. Mrs. Harris stated that it was her belief that if DEM had incorrectly applied the Zoning Ordinance, then the Board could make a determination. But, she said that since the appellant did not agree that DEM had the authority to apply the Zoning Ordinance, the Board could not make a determination. Mr. McGinnis said the question that arose with these cases was, do you apply the State Law or the County Law to the application? He stated that the basis of the law is the Constitution, which goes through the State Legislature, and then gives the County only those rights and authorities passed by the Legislature. Mrs. Harris stated that it was her belief, that Mr. McGinnis was not questioning how DEM applied the Subdivision Ordinance, but was contending that the Ordinance was faulty.

Mr. Hammack said that the Crestar Bank v. Martin case held that, while an application might be exempt from the Subdivision Ordinance, it would have to comply with the Zoning Ordinance. He noted that DEM had taken this position in denying the subdivision.

Mr. McGinnis stated that in the Crestar Bank v. Martin case the judge had determined that an application did not have to comply with the Subdivision Ordinance, but did have to comply with the Land Use Ordinance. He further explained that the case involved a subdivision of a family lot in Montgomery County where they had installed three (3) mobile homes. Mr. McGinnis stated that this was a specific violation of a specific Zoning Use Ordinance. He stated that in the appeals before the Board, the appellants were not requesting mobile homes, but intended to construct residential dwellings which would be in keeping with the surrounding area. Mr. McGinnis stated that the criteria placed upon land uses by the court is, "does it promote the health, welfare, and the police powers of the County."

Mr. Hammack stated that while the judge mentioned the mobile homes, he specifically referred to the division of the original five and one-half acres into lots that were smaller than that required under the applicable Zoning Ordinance. Mr. McGinnis stated that it was his contention that the judge ruled on the narrower issue of the mobile home statute. He noted that the judge did not cite the lot size statute or ordinances, but had dealt solely with the mobile home statute.

Mrs. Thonen stated that under the gift lot subdivision provision it stated that the approval of a subdivision of a gift lot did not exempt the parent lot or the gift lot from any requirements set forth in the Zoning Ordinance. She expressed her belief that the appellants were not adhering to the five (5) acre requirement of the Zoning Ordinance. She noted that while the County was not allowed to lower the State standards, it could be more restrictive.

Mr. McGinnis stated that his understanding of the law was that the County could not be more restrictive than the Virginia State Code. He said they must be within privity of the State.

Mr. Hammack's asked Mr. McGinnis what he thought the Virginia State General Assembly had in mind when they used the term, "reasonable provisions permitting a single division." He also asked Mr. McGinnis if he believed the County Code was unreasonable. Mr. McGinnis stated that reasonable regulations as applied by the County prohibited the family subdivision. He stated that it was his belief that in order to promote the family, a family subdivision should be completely exempt from the Zoning Ordinance. Mr. McGinnis expressed his belief that the Virginia State Legislature, in an effort to promote the family unity, purposely eliminated regulations. He noted that the size of proposed family subdivision lots would be approximately three (3) acres each, and would in no way disrupt the area.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to uphold the decision of the Director of the Department of Environmental Management in A 90-S-020. He stated that he believed the Virginia State General Assembly did not intend that gift lots be totally exempt from the zoning Ordinances. He said that there is language in the Virginia Code Statute that implies that reasonable requirements can be imposed. He stated that Mr. McGinnis did not substantiate the argument that the requirements of the County Ordinances are unreasonable or unconstitutional.

Mr. Hammack stated that although Mr. McGinnis tried to distinguish the Crestar Bank v. Martin from A 90-S-020, it is very similar to the Zoning Ordinances with respect to bulk, area, and frontage.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley stated that he could not support the motion. He said that the split lot or family lot subdivision was intended, by its general nature, by the General Assembly to correct situations where subdivision would not meet specific Ordinances. He further stated that the General Assembly had gone to great pains to maintain the family unit.

Mr. Hammack stated that in the Crestar Bank v. Martin case they had discussed the presumption of validity. He expressed his belief that the Ordinance, which was enacted by the County Board and is presumed valid, was adopted to be in conformity with the State Code Statute. He stated that although he was not unympathetic with the arguments, the Crestar Bank v. Martin case, and the presumptions it implied, led him to the decision to uphold the Director of the Department of Environmental Management's decision.

The motion carried by a vote of 5-2 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Hammack and Mr. Pammel voting aye; Mr. Kelley and Mr. Ribble voting nay.

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Mr. Hammack made a motion to uphold the decision of the Director of the Department of Environmental Management in A 90-S-021 for the reasons stated in the previous motion.

Mrs. Thonen seconded the motion. She stated that the Zoning Ordinance is constantly being amended and suggested that anyone who disagrees with the Ordinance should work to have it changed. She noted that the Board must obey the existing Zoning Ordinance.

The motion carried by a vote of 5-2 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Hammack, and Mr. Pammel voting aye; Mr. Kelley and Mr. Ribble voting nay.

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The Board recessed at 11:32 a.m. and reconvened at 11:43 a.m.

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Page 189, February 26, 1991, (Tape 2), Scheduled case of:

10:15 A.M. WOLFTRAP MEADOWS APPEAL, A 89-D-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Evaluation Director's decision that Tax Map 19-3((13))K satisfies the Zoning Ordinance definition of usable open space and therefore meets the provisions of Condition Number 22 of Special exception SE 83-D-106 on approx. 4 acres located on Days Farm Drive, zoned R-1, Dranesville District, Tax Map 19-3((13))K. (DEF. FROM 3/13/90 AT APPELLANT'S REQUEST) (DEFERRED FROM 5/22/90 AT APPELLANT'S REQUEST) (DEFERRED FROM 9/20/90 AT APPLICANT'S REQUEST FOR 3-MONTH DEFERRAL) (DEFERRED FROM 12/20/90)

Chairman DiGiulian stated that the Board had received a letter from the appellant's attorney, Philip W. Leber, requesting a deferral of ninety days.

Mrs. Thonen made a motion to defer Wolftrap Meadows Appeal, A 89-D-018 to May 28, 1991, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack not present for the vote.

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Page 189, February 26, 1991, (Tape 2), Scheduled case of:

10:30 A.M. NORMA WARD COYNE, VC 90-P-136, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 14.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 10,416 s.f. located at 13214 Moss Ranch La., zoned R-3 (developed cluster), Providence District, Tax Map 45-3((2))(3)24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Coyne replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the subject property is located east of Stringfellow Road. The surrounding lots are zoned R-3 and are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings. Ms. Dickey stated that the request for a variance resulted from the applicant's proposal to construct an enclosed sunroom at a distance 14.0 feet from the rear lot line. A minimum rear yard of 25.0 feet is required by the Zoning Ordinance. Accordingly, the applicant was requesting a variance of 11.0 feet to the minimum rear yard requirement. She stated that the dwelling on adjacent Lot 9 to the north is located approximately 45.0 feet from the shared rear lot line.

The applicant, Norma Coyne, 13214 Moss Ranch Lane, Fairfax, Virginia, addressed the Board and stated that while her house is a rambler, almost all the neighboring houses are large colonials. She explained that the "L" shaped structure is located well back onto the lot which has resulted in a small backyard.

Ms. Coyne stated that she was requesting the addition so that her 82 year old infirmed mother could enjoy the sunroom. Ms. Coyne explained that the extensive landscaping on the lot would ensure that there would be no detrimental impact on the abutting property.

Ms. Coyne said that when she purchased the property, she was not aware of the setback restrictions; therefore, compliance to the Zoning Ordinance would impose an undue hardship. She noted that the structure on Lot 9 was 45.0 feet from the shared property line, the structure on Lot 25 was screened by a privacy fence, and that the many shrubs and trees screened the structure on Lot 23.

In response to Mr. Ribble's question, Ms. Coyne stated that the proposed sunroom would be constructed on the existing 13.0 by 17.0 foot patio.

Mr. Pammel's asked whether the sunroom could be built on the front of the house where there was an existing porch. Ms. Coyne stated that besides being the main entrance into the house, the existing front porch was very small. She further explained that an addition to the front of the exiting structure would require extensive renovation and would not be aesthetically pleasing.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 90-P-136 for the reasons reflected in the Resolution.

Chairman DiGiulian called for discussion. He stated that because of the shallow lot and the unusual shape of the dwelling, he could not support the motion.

Mr. Ribble stated that he believed that the sunroom could be placed in another location.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-136 by NORMA WARD COYNE, under Section 18-401 of the Zoning Ordinance to allow addition 14.0 feet from rear lot line, on property located at 13214 Moss Ranch Lane, Tax Map Reference 45-3(2)(3)24, 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 26, 1991; and

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

1. The applicant is the owner of land.
2. The present zoning is R-3.
3. The area of the lot is 10,416 square feet.
4. The variance requested would be too large for the backyard.
5. The situation is not unique in that there are many ranch style houses in this neighborhood.
6. The application does not meet the standards necessary for the granting of a variance. The lot is not exceptionally narrow, it is not shallow, and it does not have exceptional size.
7. A variance of 11.0 feet is too large. It would be almost half of the 25.0 feet setback required under the Zoning Ordinance.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Thonen, Mr. Hammack, Mr. Pammel Mr. Kelley, and Mr. Ribble voting aye; Chairman DiGiulian voting nay. Mrs. Harris 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 6, 1991.

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Page 191, February 26, 1991, (Tape 2), Scheduled case of:

10:45 A.M. ROBERT E. SIMON, JR. CHILDREN'S CENTER, INC./INOVA SERVICES, INC., SPA 89-C-028-1, appl. under Sect. 6-303 of the Zoning Ordinance to amend SP 89-C-028 for child care center to delete land area to approx. 42,152 s.f. from approx. 21.51 acres and change permittee located at 1800 Cameron Glen Dr., zoned PRC, Centreville District, Tax Map 17-1-((1))pt. 14E. (formerly Reston Area Child Care Center, Inc.) (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hendry replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the property is located within the Cameron Glen Adult Center in the Reston Town Center. The property currently under special permit contains 21.51 acres and is zoned PRC. The surrounding properties are developed with various uses associated with the Reston Town Center. The applicant is requesting an amendment to the existing special permit for a child care center to allow a reduction in land area. The original special permit was granted by the BZA in 1989 and was approved on 21.5 acres. She noted that the child care center is located in a small portion of the Cameron Glen Center. She said that a portion of the property is devoted to the child care center, the parking and the play area. She stated that the applicant was merely requesting that the area be reduced. She noted that there would be no physical changes to the site, nor any changes to the operation of the facility.

Ms. Greenlief stated that staff believed that the change would be in conformance with the Comprehensive Plan and within the purpose and intent of the PRC District. She said that the use would meet the standards for approval and thus, staff recommended approval of application subject to the development conditions. She noted that the conditions were carried forward from the last approval with the deletion of the requirement for site plan approval.

Page <sup>192</sup> 192, February 26, 1991, (Tape 2), (ROBERT E. SIMON, JR. CHILDREN'S CENTER, INC./INOVA SERVICES, INC., SPA 89-C-028-1, continued from Page 191)

The agent for the applicant, Van C. Hendry, Assistant Administrator, Cameron Glen Care Center, 1800 Cameron Glen Drive, Reston, Virginia, addressed the Board and stated that he had nothing to add to the staff report. He requested that the Board act favorably to the request. Mr. Hendry also requested a waiver of the eight day waiting period.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPA 89-C-028-1 subject to the development conditions contained in the staff report dated February 12, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 89-C-028-1 by ROBERT E. SIMON, JR., CHILDREN'S CENTER, INC./INOVA SERVICES, INC., under Section 6-303 of the Zoning Ordinance to amend SP 89-C-028 for child care center to delete land area to approximately 42,152 square feet from approximately 21.51 acres and change permittee, on property located at 1800 Cameron Glen Drive, Tax Map Reference 17-1((1))pt. 14E, 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 26, 1991; and

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

1. The applicant is the lessee of the land.
2. The present zoning is PRC.
3. The area of the lot is 42,152 square feet.

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

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

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

The following development conditions incorporate all applicable conditions of the previous approval. No new conditions have been added. The development conditions requiring site plan approval has been deleted since no new structures or improvements, or changes to the existing facility or use are proposed.

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. The hours of operation shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.
5. 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.
6. 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.
7. 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.

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- 8. The number of employees at the child care center at any one time shall meet the state standards for child care centers.
- 9. 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 legally established until this has been accomplished. The new Non-Residential Use permit must reflect the change in land area.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, three (3) months after the approval date\* of the Special Permit unless the activity authorized has been established 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 which carried by a vote of 6-0 with Mrs. Harris not present for the vote.

Mr. Ribble made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mrs. Harris not present for the vote.

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Mr. Kelley stated that he wanted to thank Lori Greenleaf for all she has done for the Board.

Mrs. Thonen stated that the Board members would miss Lori Greenleaf, although they could understand her reason for leaving. She noted that Lori had always been an asset to the Board's staff.

Mr. Hammack asked Lori if she would miss the Board. Tongue-in-cheek, Lori said "yes", but declined the request to sing a goodbye song.

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Mr. Pammel stated he was concerned with the testimony of Mr. McGinnis on the Zane Mason and Louise Mason Appeals. He stated that there seemed to be a problem with the coordination of the appeals. He expressed his belief that if a technical error was made by the public, it is incumbent upon the County to inform the applicant so that the appropriate correction could be made. He recommended that DEM be made aware of the Board's concerns.

Chairman DiGiulian suggested that the Board ask staff to compose a letter.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if it was the consensus of the Board to have staff compose a letter for the Chairman's signature. Chairman DiGiulian stated that he thought that would be the best course of action.

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As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/18/91

APPROVED: 6/14/91



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 5, 1991. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Martha Harris was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:28 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 195, March 5, 1991, (Tape 1), Scheduled case of:

9:00 A.M. THE WASHINGTON SAN HAN PRESBYTERIAN CHURCH, SP 90-M-090, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 1.2264 acres located at 6901 Columbia Pike, zoned R-2, HC, Mason District, Tax Map 60-4((11))23.

Chairman DiGiulian stated that the Board had received a letter from the applicant requesting a ninety day deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and suggested a deferral date of June 18, 1991, at 8:00 p.m.

Chairman DiGiulian called for speakers to the deferral.

Ms. Kelsey stated that the agent for the applicant, as well as interested citizens, was present in the Board room.

The applicant's agent, Mark D. Mittereder, 4300 Evergreen Lane #306, Annandale, Virginia, addressed the Board. He stated that a number of issues of concern had been raised at a meeting between a group of neighbors, various citizen associations, and the applicant. Mr. Mittereder stated that the applicant would like to cooperate and resolve the issues raised at the meeting, therefore, was requesting a deferral. He indicated that both the design of the structure and the plat would be revised.

Mr. Hammack made a motion to defer SP 90-M-090 to June 18, 1991, at 8:00 p.m. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Page 195, March 5, 1991, (Tape 1), Scheduled case of:

9:15 A.M. MICHAEL J. AUGERI, VC 90-L-137, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 14,488 s.f. located at 4439 Flintstone Rd., zoned R-3 (developed cluster), Lee District, Tax Map 92-1((10))5063.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Augeri replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct an addition 21.0 feet from the rear lot line. Mr. Riegle noted that the Zoning Ordinance requires a minimum rear yard of 25 feet. Accordingly, the applicant was requesting a variance of 4.0 feet to the minimum rear yard requirement.

Mr. Riegle stated that the dwellings on adjacent Lots 5094A and 5095A to the east of the subject property are located between 30.0 and 50.0 feet from the shared lot line.

The applicant, Michael J. Augeri, 4439 Flintstone Road, Alexandria, Virginia, addressed the Board and stated that the need for the variance was caused by the irregular shape of the lot, the location of the existing structure on the lot, and the natural drainage of the lot. He said that the irregular shape of the lot, in conjunction with the location of the existing structure, dictated that any addition must be constructed to the rear of the property. He further explained that the drainage problem at the rear of the property also restricted the placement of an addition in that area.

Mr. Augeri stated that there would be no adverse impact on the abutting properties. He said that the addition would conform to the existing structure and would be aesthetically pleasing. He noted that the Homeowners' Association, which must approve the plans and materials used in the construction of the addition, had expressed their support for the variance. Mr. Augeri stated that his neighbors had also indicated their approval for the addition.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 90-L-137 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 26, 1991.

Mrs. Thonen seconded the motion.

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Page 196, March 5, 1991, (Tape 1), (MICHAEL J. AUGERI, VC 90-L-137, continued from page 185)

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that the request was for a minimum variance. She noted the irregular shape of the lot and the drainage problems on the property, and expressed her belief that the proposed location would be the only possible site for the addition.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-137 by MICHAEL J. AUGERI, under Section 18-401 of the Zoning Ordinance to allow addition 21.0 ft. from rear lot line, on property located at 4439 Flintstone Rd., Tax Map Reference 92-1((10))5063, 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 5, 1991; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-3.
3. The area of the lot is 14,488 square feet.
4. The application has satisfied the standards necessary for the granting of a variance.
5. The highly irregular shape and configuration of the property has caused the need for the variance.
6. The request is for a minimum variance to the back lot line.
7. The back lot line converges in the area that the variance is required.
8. The applicant would probably require a variance of some nature even if the proposed addition were moved to another location.
9. The addition will not have a negligible effect on the neighbors.

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

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

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

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

Page 191, March 5, 1991, (Tape 1), (MICHAEL J. AUGERI, VC 90-L-137, continued from Page 196)

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

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.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 191, March 5, 1991, (Tape 1), Scheduled case of:

9:45 A.M. WILLIAM E. & MARY E. CALE, VC 90-D-105, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot A-1-B having a lot width of 12.0 ft. (150 ft. min. width required by Sect. 3-106) on approx. 4.95 acres located at 7321 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 21-3((6))A. (DEFERRED FROM 2/12/91 FOR ADDITIONAL INFORMATION)

The applicants' representative, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Enrich, and Lubeley, P.C., 200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board and stated that she had submitted the additional information requested by the Board at the February 12, 1991, public hearing.

Ms. Strobel referred to the March 5, 1991, memorandum to the Board from Jane Gwinn, Zoning Administrator, which indicated that Outlot A could be included as part of the proposed subdivision. She stated that because of this ruling, the plat would have to be revised. Ms. Strobel also noted that the memorandum stated that either the existing servants quarters would have to be removed, or Lot A-1-A would have to meet the two acre requirement.

Mrs. Thonen asked Ms. Strobel if a deferral would be necessary so that a new plat could be submitted. She also pointed out that the changes would necessitate that the case be readvertised. Ms. Strobel said that although she was reluctant to ask for a deferral, the inclusion of Outlot A in the application would require a new plat.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral date of April 2, 1991, at 10:30 a.m.

Mr. Pammel made a motion to defer VC 90-D-105 to the suggested date and time.

In response to Mrs. Thonen's request that the case be expedited, Ms. Kelsey said that staff would do everything possible to assist the applicant.

Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Page 191, March 5, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions from February 26, 1991, Public Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Page 191, March 5, 1991, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing  
Elisa J. Grammer and Fredric D. Chanania, VC 91-M-011

Jane Kelsey, Chief Special Permit and Variance Branch, addressed the Board and stated that although the applicant had requested both a waiver of submission requirements and an

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Page 198, March 5, 1991, (Tape 1), (ELISA J. GRAMMER AND FREDRIC D. CHANANIA, VC 91-M-011, continued from Page 197)

expedited review of the variance application, staff did not realize the applicant was requesting an out-of-turn hearing. Ms. Kelsey suggested another date of March 26, 1991, at 11:00 a.m.

In response to Mr. Hammack's question, Ms. Kelsey stated that staff would be able to accommodate the request.

Mr. Hammack made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Page 198, March 5, 1991, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal  
NVHOMES L.P.

Jane Kelsey, Chief, Special Permit and Variance Branch, referred to the memorandum from Jane W. Gwinn, Zoning Administrator, which stated that the application may be moot. She recommended that the Board defer the scheduling of the appeal until the March 19, 1991, public hearing.

Mrs. Thonen made a motion to defer the request to the suggested date. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the Board Room will not be available for the Board of Zoning Appeals May 23, 1991, night meeting. She explained that the Board of Supervisors would be using the Board Room on that night.

In response to Chairman DiGiulian's question, Ms. Kelsey stated that there were no scheduled cases on that date.

Mrs. Thonen made a motion to cancel the May 23, 1991, night meeting. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mrs. Harris absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:47 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/9/91

APPROVED: 4/18/91

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 19, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:15 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 199, March 19, 1991, (Tape 1), Scheduled case of:

8:00 p.m. GRACE & PARK CORPORATION, VC 90-D-114, appl. under Sect. 18-401 of the Zoning Ordinance to allow 7.0 ft. high fence to remain in front yard of corner lot (3.5 ft. max. height permitted for fence on corner lot by Sect. 2-505, 4 ft. max. height permitted by Sect. 10-104) on approx. 18,985 s.f. located at 1800 Briar Ridge Ct., zoned R-2, Dranesville District, Tax Map 31-3((22))29. (DEFERRED FROM 1/10/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian advised the Board that the applicant had requested permission to withdraw the application.

Mrs. Thonen made a motion to allow the applicant to withdraw VC 90-D-114. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 199, March 19, 1991, (Tape 1), Scheduled case of:

8:15 p.m. LYDIA B. GRIMSLEY, SP 90-D-083, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 9.68 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 12,400 s.f. located at 6531 Chesterfield Ave., zoned R-3, Dranesville District, Tax Map 40-2((13))69. (DEFERRED FROM 1/24/91 FOR CONTRACTOR TO BE PRESENT)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Grimsley replied that it was.

Mike Jaskiewicz, Staff Coordinator, stated that this request was heard by the BZA on January 24, 1991, at 10:30 a.m., but was deferred to this date and time so that the applicant's contractor could explain the discrepancy between the 12-foot distance from the side lot line to the addition shown on the building permit, and the actual constructed distance of 9.68 feet. He said that the contractor was notified by letter dated January 24, 1991, that his presence was requested at the hearing and he was in the audience.

In review, Mr. Jaskiewicz stated that the subject property is located generally northeast of the intersection of Kirby Road and Westmoreland Street in McLean. He said that the applicant was requesting approval of a special permit for modification to the minimum side yard requirement, based on an error in building location, to allow the existing building addition to remain 9.68 feet away from the side lot line. Mr. Jaskiewicz said that the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant was requesting modification of 2.32 feet to the minimum side yard requirement. He said that the background, as could be determined by staff, was set forth on page 2 of the staff report.

The applicant, Lydia B. Grimsley, 6531 Chesterfield Avenue, McLean, Virginia, came to the podium.

Chairman DiGiulian asked the contractor to come forward. The contractor identified himself as L. Frank Dekker, 6505 Roosevelt Street, Falls Church, Virginia. He said that he had reviewed the plans many times and could not determine what had happened, but took full responsibility for not checking and rechecking the distance to the property line. Mr. Dekker apologized for the grief that he had caused Ms. Grimsley.

Mrs. Harris asked Mr. Dekker if the garage opening of 14.3 feet was the size which he had always intended it to be, and he replied that it was. Mrs. Harris asked Mr. Dekker if he had plans showing that to be true, and that there was not just a mistake made during the construction. Mr. Dekker said that the garage opening was always intended to be 14.3 feet and the error was a matter of the measurements not corresponding to the actual layout.

Mr. Hammack asked Mr. Dekker if he had extended the existing carport roof toward the property line and Mr. Dekker said that he did extend the carport about one foot toward the west property line.

Chairman DiGiulian asked if there was anyone present to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition, to which he also received no response. Jane Kelsey, Chief, Special Permit and Variance Branch, advised Chairman DiGiulian that the applicant indicated that letters in support of the application were in the file.

Page <sup>200</sup> 199, March 19, 1991, (Tape 1), (LYDIA B. GRIMSLEY, SP 90-D-083, continued from  
Page 199)

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-D-083, adopting the standard Resolution for errors in building location, subject to the Development Conditions contained in the staff report dated January 17, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-083 by LYDIA B. GRIMSLEY, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 9.68 ft. from side lot line, on property located at 6531 Chesterfield Ave., Tax Map Reference 40-2(13)69, 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 19, 1991; and

WHEREAS, the Board has made the following conclusions of law:

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

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

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

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

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

1. This 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. A four (4) foot high evergreen hedge shall be planted in a strip along the western side of the dwelling addition so as to soften and screen its appearance from adjacent Lot 70. This hedge shall be planted so as not to interfere with the operation of the applicant's fence gate.

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



Page 201, March 19, 1991, (Tape 1), (LYDIA B. GRIMSLEY, SP 90-D-083, continued from Page 200)

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 other applicable ordinances, regulations, or adopted standards.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 27, 1991. This date shall be deemed to be the final approval date of this special permit.

Note: At the May 14, 1991 Board of Zoning Appeals Meeting, the Board passed a motion to approve these minutes, subject to a notation that Mr. Pammel arrived at the Board meeting at approximately 8:20 p.m. and did participate in the Grimsley application and all applications that followed.

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Page 201, March 19, 1991, (Tape 1), After Agenda Item:

Request for Additional Time  
George Steven Hawkins, VC 89-L-062 and VC 89-L-063

Mrs. Harris addressed this request, wherein the applicant had requested an additional twenty-four months because of the economic climate. A discussion ensued as to whether or not this was an unforeseen circumstance as set forth in the Zoning Ordinance.

Mrs. Thonen made a motion to grant additional time of one year, with a new expiration date of February 9, 1992. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 201, March 19, 1991, (Tape 1), After Agenda Item:

Request for Date and Time  
Markey Business Center IV Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that Jane W. Gwinn, Zoning Administrator, had intended to be present to address this issue and asked the Board to defer it until later in the meeting when Ms. Gwinn was expected to be present, which the Board agreed to do.

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Page 201, March 19, 1991, (Tape 1), After Agenda Item:

Request for Approval of Minutes from January 29 and February 25, 1991

Mrs. Harris made a motion to accept the minutes as submitted by the Clerk. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 201, March 19, 1991, (Tape 1), After Agenda Item:

Request for Date and Time for N.V. Homes Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board that they had passed this request over two weeks previously because of a letter from the County Executive which indicated that the problem might be worked out so that the applicant would not have to appeal. Ms. Kelsey stated that Jane W. Gwinn, Zoning Administrator, had intended to be present when this item was called and asked the Board to defer it until later in the meeting when Ms. Gwinn would be present, since Ms. Gwinn had made a determination that this appeal was not timely filed. The Board agreed to defer this item until later in the meeting.

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The Board began a short recess at 8:30 p.m. and reconvened at 8:40 p.m. Chairman DiGiulian called the next scheduled case.

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Page 202, March 19, 1991, (Tape 1), Scheduled case of:

8:30 p.m. EKOJI BUDDHIST TEMPLE, SP 90-S-089, appl. under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities on approx. 13.5769 acres located at 7208 and 7216 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 86-4((1))8A, 8B.

Chairman DiGiulian advised that a request for a deferral had been received from the applicant, adding that staff recommended a hearing date of May 23, 1991, at 8:00 p.m. in the Fairfax County Judicial Center, Room 211C.

Gregory N. Harney, Esquire, 6100 Old Keene Mill Court, Springfield, Virginia, the applicant's agent, said that the applicant was requesting a deferral to allow time to work with the citizens within the community, in view of the interest shown and the objections which have been raised about the application. He stated that he had discussed this with Planning Commissioner Peter Murphy, who suggested that it might be of mutual interest to defer the public hearing to a later date. Mr. Harney expressed a desire to have the hearing in late April. Chairman DiGiulian advised him that certain members of the Board wished to be present for the hearing and that the only date which could accommodate them was May 23, 1991.

Mr. Harney expressed concern over the fact that a longer delay would be more costly to the applicant.

Chairman DiGiulian asked if there was anyone else who would like to address the deferral.

Jeff Milstein, 7175 Swift Run Trails, Fairfax Station, Virginia, came forward, stating that his property abutted the proposed development site. He said he represented the Swift Run Trails Homeowners Association, the more than 650 petitioners, and the 250 letter writers from the Fairfax Station/Clifton community. Mr. Milstein spoke in favor of the deferral and specifically requested a night hearing, in order to allow as many interested citizens as possible to attend. Mr. Milstein stated that one of the concerns of the community about this application is the impact upon the environment. Mr. Milstein attempted to introduce some new information about Shaker Homes and Long Signature Homes, and Chairman DiGiulian asked him to restrict his comments to addressing the subject of the deferral. Greg Riegler, Staff Coordinator, acknowledged that staff was aware of the information to which Mr. Milstein referred, that it was being taken under consideration, and that it would be addressed at the appropriate time.

Mr. Kelley made a motion to defer SP 90-S-089 until May 23, 1991, at 8:00 p.m., at the Fairfax County Judicial Center, Room 211C. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

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Page 202, March 19, 1991, (Tape 1), After Agenda Item:

Request for Date and Time  
Markey Business Center IV Appeal

This item was deferred from earlier in the meeting, in order that Jane W. Gwinn, Zoning Administrator, could be present for the discussion.

Ms. Gwinn stated that the appellant's counsel had requested another deferral, but that she was not in favor of granting a deferral. She stated that the decision before the Board was whether or not to accept the appeal, and Ms. Gwinn's determination was that the appeal was not timely filed. The basis of the appellant's request for a deferral, she said, was that there was a pending proffered condition amendment filed by another property owner, which may or may not resolve this issue. Ms. Gwinn's understanding was that the Planning Commission had deferred action on the case until May, and the Board of Supervisors' hearing date would be another eight weeks after that. Ms. Gwinn said she frankly did not believe there was a basis for deferring consideration of whether or not to accept the appeal. Mr. Kelley asked Ms. Gwinn if it would make sense to defer making a decision until May 23, 1991, and Ms. Gwinn said that, by that time, the Planning Commission may or may not have yet made a recommendation, and the item still would require action by the Board of Supervisors (BOS). Regardless of what the Planning Commission and the BOS do on the other application, Ms. Gwinn stated that she had determined that the appeal was not timely filed.

Mrs. Harris asked Ms. Gwinn if she had discussed the issue with Mr. Spring, the appellant's agent, and if she had any indication that he would have liked to be present to give his perspective on the subject. Ms. Gwinn stated that she had seen Mr. Spring the previous day at the BOS meeting and had told him that she would be at the BZA meeting and would voice her objections, so he was aware of her intentions.

Ms. Gwinn said that, if the Board wished to defer making a decision until the next meeting, Mr. Spring could be so advised. Mr. Kelley asked if Mr. Spring was prepared to argue whether the appeal was timely filed. Ms. Gwinn said that when she had forwarded the memo to the Board of Zoning Appeals (BZA) on December 10, 1990, she had also forwarded a copy of the memo to Mr. Spring on the same date, advising him of her position and noting that he could present his comments to the BZA, if he should so desire. She believed that his follow-up letter of December 17, 1990, to the BZA requested deferral of any action, based on a strong likelihood that, "... upcoming events will render the appeal moot and result in its withdrawal...." Ms.

Page 203, March 19, 1991, (Tape 1), (MARKEY BUSINESS CENTER IV APPEAL, continued from Page 202)

Gwinn believed there had been two more deferrals since that time. All of this led Ms. Gwinn to believe that Mr. Spring had been provided an opportunity to respond to her contention that the appeal was not timely filed.

Chairman DiGiulian asked if Mr. Spring was in the room and it was determined that he was not.

Mr. Pammel announced to the Board, for the record, that he had a business relationship with the attorney-of-record for this case; thus, he would not participate in the matter.

Chairman DiGiulian suggested that, if Mr. Spring was not in the room, the item could be deferred until the next meeting and Mr. Spring could be notified that action would be taken to determine if the appeal was timely filed, so that Mr. Spring could be present to participate in the discussion.

Mrs. Harris made a motion to defer decision on whether or not the appeal was timely filed until March 26, 1991, and to advise Mr. Spring that he could present his reasons at that time as to why he believed it to have been timely filed. In any event, the Board would act upon this item on March 26, 1991.

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mrs. Thonen was not present for the vote and Mr. Pammel abstained because of a conflict of interest.

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Page 203, March 19, 1991, (Tape 1), After Agenda Item:

Request for Date and Time  
N.V. Homes Appeal

This item had been deferred earlier in the meeting so that Jane W. Gwinn, Zoning Administrator, could be present for the discussion. Ms. Gwinn recited a brief chronology of events leading up an interpretation by the Acting County Executive, which might render this appeal moot. Ms. Gwinn said that she had faxed a copy of the interpretation to the appellant, in case the Board decided to defer action on accepting the appeal until the appellant's reaction to the appeal could be learned. Ms. Gwinn said that she had spoken briefly with Mr. Norair, attorney for the appellant, after faxing the copy to him and, on the day of the meeting, she had called him because she had not heard from him. At the time that she spoke with him, she had expressed her willingness to meet with Mr. Norair and his client, to see how the interpretation applied to them. When she spoke with Mr. Norair the day of the meeting, he advised her that they were not going to withdraw the appeal and the Board of Zoning Appeals should take action to make a decision on whether or not to accept the appeal. Ms. Gwinn stated that she had not recommended acceptance because she did not believe the appeal met the submission requirements. She also provided that information to Mr. Norair so that he would have an opportunity to respond to the Board; however, he did not respond.

Mrs. Harris made a motion to defer decision on whether to accept the N.V. Homes Appeal until March 26, 1991. She said she would like some additional time to read the backup material, since she had just received it. Also, Mrs. Harris said that she wished to give the applicant the opportunity to address the Board, if he so chose.

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

The Board asked staff to inform the appellant of its decision.

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Page 203, March 19, 1991, (Tape 1), Information Item:

Memo from Barbara A. Byron Regarding  
House Bill 1872

Mr. Kelley asked if the Bill removed the authority from the Zoning Administrator or split the authority. Jane W. Gwinn, Zoning Administrator, stated that the Bill specifically added provisions to the State Code allowing the Board of Zoning Appeals to revoke a special permit and added specific language to that effect; right now the Code is silent in this regard. Mr. Kelley asked if it left the Zoning Administrator's authority intact. Ms. Gwinn said yes, that the current Zoning Ordinance provisions, which provide that the Zoning Administrator may revoke, were based upon a Virginia Supreme Court decision to that effect. She said that she hoped, by the end of the week, to get a signed copy of the Bill, and then prepare the necessary amendment to the Zoning Ordinance. In the same Bill, she said, it was also specified that the Board of Zoning Appeals (BZA) could impose time limits on special permits. Ms. Harris asked Ms. Gwinn if that meant that an applicant did not need to go through the Office of the Zoning Administrator, but could appeal directly to the BZA if conditions of a special permit had been violated. Ms. Gwinn said that the way it was set up for the Board of Supervisors, the current Ordinance provides that the Board may revoke a

Page 204, March 19, 1991, (Tape 1), (MEMO FROM BARBARA A. BYRON REGARDING HOUSE BILL 1872, continued from Page 203)

special exception. It still follows the format of a recommendation from staff, a violation being issued, and the Zoning Administrator recommending to the Board of Supervisors that the special exception be revoked. Ms. Gwinn said that she would get a copy of the Bill for the Board as soon as it was available.

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Page 204, March 19, 1991, (Tape 1), Scheduled case of:

8:45 P.M. KENNETH LESTER APPEAL, A 90-S-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the storage of dump trucks and construction equipment and the stockpiling of mulch, gravel, and sand and the associated delivery business on the subject property are not permitted uses in the R-C District on approx. 7.1950 acres located at 7815 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 95-2((1))6 and 6B. (DEFERRED FROM 1/24/91 FOR APPLICANT TO PREPARE LEGAL STATEMENT. DEFERRED FROM 2/21/91 FOR BZA TO REVIEW LEGAL OPINION AND APPELLANT'S RESPONSE, IF SUBMITTED)

Chairman DiGiulian called on Jane W. Gwinn, Zoning Administrator, who said that she believed there was a motion which needed to be discussed, which she said Mr. Sanders would explain.

H. Kendrick Sanders, Esquire, with the law firm of GILLIAM, SANDERS & BROWN, 3905 Railroad Avenue, 200N, Fairfax, Virginia, the appellant's agent, referred to the previous hearing and a memorandum from Mr. Sanders which was submitted to the Board, outlining the evidence in the case. He then moved that the proceedings be dismissed, based on the legal grounds contained in his memorandum and a subsequent memorandum provided to the Board by the County Attorney's Office, and made available to Mr. Sanders. Mr. Sanders entered an objection to having the Board consider Ms. Gwinn's memorandum to it. He asked if there would be witnesses under oath to be cross examined by him and what rules of evidence would apply to the proceedings. Mr. Sanders acknowledged having a copy of the By-laws of the Board of Zoning Appeals (BZA), but continued to ask questions and request changes in the procedures under which the BZA functions.

Mr. Sanders said that the By-laws say that the applicant has ten minutes to present his case and asked who the applicant might be, according to the By-laws. Chairman DiGiulian advised Mr. Sanders that he would be considered the applicant and that he had ten minutes to make his presentation. Mr. Sanders said that if the Board was going to consider Ms. Gwinn's memo, he wanted to be able to examine Ms. Gwinn about the memo, under oath, saying that she seemed to be sitting as both the prosecutor and complainant in the matter.

Mr. Sanders continued to request that the BZA follow the procedures used in a court of law, and the BZA members continued to remind Mr. Sanders that the procedures of the Board were administrative in nature.

Mrs. Harris told Mr. Sanders that she had been looking forward to reading his response to the memo from the County Attorney's office which, in the previous hearing, he had said he that may or may not submit. Mr. Sanders said that he had not submitted a response.

Chairman DiGiulian told Mr. Sanders that, if the rest of the Board concurred, they would have a normal hearing, the witnesses would not be under oath, the hearing was being taped, and a copy could be made available to him.

Mr. Sanders stated that he wanted the record to show that the County had asserted a violation of law and that the burden was on the County to establish it before the appellant was obliged to submit any testimony or evidence before the body and that he planned to proceed according to that premise.

Chairman DiGiulian told Mr. Sanders that Ms. Gwinn would provide a brief description of the location, that Mr. Sanders would present his appeal, that Ms. Gwinn would then address the reasons for her decision, testimony would be taken from anyone present who wished to speak, and then Mr. Sanders would have several minutes of rebuttal time. Mr. Sanders answered that he understood, but that he objected to the procedure.

Mr. Hammack referred to Mr. Sanders' memorandum which was submitted at the previous hearing, to which the County Attorney's Office had responded with a memorandum, stating that at the conclusion of Mr. Sanders' memorandum he had stated, "...There is no cure for the prehearing *ex parte*; recusal by board members leaves no persons to adjudicate the appellant's case. Therefore, the only remedy is to dismiss the proceeding..." Mr. Hammack stated that the citations of Mr. Sanders applied to criminal court proceedings and an Oregon case, to which the County Attorney's Office's memorandum responded satisfactorily, in Mr. Hammack's opinion.

Mr. Hammack said that, for procedural purposes, he was making a motion to deny Mr. Sanders' motion that the Board members recuse themselves and dismiss the proceeding, prior to their taking evidence on it, for the reasons set forth in the County Attorney's memorandum.

Page <sup>205</sup> 204, March 19, 1991, (Tape 1), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 204)

Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

Mr. Kelley asked Mr. Sanders to limit his presentation to responding to the alleged violations set forth in the letter to Mr. Lester, dated October 8, 1990.

Mr. Sanders responded by questioning the nature of the BZA's standard proceedings and refusing to present his case.

Much discussion ensued concerning proceedings and Mr. Sanders' unwillingness to follow standard procedures and present his case. Mr. Sanders said that he did not want to even get into the merits of his case.

Mr. Hammack reminded Mr. Sanders that he had made the choice to come before the BZA and appeal the decision of the Zoning Administrator, but Mr. Sanders still declined to follow standard procedures.

Chairman DiGiulian asked Mr. Sanders to continue with the hearing and Mr. Sanders said he was waiting for Ms. Gwinn to speak. Chairman DiGiulian told Mr. Sanders that Ms. Gwinn had located the property on the overhead screen, which was all that she was required to do at this point.

Mr. Sanders stated that the burden was on the County to establish some prima facie case which he did not believe could be done by Ms. Gwinn submitting a memorandum.

Despite considerable encouragement from the Board, Mr. Sanders refused to offer any testimony or to present his case, other than stating that the appellant denied the allegations in the letter from the County.

Mr. Sanders referred to the Alward case and said that, if he did not come before the BZA, there would be no relief for the appellant in the Court system.

Ms. Harris told Mr. Sanders that she had questions and, since he chose to come before the Board, she would like him to answer them. Mr. Sanders stated that he did not choose to come before the BZA, but that the Code of Virginia required him to do so before he could seek relief elsewhere.

Mr. Hammack asked Jan Brodie, Assistant County Attorney, to describe the Alward case, to which Mr. Sanders had eluded. Ms. Brodie stated that the Alward case involved a decision by the zoning Administrator, which had not been appealed before the BZA. She said that the Supreme Court believed that the appellant was required to exhaust due process, and failure to do so rendered the zoning Administrator's decision a thing certain, not subject to dispute in any other Court or case. Ms. Brodie and Mr. Hammack continued to discuss this aspect of the case.

Since Mr. Sanders still refused to present his case, Chairman DiGiulian called on Ms. Gwinn, who presented her testimony as set forth in her memorandum dated January 17, 1991. Ms. Gwinn said that on February 20, 1991, she viewed the property in question from off-site and verified the extensive storage of fire wood, the stockpiles, the dump trucks, the front-end loader, etc. She stated that her position was that this use was not allowed in the R-C District.

Mr. Hammack asked Ms. Gwinn if the Inspector who had done the original inspection was present and she said that he was.

Leslie D. Setliff, Zoning Inspector, Zoning Enforcement Branch, came forward and testified that, on the original inspection on September 25, 1990, there were people on the property to whom he spoke, who told him that they had a nonconforming use, or a grandfathered use, of the property. Mr. Setliff asked those present on the property for permission to look around, and they said that he could. Mr. Setliff saw one dump truck, a front end loader, mulch, sand and gravel. He spoke with those present as he left and concluded his inspection.

On January 2, 1991, Mr. Setliff called Mr. Lester, told him that the appeal would go forward, and asked him if he could come out and take some pictures, to which Mr. Lester replied that Mr. Setliff could.

A discussion ensued regarding the chronology of changes in the Ordinance and the resulting effects on the subject property and the grandfathering aspects, with Ms. Gwinn stating that the current uses had not been allowed on the subject property since the Ordinance was established in 1941. Mr. Kelley referred to Mr. Sanders' statement that the property had been used for current purposes since 1952, without interruption, and asked Ms. Gwinn if that was true. Ms. Gwinn said that it might be true, if it was not hearsay. Mr. Sanders did not answer the question.

A discussion ensued during which the Board questioned Ms. Gwinn about any of the vehicles being allowed for agricultural use on the property.

Page 206, March 19, 1991, (Tape 1), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 205)

Mrs. Harris asked Mr. Setliff how he knew where to write to Mr. Lester about the violations. Mr. Setliff stated that he thought he recalled getting Mr. Lester's address from Real Estate Assessments and, thus, discovered that Mr. Lester did not live on the subject property.

Mr. Hammack asked Mr. Setliff to come back to the podium. In answer to questions from Mr. Hammack, Mr. Setliff said that he had visited the appellant's property many times, observing violations on every visit, seeing from one to three trucks on the property at any one time, entering and exiting the property, loading and unloading. Mr. Setliff said that four of the vehicles on the property were of a type that would be considered in violation of the Ordinance. Mr. Setliff also had seen mulch, gravel, sand and fire wood. He saw people working on the property, with whom he conversed and was led to believe by their conversation that they were employees. He saw them stacking fire wood, driving trucks, driving end loaders, and splitting firewood.

Ms. Gwinn said that, when the appeal was filed and it was represented that the use was in violation, she called Mr. Sanders in an effort to determine if, perhaps there was a nonconforming use and that he might like to discuss it. Ms. Gwinn said the reason for her call was to try to find out if there was a valid violation, or that perhaps the notice was incorrect. When she heard Mr. Sanders' version of the situation, she determined that the information should be reviewed by the BZA.

Chairman DiGiulian asked if there was anyone else who would like to address the appeal and a gentlemen in the back of the Board Room started down the aisle, but Mr. Sanders stopped him, had a short discussion and the man returned to his seat.

Mr. Sanders gave a dissertation on playing by the rules, criticized the County's procedure for determining whether a citizen was committing a violation, and said that the materials in the appellant's yard could be found in anyone's back yard. He denied that there was any evidence that the appellant was carrying on a business at the address in question, which Mr. Sanders had been referring to as the appellant's back yard; however, Mrs. Harris had earlier determined from Mr. Setliff's testimony that Mr. Lester did not reside at the address where the violations had occurred. Mr. Sanders reviewed the evolution of the County Zoning Ordinance to the point as we know it today. He reviewed the cited violations and stated that the case hinged on whether or not one believed that the violations had occurred. Mr. Hammack asked Mr. Sanders if he wished to offer any rebuttal to the testimony by the Zoning Administrator and he replied that he did not.

Chairman DiGiulian asked if anyone else wished to speak and, hearing no response, he closed the public hearing.

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator in the case of appeal A 90-S-023 by Kenneth Lester. Mr. Hammack said that he would not go into all that had been said previously, but he did believe that, if the appellant believed that he was obligated to appeal to the BZA because of a decision of one of the Virginia Appellate Courts, or because of choice, the appellant did come in and make an appeal, and he had an opportunity to address the issues raised by the Zoning Administrator. Mr. Hammack said that he would have been happy to hear any rebuttal testimony to the case presented by the Zoning Administrator, or any testimony concerning the number of trucks which were parked, stored or used in connection with the property from the time Mr. Lester has owned it, and the amount of work, if any, he has conducted on the property, and really look at the merits of the issues. In the absence of such rebuttal testimony, Mr. Hammack said that he was left to consider that the Zoning Administrator had personally inspected the property and believed there was a violation; the Zoning Inspector testified that he had gone out to the appellant's property on a number of occasions and observed conduct which appeared to be in violation. The foregoing led Mr. Hammack to believe that this was a prima facie case in support of the Zoning Administrator. Mr. Hammack stated that he believed that the appellant had been afforded due process and an opportunity to testify and present evidence but, since he chose not to do so, and the Board did not hear the other side of the story, the Board could only accept what has been put into the record by the Zoning Administrator and her staff. For all of the aforementioned reasons, Mr. Hammack stated that the Board had to uphold the determination of the Zoning Administrator.

Mrs. Harris seconded the motion.

Mr. Pammel stated that he had gone out to the subject property on the day of the meeting and believed that if any grandfathering was ever involved, it had been expanded, and that the appellant was now in violation of the Ordinance because one is not allowed to expand a nonconforming use. Mr. Pammel agreed with the Zoning Administrator's determination.

Mrs. Harris addressed Mr. Sanders' previous use of the word "hearsay" to describe evidence of commercial activity emanating from the subject property. Mrs. Harris stated that she lived in Clifton and personally knew of multiple people who have had gravel, sand, and mulch delivered from Mr. Lester's property, and referred to a letter of complaint from one of Mr. Lester's neighbors who had stated that the appellant made his livelihood through the commercial use of the property. Because of these facts, Mrs. Harris did not believe the evidence was hearsay.

Page 207, March 19, 1991, (Tape 1), (KENNETH LESTER APPEAL, A 90-S-023, continued from Page 206)

Mr. Kelley said that he was not totally convinced that the use had been expanded and that this has not been a continuing use, and that he would vote against the motion.

Mr. Hammack said that he believed that both Mr. Pammel and Mr. Kelley were right, but that the hidden issue was whether there was any grandfathering of the original use; however, Mr. Sanders had chosen not to raise that as an issue or a defense to anything that the Zoning Administrator had stated. Mr. Hammack said that he personally believed that there was an enlargement of the use and, if testimony had been put into evidence demonstrating that the use had existed for a number of years and had been permitted at the time of the original zoning ordinance, the Board had the authority to act upon that evidence.

Mr. Hammack stated that, in the absence of any defense or rebuttal, there was sufficient reason to uphold the zoning Administrator's decision.

Mrs. Harris again made reference to the fact that the residential use for the materials found on Mr. Lester's property, to which Mr. Sanders had previously eluded, was not valid because Mr. Lester did not live on the subject property.

The motion carried by a vote of 5-1; Mr. Kelley voted nay. Mrs. Thonen was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 a.m.

Geri B. Bekko  
Geri B. Bekko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiuliano  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/7/91

APPROVED: 5/14/91

Handwritten signature or initials, possibly reading "A. H. X."





The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 26, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 209, March 26, 1991, (Tape 1), Scheduled case of:

9:00 A.M. MARIUS IANAS, SP 90-D-086, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow garage/workshop to remain 2.0 ft. from side and rear lot lines (10 ft. min. side yard and 11.2 ft. min. rear yard required by Sect. 3-407 and 10-104) on approx. 10,075 s.f. located at 6516 Roosevelt St., zoned R-4, Dranesville District, Tax Map 40-4((10))(B)4. (DEFERRED FROM 2/12/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sanchez, the applicant's agent, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the application had been deferred from February 12 in order to allow the applicant to resolve an issue with the department of Public Works regarding the shed being located in a sanitary sewer easement. Mr. Riegle stated that Public Works told the applicant that the shed could not be in the easement and the applicant has since relocated the shed 15.5 feet from the rear lot line and 1.2 feet from the side lot line. (He called the Board's attention to the revised plat.) Mr. Riegle stated that the applicant was requesting a variance of 7.8 feet.

Chairman DiGiulian stated that the new plat showed an addition. Mr. Riegle stated that the addition did not encroach into the yards and could be built by right. He added that the applicant had not yet decided whether he will or will not build the addition.

Michael K. Sanchez, P.E., 6514 Roosevelt Street, Falls Church, Virginia, came forward to represent the applicant and thanked the Board for granting a deferral. He stated that the lot, as it is now, does not conform with the R-4 zoning requirements as the lot is 65 feet wide as opposed to 75 feet. He pointed out that the lot was developed prior to the present zoning Ordinance. Mr. Sanchez stated that the applicant has removed the light fixture from the rear of the property that was objectionable to the neighbors and has agreed to install landscaping if it is necessary.

Regarding the development conditions, Mr. Sanchez asked that Condition Number 4 be revised to allow the building to be painted to match the color of the house to allow the applicant some flexibility in the future. He also asked that an additional 14 days be added to the 90 days for the applicant to obtain a building permit as the applicant's father is very ill and the applicant will be going out of the country.

Mr. Sanchez stated that the lot is very narrow which made it difficult to find a location to site the building and have everything operate the way the applicant wanted it to work. He stated that the access is what prompted the applicant to put the building in the way that it is. The problem with the driveway is when approaching the driveway and coming up the hill there is only 150 feet of sight distance and to back a boat into the driveway is very difficult. He stated that by the applicant siting the building the way it is the applicant can pull into the driveway and turn around and put the boat into the driveway without much difficulty. Mr. Sanchez stated that when the applicant set out to build the addition he had no knowledge of the zoning Ordinance regulations and simply looked at the other additions in the neighborhood. He explained that the applicant has already taken a hardship upon himself in having to relocate the building because of the easement and to have the applicant remove the structure completely would compound that hardship.

In response to questions from Mrs. Harris, Mr. Sanchez replied that the applicant could not house his boat in a structure smaller than 26 feet by 13.7 feet. He stated that the remainder of the building was used for a wood working shop and storage. Mr. Sanchez explained that the applicant planned to remove a section from the middle of the building and slide the two sections together.

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

Mr. Hammack made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-086 by MARIUS IANAS, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location

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Page 210, March 26, 1991, (Tape 1), (MARIUS IANAS, SP 90-D-086, continued from Page 209 )

to allow garage/workshop to remain 2.0 feet from side and rear lot lines, on property located at 6516 Roosevelt Street, Tax Map Reference 40-4((10))B)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 March 26, 1991; 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 10,075 square feet.
4. The addition is too large a structure.
5. Although there is sympathy for the problem the applicant has, the Board cannot possibly allow any structure to remain in the easement.
6. The Board cannot go along with the structure being located 2 feet off the side lot line on the western boundary. Even under his proposal to change the configuration, it would still be 26 feet square, which is larger than we normally would allow if it were a garage.
7. The Board could not support the request if it was filed as a new application in its present configuration.
8. The building is too large a structure to remain that close to the side lot line.
9. The Board cannot consider economic hardship.
10. If this were somehow configured into a boat storage and a separate shed for a work shop, maybe it would be a different result.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 of the zoning Ordinance.

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

Mrs. Harris seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1991.

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Page 210, March 26, 1991, (Tape 1), Scheduled case of:

9:15 A.M. GEORGE V. & MIRIAM S. LINGG, VC 91-D-001, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 15.2 ft. from front lot line (20 ft. min. front yard required by Sect. 3-307) on approx. 8,924 s.f. located at 12635 Fantasia Dr., zoned R-3 (developed cluster), Dranesville District, Tax Map 10-2((4))407.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Lingg replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval to construct a two-story addition 15.2 feet from the front lot line and the zoning Ordinance requires 20 feet, thus the applicants were requesting a variance of 4.8 feet. Mr. Riegler stated that other dwellings in the subdivision are 30 to 37 feet from the respective front lot lines.

The co-applicant, George V. Lingg, 12635 Fantasia Drive, McLean, Virginia, stated that he and his wife purchased their house on June 30, 1983 from the original owners. He stated that the lot has an exceptional shape as most of the corner lot properties in the Kingston Chase development has a property line that goes back at a 90 degree angle but their lot does not. Mr. Lingg stated that their garage is on the front of the house and the family room is in the back and if they built the addition on the north side of the house it would still require a variance because of the 8.9 foot setback which exists now. He stated that the lot is 8,924 square feet in size, which is typical of the development, but their dwelling was placed deep within the lot and off center giving a disproportionate amount of property on the east and south side. To the rear of the house, Mr. Lingg stated there is very little space as indicated by the 18.2 foot setback on the west side of the property and to build on that side of the property would also require a variance. Mr. Lingg stated that over the past several years there have been several homeowners who have added one and two story additions to the rear of their property without variances such as their next door neighbor. He noted that the only logical location for the addition would also require a variance because the property is a corner lot and has two front yards. Mr. Lingg stated that they have personally discussed

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the request with all ten property owners who received written notices and nine of those property owners have signed a petition in support of the request. He added that the one remaining property owner lives in Maine and he discussed the request with him by telephone and the neighbor had no objection. He stated that they have also discussed the proposed addition with the residents on Little Stone Lane since those residents would be the most impacted and those residents also signed the petition in support of the request. Mr. Lingg pointed out that the residents on Little Stone Lane would be screened by an existing line of shrubbery that comes across the back of the property and that additional landscaping would also be added. He stated that their request had also been reviewed by the neighborhood Architectural Review Committee and the ARB's only concerns were the materials to be used in the addition and the neighbors' acceptance. In closing, Mr. Lingg stated that the variance would not be contrary to the public interest as there is a 30 foot vehicular and pedestrian line of sight at the intersection which will be maintained and the request is for a minimal variance.

In response to a question from Mrs. Thonen, Mrs. Lingg replied that the addition would not be just a large 16 foot room but would include enlarging the existing dining room and living room.

Mr. Hammack asked what other uses would be made of the addition. Mr. Lingg explained that the first floor addition would provide a family room and the second floor would be a master bedroom/bath, an extra bedroom, and closet space making the house a four bedroom house.

Mr. Pammel asked if a 14 foot addition rather than a 16 foot addition would be acceptable to the applicants. Mr. Lingg replied that it would be.

In response to a question from Mrs. Harris, Mrs. Lingg explained that the architect had advised against building over the garage because of the cathedral ceilings in the family room.

Mr. Lingg pointed out that they had explored other avenues before coming to the Board such as converting the basement, but the idea was dismissed due to the levels of radon.

Mr. Hammack pointed out that a 16 foot addition would be larger than most of the living rooms in new houses. Mrs. Lingg explained that they would be enlarging the living room and dining room by about 2 feet and the rest of the area would be an additional play room for their children. Mr. Hammack stated that they would be adding a 14 foot by 26 foot play room.

Mr. Lingg again agreed to accept a 14 foot addition.

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

Mr. Pammel made a motion to grant the application in part for the reasons noted in the resolution.

Mr. Hammack stated that he would second the motion for purposes of discussion but that he would vote against the motion as he believed the addition would impact the neighbors.

Mrs. Thonen stated that she believed that an expansion of a play room was a convenience not a hardship; therefore she could not support the motion.

Mr. Kelley stated that the request was to convert the house into a four bedroom house and there were no objections from the neighbors. He added that he would have supported the entire request and that he would support the motion because the neighbors did not object, the ARB did not object, and the request was to provide additional living space.

Mr. Pammel pointed out the unusual configuration of the lot because it is an exceptionally small corner lot and no reasonable place for the applicants to construct the addition.

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**MOTION TO GRANT-IN-PART FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-D-001 by GEORGE V. AND MIRIAM S. LINGG, under Section 19-401 of the Zoning Ordinance to allow addition 15.2 (17.2) feet from front lot line, on property located at 12635 Fantasia Drive, Tax Map Reference 10-2((4))407, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1991; and

Page 212, March 26, 1991, (Tape 1), (GEORGE V. & MIRIAM S. LINGG, VC 91-D-001, continued from Page 211 )

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 8,924 square feet.
4. The applicants have met the nine standards.
5. There is an unusual configuration of lots.
6. Normally the corner lots are the larger lots because the frontage situation; therefore, additions are not that much of a problem. In this case there is an exceptionally small corner lot with no reasonable place for the family to put an addition onto the property. It is a very difficult situation and with an expanding family the variance is justified.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.
3. The applicant will submit revised plats in conformance with the granting.

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.

Mr. Hammack seconded the motion which **FAILED** by a vote of 3-4 with Chairman DiGiulian, Mr. Kelley, and Mr. Pammel voting aye; Mrs. Harris, Mrs. Thonen, Mr. Hammack, and Mr. Ribble voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1991.

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Page 213, March 26, 1991, (Tape 1), Scheduled case of:

9:30 A.M. IBRAHIM & JEHAN EL SAYED, VC 91-D-003, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 14.2 ft. from rear lot line (20 ft. min. rear yard required by Sect. 3-807) on approx. 1,870 s.f. located at 6916 McLean Park Manor Ct., zoned R-8, Dranesville District, Tax Map 30-4((41))11A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. El Sayed replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicants were requesting approval of a variance in order to construct an addition 14.2 feet from the rear lot line. He stated that the zoning Ordinance requires a 20 foot rear yard in the R-8 zoning district; therefore the applicants were requesting a variance of 5.8 feet.

Mrs. Harris asked if there had been other variances granted in the neighborhood and Mr. Riegle replied that there had not.

The applicants, Ibrahim and Jehan El Sayed, 6916 McLean Park Manor Court, McLean, Virginia, came forward. Mr. El Sayed submitted a letter from the homeowners association and the next door neighbor into the record. He stated that due to the close proximity of the townhouses and the height of the townhouse on the southwest side the sunlight is blocked from their townhouse. Mr. El Sayed added that their townhouse property is the smallest property in the entire neighborhood comprised of 30 townhouses. He stated that they presently do not have a family room and the sunroom addition would provide additional living space. Mr. El Sayed stated that without a variance the addition could be constructed only 6 feet wide which would not be sufficient and they would like to remain in the townhouse since they have lived there for 15 years.

In response to a question from Mr. Hammack, Mr. El Sayed replied that the sunroom would be a two story addition.

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

Mrs. Thonen made a motion to grant the request because the property is located in a higher density and since it is a townhouse she believed that the Board could be more flexible. The motion died for the lack of a second.

Mrs. Harris then made a motion to deny the request for the reasons noted in the Resolution.

NOTE: Later in the public hearing the applicant asked that the Board waive the 12-month waiting period for rehearing an application and the Board did so.

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#### COUNTY OF FAIRFAX, VIRGINIA

##### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-003 by IBRAHIM AND JEHAN EL SAYED, under Section 18-401 of the Zoning Ordinance to allow addition 14.2 feet from rear lot line, on property located at 6916 McLean Park Manor Court, Tax Map Reference 30-4((41))11A, 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 March 26, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-8.
3. The area of the lot is 1,870 square feet.
4. The lot looks pretty normal compared to the others, although the applicant stated that the lot was smaller but the configuration is the same.
5. The lot does not have any converging lot lines.
6. The granting of the variance would be a convenience asked by the applicants or maybe a more minimum variance could be requested than a sunroom of 12.3 feet by 15 feet.
7. The variance could be reduced.
8. There have been no other variances in the neighborhood and it could start a precedent.

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;

Page 214, March 26, 1991, (Tape 1), (IBRAHIM & JEHAN EL SAYED, VC 91-D-003, continued from Page 213)

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-2 with Mrs. Harris, Mr. Hammack, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian and Mrs. Thonen voting nay.

The Board took action to waive the twelve-month waiting requirement for refiling.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1991.

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Page 214, March 26, 1991, (Tape 1), Scheduled case of:

9:45 A.M. VIRGINIA ELECTRIC & POWER COMPANY, SP 91-D-001, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement for Swinks Mill Substation on approx. 2.5 acres located at the end of Spencer Rd., zoned R-1, Dranesville District, Tax Map 21-3((91))37A. (OTH GRANTED)

Mrs. Thonen made a motion to grant the applicant's request and allow the withdrawal of SP 91-D-001. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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The Board recessed at 10:00 a.m. and reconvened at 10:10 a.m.

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IBRAHIM & JEHAN EL SAYED, VC 91-D-003.

Mr. Riegle explained that the applicant in VC 91-D-003 denied by the Board earlier in the public hearing was requesting a waiver of the 12-month time limitation for rehearing an application.

Mr. Harris made a motion to grant the applicant's request. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Hammack, Mr. Kelley, and Mr. Ribble not present for the vote.

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Page 25, March 26, 1991, (Tape 1), Scheduled case of:

10:00 A.M. RHENUS L. O'DELL, JR., VC 91-A-017, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 15,613 s.f. located at 7718 Elgar St., zoned R-3, Annandale District, Tax Map 70-4((4))(56)16. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. O'Dell replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval to enclose an existing carport 10.5 feet from the side lot line necessitating the need for a 1.5 foot variance. Mr. Riegle explained that in 1975 the Board approved an identical request but the previous property owner never established the use and the variance expired. He stated that the dwelling on Lot 17 sets back 17 feet from the shared lot line.

The applicant, Rhenus L. O'Dell, Jr., 7718 Elgar Street, Springfield, Virginia, stated that he lives in one of the smaller houses in the North Springfield subdivision comprised of 2,100 houses and he would be the fourth homeowner to have the carport enclosed. He stated that when the houses were built the deed of dedication had a 8 1/2 foot side yard variance which was confirmed by title insurance when he purchased the property in 1977. Mr. O'Dell stated that in the past some homeowners built without permits and some of the homeowners apparently got caught in a zoning change but he was not aware of when it occurred. He stated that he put an addition on the rear of his house for which he obtained a permit but he was unable to obtain a permit for the carport.

In response to questions from Chairman DiGiulian, Mr. O'Dell replied that he would only be enclosing the carport.

Mr. Hammack asked if the carport had been partially enclosed. Mr. O'Dell answered that it was not. He assured the Board that he would use similar materials on the carport as on the existing dwelling.

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

Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-A-017 by RHENUS L. O'DELL, JR., under Section 18-401 of the Zoning Ordinance to allow addition 10.5 feet from side lot line, on property located at 7718 Elgar Street, Tax Map Reference 70-4((4))(56)16, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,613 square feet.
4. The applicant has met the nine required standards.

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

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

Page 216, March 26, 1991, (Tape 1), (RHENUS L. O'DELL, JR., VC 91-A-017, continued from Page 215)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 216, March 26, 1991, (Tape 1), Scheduled case of:

10:15 A.M. SISLERS, INC., VC 91-P-013, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to remain 24.0 ft. from front lot line (40 ft. min. front yard required by Sect. 5-507) on approx. 2.42533 acres located at 7139 Lee Highway, zoned I-5, HC, Tax Map 50-2((1))4, 5. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant's agent, Mr. Butler, replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the property is developed with a one-story retail store and construction supply store with an attached garden shop. He explained that the applicant received Board of Supervisors' approval for a special exception to allow construction within the floodplain with a condition that the applicant seek a variance from the BZA to allow the existing retail store structure to remain 24.0 feet from the front lot line. Mr. Jaskiewicz stated that the Zoning Ordinance requires a minimum front yard of 40.0 feet in the I-5 District, thus the applicant was requesting a 16.0 foot variance.

Chairman DiGiulian asked when the building was constructed and Mr. Jaskiewicz answered approximately 1938-1940.

Henry Butler, 6816 Rolling Road, Springfield, Virginia, stated that the use was under special exception and one of the conditions required the applicant to come to the BZA to obtain a variance to allow the existing building to remain in its present location. He stated that apparently the minimum lot line changed when Lee Highway was widened several years ago and since it was something that the owner did not cause that the County should grant the variance. Mr. Butler pointed out that other establishments up and down Lee Highway have the same problem.



Page 217, March 26, 1991, (Tape 1), (SISLERS, INC., VC 91-P-013, continued from Page 216)

Mr. Pammel asked how much Lee Highway had been widened. Mr. Butler stated that the road had been widened from two lanes to four.

Ed Sisler, Knollwood Drive, Falls Church, came to the podium and responded to Mr. Pammel's question by stating that the State had acquired a portion of his land for the right of way but he did not recall how much land was acquired. He stated that he had not brought the documents to the public hearing.

Mr. Pammel stated that he would like to see the documentation that the applicant had in his possession to substantiate the purchase of the land by the State.

Chairman DiGiulian asked Mr. Pammel if he was suggesting that the case be deferred. Mr. Pammel stated that he was suggesting that the Board defer decision until they could review the documents with respect to the road widening.

Mr. Riegler stated that staff would be happy to read through the special exception staff report to see if the information was available. Mr. Pammel agreed.

In response to a question from Chairman DiGiulian, Mr. Sisler replied that the building was constructed sometime between 1946 and 1948. He explained that no one can remember exactly because the building was done piece meal after the war whenever materials were available. Mr. Sisler stated that the road was widened in 1963.

Mr. Ribble asked if the building would be back 40 feet if the road had not been widened. Mr. Sisler stated that he had no idea. Mr. Hammack asked if the garden shop was also constructed then and Mr. Butler stated that the garden shop was constructed in 1960.

Mr. Butler explained that the building that sets back from Lee Highway 24 feet is the applicant's office and has been operating like that since 1946.

Mr. Pammel called the Board's attention to item 2 in the January 21, 1991 letter which notes that the setback was reduced to 24 feet from the corner of the office to the curb. He stated that he believed that should be "right of way" not to the curb. Chairman DiGiulian pointed out that the plat notes right of way.

Mr. Riegler stated that the issue referenced by Mr. Pammel was not raised in the special exception staff report but it was noted that no additional right of way was needed to accommodate future improvements.

Since there was no further discussion and no speakers to address the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

##### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-013 by SISLERS, INC., under Section 18-401 of the Zoning Ordinance to allow existing structure to remain 24.0 feet from front lot line, on property located at 7139 Lee Highway, Tax Map Reference 50-2((1))4 and 5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1991; and

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

1. The applicant is the owner of land.
2. The present zoning is I-5 and HC.
3. The area of the lot is 2.42533 acres.
4. The applicant has met the nine required standards for a variance.
5. There is an very unusual situation in that this structure was built long before the present Zoning Ordinance.
6. There was a road widening which took place which probably brought it closer to the front lot line, that would require 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.

Page 218, March 26, 1991, (Tape 1), (SISLERS, INC., VC 91-P-013, continued from Page 217),

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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.

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.

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 April 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 219, March 26, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions from March 19, 1991 Hearing

Mr. Ribble made a motion to approve the Resolutions as submitted. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 218, March 26 1991, (Tape 1), After Agenda Item:

Waiver of the 12 month Time Limitation  
The Community of the Poor Clares, Inc. SPA 82-v-052-1

Mrs. Thonen stated that she had received numerous telephone calls and letters from the community asking that the issue be allowed to rest for awhile. She then moved denial of the applicant's request to waive the 12-month time limitation for rehearing an application.

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

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Page 219, March 26 1991, (Tape 1), After Agenda Item:

Waiver of the 12 month Time Limitation  
Mildred Mansfield, SP 90-L-082.

Greg Riegler, Staff Coordinator, explained that the request had been for special permit under the mistake section for an accessory structure.

Mr. Ribble asked if the case was the one where the applicant was represented by her contractor and Mr. Riegler replied that it was.

Michael L. Houliston, P.C., 4510 Old Columbia Pike, Annandale, Virginia, the applicant's attorney submitted the return receipts for the certified letters to the clerk.

Mr. Ribble asked Mr. Houliston if it was his belief that all testimony presented at the public hearing was not accurate and Mr. Houliston replied that was correct. Mr. Houliston stated that he believed that the record would reflect that the Board was given the impression that the applicant knew going into the project, which cost her almost \$7,000, that the addition would not be in conformance with the County Code. He stated that he believed that to be ludicrous that a woman who lived in a modest neighborhood with modest means would spend that kind of money knowing the structure would be violation.

Mr. Ribble made a motion that the Board waive the 12-month waiting period for rehearing a new application. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 219, March 26, 1991, (Tape 1), After Agenda Item:

Merkey Business Center VI Appeal

Mrs. Thonen asked how the Board planned to handle appeals when it was the Zoning Administrator's position that the appeal was not timely filed.

Chairman DiGiulian stated that he believed that it would depend on the case but that the Board ought to hear both sides if there is any question as to whether it was timely filed.

Mrs. Harris suggested that the Board defer the discussion until later in the public hearing since the Board had discussed the appeal at its March 19, 1991 public hearing and had asked that the appellant be present.

It was the consensus of the Board to defer discussions on both After Agenda Item Numbers 4 and 5 until later in the public hearing.

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Page 219, March 26, 1991, (Tape 1), After Agenda Item:

Out of Turn Hearing  
Jay Briley and Lucille Wooden, VC 91-P-033

Greg Riegler, Staff Coordinator, stated that it was his understanding that the applicant wished to address the request but was not yet present in the Board room.

It was the consensus of the Board to defer action until the end of the agenda.

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Page 219, March 26, 1991, (Tape 1), Scheduled case of:

10:30 A.M. RICHARD L. & MARY P. SIEPERT, VC 91-A-002, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.0 ft. from side lot line (8 ft. min. side yard and 20 ft. min. total yards required by Sect. 3-307) on approx. 9,658 s.f. located at 4923 Gloxinia Ct., zoned R-3 (developed cluster), Annandale District, Tax Map 69-4((12)45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Siefert replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicants were requesting approval to construct a garage 6.0 feet from the side lot line in a district where the Zoning Ordinance requires a minimum side yard of 8.0 feet, thus a variance of 2.0 feet was requested. Ms. Dickey pointed out that the dwelling on Lot 44 is located approximately 13.3 feet from the shared lot line.

Richard L. Siefert, 4923 Gloxinia Court, Annandale, Virginia, came forward and stated that he purchased the house in 1977 with the intentions of enclosing the carport at some time in the future and had been unaware of the setback requirements. He stated that on the left side of the property there is a pipestem that goes to two houses in the rear of his property in an area that he believed that he had a substantial amount of land when in reality he has only 8 feet. He stated that he would like to remove the existing carport and build a garage to provide additional storage space. Mr. Siefert stated that he would like to construct a fifth

Page 220, March 26, 1991, (Tape 1), (RICHARD L. & MARY F. SIEFERT, VC 91-A-002, continued from Page 219)

bedroom with a shower for his father to occupy in the area that he presently uses for storage. He stated that he had letters from adjacent homeowners who were in support of the request since they believed that it would remove an eye sore.

In response to a question from Mr. Hamneck, Mr. Siefert introduced his contractor who assured the Board that materials used in the construction of the garage would match the existing dwelling.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report with the following addition:

3. The building materials utilized in the construction of the addition shall be compatible with those on the existing dwelling.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-A-002 by RICHARD L. AND MARY F. SIEFERT, under Section 18-401 of the Zoning Ordinance to allow addition 6.0 feet from side lot line, on property located at 4923 Glorinia Court, Tax Map Reference 69-4((12))45, 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 26, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,658 square feet.
4. The applicants have satisfied the standards for a variance.

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

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

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

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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 garage shown on the plat (prepared by Huntly, Wyce and Associates, P.C., dated January 4, 1990) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.
3. The building materials utilized in the construction of the addition shall be compatible with those on the existing dwelling.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 221, March 26, 1991, (Tapes 1-2), Scheduled case of:

10:45 A.M. KENNETH W. RUTLAND, VC 91-C-009, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 9.0 ft. from rear lot line (13 ft. rear yard required by Sects. 3-307 and 2-412) and addition 10.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 9,016 s.f. located at 13136 Curved Iron Road, zoned R-3, Centreville District, Tax Map 25-1((14))157.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Rutland replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and stated that the applicant was requesting approval to construct an enclosed screened porch 10.3 feet from the rear lot line and an 5.0 high open deck 9.0 feet from the rear lot line. She explained that Sect. 2-412 of the Zoning Ordinance allows a deck 4.0 feet in height to extend 12.0 feet into the minimum rear yard; therefore the deck should be constructed at least 13.0 feet from the rear lot line. Ms. Dickey concluded by stating that the applicant was requesting a variance of 14.7 feet to the minimum yard for the screened porch and a variance of 4.0 feet to the minimum yard requirement for the deck. She pointed out that the dwelling on adjacent Lot 156 is located approximately 9.0 feet from the shared lot line and the area to the rear of the subject property is dedicated as open space to the homeowners association.

Kenneth W. Rutland, 13136 Curved Iron Road, Herndon, Virginia, explained that the variance request was necessitated by the shallowness of the lot and that without the variance he could not construct either the screened porch or the deck. He stated that the property is located on a cul-de-sac and there are other properties in the neighborhood that have much deeper back yards that have constructed decks. Mr. Rutland stated that he believed that the granting of the variance would relieve a clearly demonstrable hardship and without the variance he could not improve the property to be comparable with other properties in the immediate vicinity.

In response to a question from Mrs. Thonen, Mr. Rutland replied that the deck would come off the screened porch and the elevation where the screened porch meets the house establishes the floor of the porch. He stated that it would make a tremendous step down if the deck is lowered by 1 foot.

Mrs. Thonen stated it would not be too advisable to have a step down. Mr. Rutland agreed and stated that it would not be aesthetically pleasing as it would be too much of a step down.

Mr. Hammack stated that the staff report mentioned that the dwelling on Lot 156 is only 9.0 feet from the shared lot line. He asked Mr. Rutland to indicate on the viewgraph the location of the neighbor's house which Mr. Rutland did.

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

Page 222, March 26, 1991, (Tapes 1-2), (KENNETH W. RUTLAND, VC 91-C-009, continued from Page 221 )

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report being implemented.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-009 by KENNETH W. RUTLAND, under Section 18-401 of the Zoning Ordinance to allow addition (deck) 9.0 feet from rear lot line and addition 10.3 feet from rear lot line, on property located at 13136 Curved Iron Road, Tax Map Reference 25-1((14))157, 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 26 1991, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,016 square feet.
4. The applicant has satisfied the nine standards for a variance.
5. The Board agrees with the applicant that the lot is shallow and is sort of triangularly shaped off the cul-de-sac and it backs up to park land.
6. The requested variance will not result in any real impact on any other property owners.
7. Because of the shallowness, the applicant is precluded from really using his property effectively.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 locations and the specific additions shown on the plat prepared by Land Design Consultants, Inc., dated October 1989 and revised January 1991, included with this application, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris 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 April 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 223, March 26, 1991, (Tape 1), Scheduled case of:

11:00 A.M. ELISA J. GRAMMER AND FREDRIC D. CHANANIA, VC 91-M-011, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (enclosed porch) 8.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 20,452 s.f. located at 3631 Tallwood Terrace, zoned R-2, Mason District, Tax Map 61-3((14))351. (OTH GRANTED)

Chairman DiGiulian explained that staff had indicated that the posting was not in order. He suggested deferring the application to April 2, 1991 at 11:15 a.m.

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Harris, Mr. Hammack, and Mr. Ribble not present for the vote.

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Page 223, March 26, 1991, (Tape 2), After Agenda Item:

Markey Business Center VI Appeal

The Board had passed over this item earlier in the public hearing in order for the appellant's attorney to be present.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that this case had been deferred several times with the last time being the March 19, 1991 public hearing at which time the Zoning Administrator was present. She stated that the Zoning Administrator had reiterated that it was her position that the appeal was not timely filed because her determination was dated September 5, 1990, and subsequently the appellant's attorney requested additional time to provide the required interparcel access easement after that date. Ms. Kelsey stated that the Zoning Administrator informed the appellant in a letter dated November 20, 1990, that she would grant an extension for providing the interparcel access, but she had not changed her original determination. Ms. Kelsey stated that the appellant's attorney was going by the November 20 date and not the September 5 date as the 30-day time period in which to file an appeal. Based on that September 5 date, it was the Zoning Administrator's position that the appeal had not been timely filed. In addition, the appellant's attorney had neglected to file a copy of the appeal with the Clerk to the Board of Zoning Appeals as required by the County and State Codes.

Mr. Pammel abstained from participating in the discussion as he had a business relationship with the law firm representing the appellant.

Mr. Kelley stated that he had read the documents submitted to the Board by the Zoning Administrator and it appeared that she gave a date of October 15 for the appellant to complete an action, which she later extended. He questioned why the Zoning Administrator would run a date from September 5 to October 15 when that date would be beyond the 30-day appeal period.

Ms. Kelsey explained that the Zoning Administrator advised the appellant on September 5 that the site plan was approved in error and the required egress/ingress and public access for the development needed to be submitted to the County for review by October 15. The appellant's attorney then asked for an extension to the October 15 date. Ms. Kelsey stated that the

Page 224, March 26, 1991, (Tape 2), (MARKEY BUSINESS CENTER VI APPEAL, contined from Page 223)

appellant had 30 days from the receipt of the letter in order to make a determination as to how he wanted to proceed.

Mrs. Thonen agreed with Mr. Kelley. She stated that if someone gave her time to work out a problem she would not have thought about filing an appeal.

John R. Spring, Jr., Esquire, Rees, Broome & Diaz, P.C., Ninth Floor, 8133 Leesburg Pike, Vienna, Virginia, stated that the appellant received the letter which stated that they had until October 15 to provide the interparcel easements and that he believed it would be customary for a layman, which the appellant is, to think of that date as a deadline for doing something. He stated that the appellants did not contact him until after the appeal deadline had run, that is after October 5. Mr. Spring stated that on October 16 he requested in writing an extension of the October 15 deadline and by letter dated November 20 the Zoning Administrator's assistant granted an extension to December 1. He stated that his October 16 letter requested an extension not only of the October 15 date but of all matters that had been raised. On November 26, Mr. Spring stated that he consulted with the appellants and it became apparent that they could not meet the December 1 deadline and he was instructed to file an appeal using the November 20 date as the 30-day appeal period. He stated that both the Virginia Code 15.1496.1 and the Fairfax County Zoning Ordinance, Section 18-301, provide that a citizen may appeal any decision, determination, order or requirement of the Zoning Administrator. Mr. Spring stated that the decision that was being appealed was the November 20 letter and that he believed the statute and the Ordinance allow 30 days from the date of any decision. He stated that he believed that any time the Zoning Administrator is trying to resolve an issue with an appellant and makes a new decision, or makes a new order, or sends a new notice of violation, the 30 day period may be running again. Mr. Spring stated that as December 5 the appeal was filed and that the Board of Zoning Appeals Clerk received a copy of the appeal on December 5.

Mr. Kelley stated that he agreed with Mr. Spring that if in fact the Zoning Administrator is working with an appellant it amounts to a *de facto* extension. He stated that he would make a motion that the appeal was timely filed and that the Board should accept the appeal as such.

Mrs. Thonen stated that it was her understanding that when a citizen is issued a notice of violation and that as long as they are trying to resolve the issue all action is stayed.

Mr. Hammack stated that he would like an opportunity to reread the package now that he has heard the appellant's position.

Mr. Kelley agreed to withhold making a motion and added that he hoped that the public discussion was closed on the matter. Mr. Hammack agreed.

Chairman DiGiulian suggested that the Board defer decision on the timeliness issue to April 2, 1991 as an after agenda item. Mr. Kelley so moved. Mr. Hammack seconded the motion which carried by a vote of 4-0-1 with Mr. Pammel abstaining.

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Page 224, March 26, 1991, (Tape 2), After Agenda Item:

Acceptance of NVHomes Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had advised the appellant that the Board requested that someone be present to address the issue of timeliness.

Mr. Pammel made a motion that the Board support the Zoning Administrator's position. Mr. Hammack seconded the motion.

Mrs. Thonen asked if there was anyone present and Ms. Kelsey said there was not. Mrs. Thonen stated that she would like to see the appellant supply the Board with better information since the Board could not act fairly without sufficient information. Ms. Kelsey agreed that staff would again contact the appellant.

Mrs. Thonen made a substitute motion to defer action for one week to allow her time to contact the attorney. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not present for the vote.

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Page 224, March 26, 1991, (Tape 2), After Agenda Item:

Out of Turn Hearing  
Jay Briley and Lucille Wooden, VC 91-P-033

The co-applicant, Jay Briley, 8430 Woodyard Road, Clinton, Maryland, came forward.

In response to questions from the Board, Mr. Briley replied that he was the contract purchaser.



Page 225, March 26, 1991, (Tape 2), (JAY BRILEY AND LUCILLE WOODEN, VC 91-P-033, continued from Page 224 )

Mrs. Thonen made a motion to grant the request. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not present for the vote.

Chairman DiGiulian asked staff for a date and time. Greg Riegler, Staff Coordinator, suggested May 7, 1991 at 10:00 a.m.

Hearing no objection, the Chair so ordered.

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Mr. Pammel asked if there was a possibility of rescheduling the June and July night meetings for the second or fourth Tuesdays.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the Board had deferred a case to the June 18 night meeting.

It was the consensus of the Board to reschedule the July night meeting if the Board room was available.

In response to a question from Mr. Hammack, Ms. Kelsey confirmed that there was no night meeting scheduled in April.

Ms. Kelsey pointed out that the May 21, 1991 meeting had been rescheduled to May 23 in the Judicial Center, Room 211C.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/30/91

APPROVED: 5/7/91

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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 2, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribbie;

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Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 227, April 2, 1991, (Tape 1), Scheduled Case of:

9:15 A.M. PETER & ANNE FITZPATRICK, VC 91-D-006, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.7 ft. from rear lot line (20 ft. min. rear yard required by Sect. 3-807) on approx. 1.0 acres located at 9012 Old Dominion Dr., zoned R-E, Dranesville District, Tax Map 13-4((1))25A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Fitzpatrick replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirement to permit construction of a one-story addition, interconnecting the two-story wood frame dwelling and the two-story outbuilding. The proposed addition would be 4.7 feet from the side lot line, and since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-E District, the applicants were requesting a variance of 15.3 feet to the minimum side yard requirement.

The applicant, Peter B. Fitzpatrick, 9012 Old Dominion Drive, McLean, Virginia, responded to Chairman DiGiulian's question, by stating that the easement shown on the plat was to ensure that the existing vegetation would be preserved. Although a small shed or a gazebo could be built on the easement, he stated the easement would restrict the building of a large structure. Mr. Fitzpatrick presented a copy of the easement agreement to the Board.

Mr. Fitzpatrick stated that the house and the outbuilding were very old and had been in existence before the adoption of the Zoning Ordinance. He stated that both buildings were currently connected by a covered breezeway and explained that he would like to construct a one story addition in order to attach the two buildings.

Mr. Fitzpatrick said that before coming to the Board he had consulted his neighbors and had obtained their support for the architecturally designed addition. He expressed his belief that the application met the requirements necessary for a variance and asked the Board to grant the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-D-006 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 26, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-006 by PETER AND ANNE FITZPATRICK, under Section 18-401 of the Zoning Ordinance to allow addition 4.7 ft. from rear lot line, on property located at 9012 Old Dominion Drive, Tax Map Reference 13-4((1))25A, 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 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is 1.0 acres.
4. The application has satisfied the nine requirements necessary for the granting of a variance.
5. The dwelling was constructed prior to the adoption of the Zoning Ordinance. The existing outbuilding is closer to the lot line than the proposed addition.
6. There will be no impact on the adjoining residences because of the easement adjacent to the property line.
7. The unusual conditions justify the granting of the variance.

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

Page 228, April 2, 1991, (Tape 1), (PETER & ANNE FITZPATRICK, VC 91-D-006, continued from Page 227)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 228, April 2, 1991, (Tape 1), After Agenda Item:

Approval of Resolutions from March 26, 1991 Hearing

Mrs. Thonen made a motion to approve the Resolutions from March 26, 1991, as submitted by the Clerk. Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 228, April 2, 1991, (Tape 1), After Agenda Item:

Reconsideration for VC 91-D-001, George V. & Miriam S. Lingg

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that Mr. Lingg had expressed his desire to speak to the reconsideration. She explained that he would be present at the end of the scheduled agenda.

Chairman DiGiulian stated that the Board would pass over this item.

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Page 229, April 2, 1991, (Tape 1), AFTER AGENDA ITEM:

Request for Scheduling of Appeal  
Markey Business Center IV

Mr. Hammack made a motion to defer the decision until the next public hearing. Mrs. Thonen seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining from the vote.

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Page 229, April 2, 1991, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal  
NVHomes L.P.

Chairman DiGiulian stated that the Board had received a letter requesting that the Board allow the withdrawal of the appeal.

Mrs. Thonen made a motion to allow the withdrawal of the appeal. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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The Board recessed at 9:25 a.m. and reconvened at 9:38 a.m.

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Page 229, April 2, 1991, (Tape 1), Scheduled Case of:

9:30 A.M. WILLIAM J. & LINDA J. NEFF, VC 91-L-005, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 6.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-107 and 2-412) on approx. 24,649 s.f. located at 6430 Freeport Ave., zoned R-1, Lee District, Tax Map 91-3((1))48.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Neff replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to allow an addition of a carport to be located 6.0 feet from the side lot line. Section 3-307 of the Zoning Ordinance requires a minimum side yard of 20.0 feet in the R-1 District. Section 2-412 allows carports to extend 5.0 feet into any minimum side yard, but not closer than 5.0 feet to any side lot line. Therefore, the carport could be located 15.0 feet from the side lot line. The application requests locating the carport 6.0 feet from the side lot line. Therefore, the applicants are requesting a variance of 9.0 feet to the minimum side yard requirement.

Ms. Bettard said that research of the files in the Zoning Administration Division indicated that no variances had been approved in the immediate vicinity.

The applicant, William J. Neff, 6430 Freeport Avenue, Alexandria, Virginia, addressed the Board and stated he would like to construct a small carport and said that he had his neighbors support for the proposed addition. Mr. Neff explained that he was placing the carport in the proposed location because the roof line would remain the same.

In response to Mrs. Harris' question, Mr. Neff stated that he had hired a contractor to build a small addition and a carport in July 1991. He explained that although the addition was finished, the contractor could not proceed with the carport until a variance was granted. Mr. Neff said that the foundation had been dug and construction started when the contractor realized a variance was necessary.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-L-005 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 26, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-005 by WILLIAM J. AND LINDA J. NEFF, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 6.0 ft. from side lot line, on property located at 6430 Freeport Avenue, Tax Map Reference 91-3((1))48, 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 April 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 24,649 square feet.
4. The application has satisfied the nine requirements necessary for the granting of a variance.
5. The plat depicts a large septic field located immediately to and central to the rear of the property. This would effectively preclude placing the carport at any other practical site on the property.
6. The contractor had started the construction of the bathroom addition before he realized that a variance would be needed for the carport.
7. The house is placed to the right on the property.
8. The house on the abutting lot is located 60 feet from the proposed addition.

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

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

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

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

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

1. This variance is approved for the addition to the specific dwelling shown on the plat (dated November 7, 1990) prepared by William Sikes and submitted with this application.
2. A Building Permit shall be obtained prior to any construction.

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.

Mr. Ribble seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

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\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 231, April 2, 1991, (Tape 1), Scheduled Case of:

9:45 A.M. ARNOLD L. PUNARO, VC 91-D-008, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 6.0 ft. from side lot line and 72.1 ft. from Dulles Airport Access Road (12 ft. min. side yard required by required Sect. 3-307, 200 ft. from Dulles Airport Access Road by Sect. 2-414) on approx. 13,485 s.f. located at 1730 Baldwin Dr., zoned R-3, Dranesville District, Tax Map 30-3((17))32A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Punaro replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the property is developed with a single family dwelling. She stated that the applicant was requesting a variance to allow an addition to be located 6.0 feet from the side lot line and 72.1 feet from Dulles Airport Access Road. Ms. Bettard noted that the property was developed prior to the establishment of the noise regulations requiring the locations of residential uses a minimum distance of 200.0 feet from the Dulles Access Road.

Ms. Bettard stated that the research of the files in the Zoning Administration Division indicated that the dwelling on adjacent Lot 33A is located approximately 13.9 feet from the shared lot line. She said the environmental analysis attached in Appendix 4 indicated that highway noise is a major concern for any development which may occur on the property.

The applicant, Arnold Punaro, 1730 Baldwin Drive, McLean, Virginia, addressed the Board and thanked staff for their help and cooperation. He explained that he was requesting the variance in order to construct a two car garage. Mr. Punaro presented a letter signed by the adjoining neighbors which expressed their support for the request. He noted that the existing carport would merely be enclosed and there would be no further intrusion into the side yard. Mr. Punaro further noted that no trees or foliage would be removed. He expressed his belief that the application met all the standards necessary for a variance and asked the Board to grant the request.

In response Mr. Ribble's question as to when the carport was built, Mr. Punaro stated that he believed that the carport was part of the original structure.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-D-008 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 26, 1991, with the deletion of Condition 3 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-008 by ARNOLD L. PUNARO, under Section 18-401 of the Zoning Ordinance to allow addition 6.0 ft. from side lot line and 72.1 ft. from Dulles Airport Access Road, on property located at 1730 Baldwin Drive, Tax Map Reference 30-3((17))32A, 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 2, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,485 square feet.
4. The applicant has shown that an extraordinary condition exists on the property.
5. Due to the Dulles Access Road, if the addition were placed to the rear of the property, a greater variance would be required.
6. The applicant is requesting a minimum side variance. The addition could not be placed either on the front or on the other side of the property.
7. Strict application of the Ordinance would produce a hardship which is not generally shared by other properties in the area.

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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 addition to the specific dwelling shown on the plat (dated December 19, 1990) prepared by Kenneth W. White submitted with this application.
2. A Building Permit shall be obtained prior to any construction.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 9:55 a.m. and reconvened at 10:02 a.m.

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Page 232, April 2, 1991, (Tape 1), Scheduled Case of:

10:00 A.M. CLARENCE B. & RUTH B. WARREN, VC 91-V-007, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 19.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 14,468 s.f. located at 8616 Buckboard Dr., zoned R-3, Mt. Vernon District, Tax Map 102-3((10))(5)1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Warren replied that it was.



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Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow the construction of a garage 19.0 feet from the rear lot line. Ms. Bettard noted that on September 20, 1990, the Board of Zoning Appeals denied VC 90-V-070. She stated that the applicant had been granted a waiver of the 12 month waiting period for rehearing. Ms. Bettard said that research of the files in the Zoning Administration Division indicated that the dwelling on adjacent Lot 11 is located approximately 60.0 feet from the shared lot line and the dwelling on Lot 12 is located approximately 31.77 feet.

The applicant, Clarence B. Warren, 8616 Buckboard Drive, Alexandria, Virginia, addressed the Board. He noted that this was the second time he had come before the Board to request a variance for a two car garage, and thanked the Board for granting the waiver of the 12 month waiting period for rehearing.

Mr. Warren explained that because of the odd shaped lots, the neighborhood had an unwritten agreement that the use of fences and small buildings would be kept at a minimum. He stated that because of this understanding, he was requesting a garage that could also be used for storage. He expressed his belief that the addition would enhance the property and would not be detrimental to the neighborhood. Mr. Warren stated a garage addition had been planned before the construction of the house and before the change in the Zoning Ordinance. He explained the house had been placed off center on the lot so that the future garage addition would balance the structure. He also noted that, because of the prior planning, the roof line would remain the same.

In response to Mrs. Harris' question as to whether the garage dimension could be reduced to 20 feet, Mr. Warren stated that he and his wife's serious health problems made it necessary to have a bedroom and bath on the first floor of the house. He further noted that the addition would also ensure that, although restricted by the state of their health, they could remain in their house and have transportation during inclement weather.

Mrs. Thonen stated that the Board could not vote on the humane issue, but must vote on the land hardship issues. She noted the irregular shape of the lot, that only a corner of the garage would need a variance, and a variance would be needed if the addition were placed anywhere on the lot.

In response to Mr. Ribble's question regarding the placement of the house, Mr. Warren stated that he had asked the builder to place the house so that when the garage addition was constructed, the house would be centered on the lot.

Mrs. Harris stated that the garage could be reduced to 20.0 feet. She noted that the Board must base its decision on hardship of land, not on convenience.

Mr. Warren said that although he would be willing to compromise, he believed that the proposed structure would add aesthetic value to the property.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Colonel James P. Lyke, 8624 Buckboard Drive, Alexandria, Virginia; Francis D. Harding, 8631 Buckboard Drive, Alexandria, Virginia; Pauline Buttery, 1905 Bridle Lane, Alexandria, Virginia; and Ralph Anderson, 8607 Buckboard Drive, Alexandria, Virginia; expressed their support of the applicant. They stated that the applicants were good neighbors, the addition would be architecturally symmetrical, the open space atmosphere would prevail, the addition would be in harmony with the neighboring structures, and there would be no detrimental impact to the area.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-V-007 for the reasons reflected in the Resolution, and subject to the development conditions contained in the staff report dated March 26, 1991, with the addition of Condition 3 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-007 by CLARENCE B. AND RUTH B. WARREN, under Section 18-401 of the Zoning Ordinance to allow addition 19.0 ft. from rear lot line, on property located at 8616 Buckboard Drive, Tax Map Reference 102-3(10)(5)1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

Page 234, April 2, 1991, (Tape 1), (CLARENCE B. & RUTH B. WARREN, VC 91-V-007, continued from Page 233)

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,468 square feet.
4. The lot has an unusual size and shape.
5. The application has satisfied the nine requirements necessary for the granting of a variance.
6. The applicants have demonstrated that a hardship exists. The applicants' health necessitates a bedroom on the first floor level of the house.
7. The applicants have shown the need for additional storage space.
8. The proposed addition would provide architectural balance and symmetry.
9. The variance requested is less than 100 square feet on a 14,468 square foot lot.
10. The variance requested is very nominal.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 building 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.
3. The architectural style and building materials shall be compatible and consistent with the existing design of the structure.

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.

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Mr. Kelley seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Pammel voting aye; Mrs. Harris, Mr. Hammack, and Mr. Ribble voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 236, April 2, 1991, (Tape 1), Scheduled Case of:

10:15 A.M. RONALD W. TUTTLE, VC 91-S-004, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory structure in front yard 15.0 ft. from rear lot line (accessory structure in front yard prohibited by Sect. 10-104, 25 ft. min rear yard required by Sect. 3-C07) on approx. 11,403 s.f. located at 4321 Cub Run Rd., zoned R-C, WS, AN, Springfield District, Tax Map 33-4(2)40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tuttle replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow an accessory structure to remain in a front yard and 15.0 feet from the rear lot line. Ms. Bettard noted that Section 10-104 of the Zoning Ordinance prohibits accessory structures in front yards. She noted that research of the files in the Zoning Administration Division indicated that the dwelling on adjacent Lot 43 is located approximately 24.9 feet from the abutting pipestem driveway.

In response to Mr. Ribble's question as to how many lots the pipestem serves, Ms. Bettard said that it served a total of four lots.

The applicant, Ronald W. Tuttle, 4321 Cub Run Road, Chantilly, Virginia, addressed the Board and thanked staff for their help with the application. Mr. Tuttle stated that he had purchased the house in 1980, and that the property had been downzoned in 1982. He said that the rezoning had made it extremely difficult to construct a workshop within the zoning requirements. He added that the adjacent pipestem imposed further restrictions on the property. He explained that the drainage patterns, the landscaping, and the existing structure preclude constructing the accessory structure at any other location.

In response to Chairman DiGiulian's question as to whether the accessory structure was in existence, Mr. Tuttle stated that while there is an existing slab, the accessory dwelling did not exist. He explained that the builder had left the slab intact when the construction shed was removed.

Mr. Tuttle stated material similar to the existing house would be used and the proposed structure would be in harmony with the area. He noted that the immediate neighbors had voiced their approval of the application.

In response to Mr. Hammack's question regarding the written statement of justification, Mr. Tuttle stated that he did not know if the builder's original shed had been approved.

In response to inquiries from the Board, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that because of the pipestem driveway, the proposed site is in a front yard and the lot line that is most opposite the shortest street line is the rear lot line. She said that when the property was rezoned to the R-C district, the rear yard and the pipestem requirement of 25.0 feet remained the same. Ms. Kelsey noted that the accessory structure was not depicted on the copy of the final approval for the house location plat.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 91-S-004. The motion died for lack of a second.

Mrs. Harris made a motion to deny VC 91-S-004 for the reasons reflected in the Resolution.

Mr. Hammack seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack expressed his concern that the proposed workshop would be too large for the site. He noted that it was over half the size of the house.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-004 by RONALD W. TUTTLE, under Section 18-401 of the Zoning

Page ~~236~~, April 2, 1991, (Tape 1), (RONALD W. TUTTLE, VC 91-S-004, continued from Page ~~235~~)

Ordinance to allow accessory structure in front yard 15.0 ft. from rear lot line, on property located at 4321 Cub Run Road, Tax Map Reference 33-4((2))40, 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 2, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS, AN.
3. The area of the lot is 11,403 square feet.
4. Although there is an unusual situation in that there are two front yards, the proposed 26.0 by 23.0 foot workshop is not essential to the use of the property.
5. Accessory structures should not be allowed in front yards.
6. The applicant did not demonstrate a hardship of the land that dictated the structure had to be placed in the front yard.
7. The variance would be for the applicant's 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;
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 5-2 with Mrs. Harris, Mrs. Thonen, Mr. Hammack, Mr. Kelley, and Mr. Pammel voting aye; Chairman DiGiulian and Mr. Ribble voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991.

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10:30 A.M. WILLIAM E. & MARY E. CALE, VC 90-D-105, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot A-1-B having a lot width of 63.84 ft. (150 ft. min. width required by Sect. 3-106) on approx. 5.22365 acres located at 7321 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 21-3((6))A. (DEFERRED FROM 2/12/91 FOR ADDITIONAL INFORMATION - DEFERRED FROM 3/5/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the agent for the applicant to the podium and noted that the case had been deferred for additional information.

The applicant's representative, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board and stated that the subject property had an exceptional shape. She noted that the situation would not be of a recurring nature, the proposed density is .4 dwelling units per acre on property that is zoned R-1, and there would be no detrimental impact on the adjoining properties. Ms. Strobel said that although staff had referenced the property as a pipestem type lot, access would not be provided to the rear lot by Georgetown Pike. She explained that access would be provided across the Outlot that accesses Saigon Road.

Ms. Strobel stated that the applicant had provided the information requested by the Board of Zoning Appeals and had also amended the plat. She requested that Condition 5 which required that, prior to approval of the subdivision, the applicant independently verify that the Saigon Subdivision would meet the density requirement be deleted. She explained that the condition would be burdensome to the applicant. Ms. Strobel expressed her belief that the application would be in harmony with the Comprehensive Plan and asked the Board to grant the request.

In response to Mrs. Harris' question regarding the previous subdivision, Ms. Strobel stated that in 1986 an access easement had been granted to the owner of the rear lot.

Jane Kelsey, Chief, Special Permit and Variance Branch stated that although the Department of Environmental Management (DEM) would require verification that the subdivision meets all the requirements, staff believed Condition 5 would provide clarification. She noted that because proposed Lot A-1-A met the two acre requirement, the servant's quarters could remain.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

A letter was submitted to the Board which raised questions regarding the application.

Ms. Kelsey noted that neither staff nor the applicant's attorney had seen the letter.

It was the consensus of the Board to recess so that the Board, Ms. Strobel, and staff could read the letter. Chairman DiGiulian stated that he would reopen the meeting if necessary.

The Board recessed at 10:55 a.m. and reconvened at 11:00 a.m.

Chairman DiGiulian reopened the public hearing.

Ms. Strobel stated that the drainage concerns referred to in the letter would be resolved by DEM at the time of site plan. She noted that the drainage concerns would be further assisted by the proposed development condition that addressed the preservation of trees. Ms. Strobel explained to the Board that the referenced tennis court was already in existence.

Mr. Kelley made a motion to grant VC 90-D-105 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 2, 1991, with the deletion of condition 5 as reflected in the Resolution.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

After a brief discussion, it was the consensus of the Board that a new condition that would ensure the subdivision would not cause drainage problems on the abutting properties, notably Lot 5-A, would not be necessary.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-105 by WILLIAM E. AND MARY E. CALE, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot A-1-B having a lot width of 63.84 ft., on property located at 7321 Georgetown Pike, Tax Map Reference 21-3((6))A, Mr. Kelley 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 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.22365 acres.
4. The application has satisfied the nine requirements necessary for the granting of a variance.
5. The lot has an exceptional shape.
6. The applicants have gone to great pains in order to satisfy the requirements.
7. The proposal is the best solution to the 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 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 Variance is granted only for the purpose(s), structure(s) and/or use(s) indicated on the variance plat prepared by Coldwell, Sikes & Associates dated March 12, 1991, and approved with this application, as qualified by these development conditions.
3. Right-of-way to forty-five (45) feet from existing centerline of Georgetown Pike 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 subdivision plan approval, whichever occurs first.

Page 239, April 2, 1991, (Tape 1), (WILLIAM E. & MARY E. CALE, VC 90-D-105, continued from Page 238)

4. Prior to subdivision approval, a tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to the approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be adversely impacted by construction on the site. This plan shall include provisions for identifying and relocating certain quality deciduous trees that would otherwise be slated for removal due to clearing, grading, and construction as determined by the County Arborist. This shall not preclude the construction of a house in the general location as shown on the approved plat.

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 the subdivision is 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 239, April 2, 1991, (Tape 1 and 2), Scheduled Case of:

11:00 A.M. TONY T. S. YANG APPEAL, A 91-V-001, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that subject property contains 2 separate dwelling units which are in violation of Sect. 2-501 of the Zoning Ordinance on approx. 6,602 s.f. located at 6111 North Kings Highway, zoned R-4, Mt. Vernon District, Tax Map 83-3(9)(3)15.

Mrs. Harris stated that the Board had received a letter from the appellant's agent requesting a deferral so that new information could be investigated.

In response to Mr. Hammack's question regarding the notice requirement, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant had not sent the required notification letters to the property owners in the area.

Ms. Kelsey suggested a deferral date of May 28, 1991 at 9:30 a.m.

Mrs. Harris made a motion to defer the public hearing to the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

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Page 239, April 2, 1991, (Tape 1 and 2), After Agenda Item:

Reconsideration for VC 91-D-001  
George V. and Miriam S. Lingg  
Heard on March 26, 1991

Chairman DiGiulian called Mr. Lingg to the podium.

The applicant, George V. Lingg, 12635 Fantasia Drive, Herndon, Virginia, addressed the Board and referred to his letter of March 28, 1991. He stated that although one of the reasons the Board had denied the application was that it would be detrimental to the neighborhood, a statement of support had been signed by the neighbors. He emphasized the fact that he had met with the neighbors to present a thorough, detailed plan of the addition before they signed the statement of support.

Mr. Kelley stated that although he could not make a motion, he urged the Board to grant the applicant his request.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board. She stated that if a reconsideration was granted, the application would be treated like a new application with scheduling, posting, advertising, and notification required.

Mr. Ribble stated that he had understood the application when presented to the Board and did not believe there was a basis for reconsideration.

Mrs. Harris made a motion to waive the twelve month waiting period for the rehearing of an application. Mr. Hammack seconded the motion.

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Page 240, April 2, 1991, (Tape 1 and 2), (AFTER AGENDA ITEM: RECONSIDERATION FOR GEORGE V. AND MIRIAM S. LINGG, VC 91-D-001, continued from Page 239 )

Ms. Kelsey stated that the Board's policy regarding the rehearing of an application is that a motion regarding the twelve month waiting period must be made before the interested parties have left the Board Room. If a waiver request is made after the public hearing, then the citizens that had been previously notified and all speakers must be informed by a questionnaire letter. Any letters returned to the Clerk are then reviewed by the Board and a decision is rendered.

Mr. Kelley asked for a clarification of the rehearing and the waiver of the twelve month policies. Ms. Kelsey stated that on the waiver of the twelve month waiting period, the applicant is required to file a new application. The reconsideration would require that the same application be readvertised, renoticed, and reposted. Ms. Kelsey stated that the difference is basically administrative.

Mrs. Harris stated that if the same application was presented to the Board, she did not believe she could vote for approval. She advised Mr. Lingg to change the application before requesting a new public hearing.

Chairman DiGiulian suggested that Mr. Lingg present a letter to the Board requesting a waiver of the twelve month waiting period. Mr. Pammel stated that he believed that the suggested process would compound the hardship to the applicant. Ms. Kelsey stated that the Board had adopted the policy so that interested citizens would have a one year period before having to attend a public hearing on the same application.

Mr. Kelley stated that the Board would be more receptive to the request if Mr. Lingg would address some of the concerns, and return with a modified application.

Mr. Lingg stated that he would be willing to accept the Board's suggestion made at the March 26, 1991, public hearing to reduce the amount of variance requested.

Mr. Kelley made a motion to waive the Board's policy and to allow a new application to be filed without going through the normal procedures that the Board established to govern its own affairs.

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that while he sympathized with Mr. Lingg, he voted against the application because it encroached too far into the side yard. He stated that if the applicant believed that the Board had misapplied rules of law, he has the right to appeal. Mr. Hammack noted that when an application is denied, the applicant usually thinks that the Board has made an error.

Mrs. Harris stated that she could not support the motion to waive the Board's rules of order.

The motion failed by a vote of 3-3 with Mr. Kelley, Mr. Pammel and Mr. Ribble voting aye; Chairman DiGiulian, Mrs. Harris, and Mr. Hammack voting nay. Mrs. Thonen was not present for the vote.

Mr. Hammack made a motion to deny the applicant's request for reconsideration.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mrs. Harris, Mr. Hammack, and Mr. Ribble voting aye; Mr. Kelley and Mr. Pammel voting nay. Mrs. Thonen was not present for the vote.

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Page 240, April 2, 1991, (Tape 1), Scheduled Case of:

11:15 A.M. ELISA J. GRAMMER AND FREDRIC D. CHANANIA, VC 91-M-011, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (enclosed porch) 8.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 20,452 s.f. located at 3631 Tallwood Terrace, zoned R-2, Mason District, Tax Map 61-3((14))351. (OTH GRANTED) (DEFERRED FROM 3/26/91 BECAUSE OF IMPROPER POSTING)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Grammer replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He noted that the property is zoned R-2 and developed with a one-story single family detached dwelling with a carport and a screened porch. Mr. Jaskiewicz stated that the applicants proposed to enclose the screened porch which is 8.0 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 15 feet in the R-2 District, the request was for a variance of 7.0 feet to the minimum side yard requirement for the proposed addition.



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The applicant, Elisa J. Grammer, 3631 Tallwood Terrace, Falls Church, Virginia, addressed the Board. She stated that the application was to merely enclose the existing screened porch. Ms. Grammer explained that there would be no further intrusion into the side yard and the only change would be that the existing screens would be replaced by glass windows.

In response to Mr. Kelley's question as to whether heating and air conditioning would be installed, Ms. Grammer said it would.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-M-011 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 19, 1991.

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

Ms. Grammer requested a waiver of the eight day waiting period so that the work could begin immediately.

Mr. Hammack made a motion to waive the eight-day waiting period.

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

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-011 by ELISA J. GRAMMER AND FREDRIC D. CHANANIA, under Section 18-401 of the zoning Ordinance to allow addition (enclosed porch) 8.0 ft. from side lot line, on property located at 3631 Tallwood Terrace, Tax Map Reference 61-3((14))351, 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 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,452 square feet.
4. The application has satisfied the nine requirements necessary for the granting of a variance.
5. There will be no change in the footprint. The applicants are merely enclosing the porch by replacing the existing screens with glass.
6. There will be no detrimental impact on the neighborhood.

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

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

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

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.

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

Mr. Hammack made a motion to waive the eight-day waiting period. Mr. Kelley seconded the motion which 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 April 2, 1991. This date shall be deemed to be the final approval date of this variance.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiuliano  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/7/91

APPROVED: 5/14/91

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 18, 1991. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Martha Harris was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 243, April 18, 1991, (Tape 1), Scheduled case of:

9:00 A.M. TRAFALGAR HOUSE RESIDENTIAL, VIRGINIA, SP 91-L-002, appl. under Sect. 3-503 of the Zoning Ordinance to allow community swimming pool and tennis court on approx. 2.16 acres located on future Fieldhurst Ct., zoned R-5, Lee District, Tax Map 91-2((17))pt. A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Keith Martin, the applicant's agent, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, which had been prepared by Lori Greenlief, Staff Coordinator. She said that the property is located north of Telegraph Road, in a subdivision called the Mews, zoned R-5, and is presently undeveloped open space associated with the subdivision. Ms. Kelsey indicated that the remainder of the dedicated open space for the subdivision is located to the southeast and east of the property; single family attached dwellings in the Kingstowne subdivision are located directly to the west.

Ms. Kelsey said that the applicant was proposing to develop a community swim and tennis facility on the property; with the pool serving 44 people; one tennis court located to the southeast of the pool; and ten parking spaces to be provided. She said that staff's main concern with the application was the close proximity of the pool to the adjacent townhouses. Ms. Kelsey indicated that the applicant had responded to those concerns by increasing the amount of transitional screening on the property. She said staff had included development conditions which are in line with the Board's adopted policy for community swimming pools, limiting the hours of operation from 9 a.m. to 9 p.m., and limiting after hours parties.

Ms. Kelsey noted that the applicant would be requesting a reduction in the amount of parking from the Director of the Department of Environmental Management when they go to site plan; that staff supported the request; and that a development condition had been included to address both the possibility of approval and denial.

Ms. Kelsey called the Board's attention to the Revised Proposed Development Conditions which had been distributed to them that morning, reflecting some changes which had been discussed with the applicant's agent. With the implementation of the Revised Proposed Development Conditions dated April 18, 1991, Ms. Kelsey said that staff believed that the use will meet the standards for special permit approval.

Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, represented the applicant and presented the statement of justification. Mr. Martin said that the applicant was planning the development of 121 townhouses and a recreation center, which had been approved by the Board of Supervisors (BOS), and would be referred to as The Mews. Mr. Martin advised that the applicant now would like to upgrade the proposed recreation center, to include a community swimming pool and bathhouse, in lieu of one of the tennis courts. Mr. Martin said the applicant had received a proffer interpretation from the Zoning Evaluation Division, indicating substantial conformance with the approved Generalized Development Plan that was approved as a part of the Proffered Condition Amendment application. He stated that the subject property is located within the same envelope as the approved recreation area and there will be no additional clearing or grading involved. Mr. Martin said that there are ten parking spaces proposed in conjunction with a waiver request that will be submitted to the Director of Environmental Management (DEM), which recognizes that the facility will be pedestrian-oriented, serving only the 121 townhouses; therefore, the required number of parking spaces of 13 will not be needed. He said that substantial landscaping will provide a sufficient buffer for the Kingstowne development, as well as for the proposed townhouses within The Mews.

Mr. Martin said that, after much consideration, the applicant had no objection to the Revised Proposed Development Conditions; the applicant's plan had staff's approval; and the applicant had met with the nearby Homeowners Association and had, to date, received no opposition to the application.

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

Mrs. Thonen made a motion to grant SP 91-L-002, subject to the revised Development Conditions dated April 18, 1991, for the reasons set forth in the Resolution.

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Page 244, April 18, 1991, (Tape 1), (TRAPALGAR HOUSE RESIDENTIAL, VIRGINIA, SP 91-L-002, continued from Page 243)

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-002 by TRAPALGAR HOUSE RESIDENTIAL, VIRGINIA, under Section 3-503 of the Zoning Ordinance to allow community swimming pool and tennis court, on property located on future Fieldhurst Ct., Tax Map Reference 91-2((17))pt. 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 April 18, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 2.16 acres.
4. The application has had the approval of almost everyone in the County, including staff, and the applicant has agreed to all of the 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, its successors and assigns only. Upon conveyance of the property to the Homeowners Association, this approval will transfer to the association. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by prepared by Dewberry & Davis dated January 9, 1991., revised March 15, 1991, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the county of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of employees on site at any one time shall be two (2).
6. Memberships shall only be sold to residents of the Mews subdivision and shall be limited to 121 family memberships.
7. There shall be a minimum and maximum of 13 parking spaces provided, unless a reduction in the required number of parking spaces is approved by the Director, DEM, at the time of site plan review. If additional parking spaces above the ten shown on the special permit plat are required, the spaces shall be provided in such a way as to not infringe on the required 25 foot transitional screening yard along the southwestern and northwestern lot lines. An amendment to this special permit shall not be necessary if the additional spaces are located in accordance with this condition. All parking shall be on site.
8. Pool lighting, including building mounted, coach and sidewalk lights, shall be limited to 10 feet in height, shall be directed downward into the pool area and shall be directed so as not to spill onto adjacent properties. There shall be no flood lights on the western side of the building. The coach lights or sidewalk lighting shall be generally located as shown on the special permit plat.
9. The regular hours of operation for the swimming pool and tennis court shall be limited to 9:00 A.M. to 9:00 P.M. After-hour parties for the swimming pool shall be governed by the following:

Limited to six (6) per season.

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Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur. Contiguous property owners shall consist of Units 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7043, 7044, 7045, 7046 Fieldhurst Court and Units 7019, 7021, 7023, 7025, 7027, 7029, 7031, 7033 Chesley Search Way. Shall not extend beyond 12:00 midnight.

The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity. Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

- 10. There shall be no swim meets held at the facility in which competitors live outside of the News subdivision.
- 11. 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.
- 12. There shall be no amplified noise emitted from the site.
- 13. The plantings shown on the special permit plat shall be deemed to satisfy the transitional screening requirement. The fencing around the pool area and tennis courts shall be deemed to satisfy the barrier requirement.
- 14. The limits of clearing and grading shall be as shown on the special permit plat.
- 15. During discharge of swimming pool waters the following operational procedures shall be implemented:
  - o Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
  - o If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

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 legally established 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. not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Harris 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, 1991. This date shall be deemed to be the final approval date of this special permit.

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9:15 A.M. GEORGE C., TIMOTHY E. & JAMES M. KEENA, VC 91-C-012, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 3 having lot width of 20 feet (150 ft. min. lot width required by Sect. 3-106) on approx. 4.4014 acres located at 9350 Lakeside Drive, zoned R-1, Centreville District, Tax Map 28-4((1))4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Claire E. Keena replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject property is located on the south side of Old Courthouse Road, east of its intersection with Arabian Avenue. She said that the surrounding properties are zoned R-1 and are developed with single family detached dwellings on the east and west, a public park on the north, and property owned by the Spring Lake Homeowners' Association on the south.

Ms. Bettard noted that the applicants were requesting approval of a variance to the minimum lot width requirement in order to subdivide the property into three lots, with proposed Lot 3 having a lot width of 20 feet. She pointed out that Section 3-106 of the Zoning Ordinance requires a minimum lot width of 150 feet in the R-1 District; thus, the applicants were requesting a variance of 130 feet to the minimum lot width requirement for proposed Lot 3.

Ms. Bettard said that staff believed that the applicants failed to meet several of the standards for variance approval, as discussed on pages 3 and 4 of the staff report. In particular, she said, staff believed that the property does not possess any of the exceptional characteristics which would make it unlike any of the other lots in the general area. Ms. Bettard said that, in the statement of justification, the applicant indicated that an extraordinary situation was created by the location of the existing homesite and access, which makes the pipestem design desirable. She said that staff noted that the design would not be needed if the applicant were not using a variance as a tool to subdivide. Ms. Bettard said that, since there is a dwelling on the lot, the applicant has some reasonable use of the land; the variance will serve primarily to increase the number of dwellings permitted. In addition, Ms. Bettard said, there is concern about any precedent this variance may set in the area. As indicated in the report, she said, there are other pipestems, but those resulted from cluster developments.

Claire E. Keena, 9350 Lakeside Drive, Vienna, Virginia, wife of James M. Keena, had previously reaffirmed the affidavit, but said that she had been told that she probably should not be speaking for the applicants, since she was not listed on the affidavit. She stated that she is an attorney and had been asked to be present for that reason; however, Timothy Keena was also prepared to make the presentation.

Mrs. Thonen advised Mrs. Keena that she could also speak after Timothy Keena gave the presentation.

Timothy Keena, 9350 Lakeside Drive, Vienna, Virginia, described how the three brothers became owners of the subject property in 1985, when both of their parents died within a few months of each other. He said they had grown up in the existing house and would like to remain in the area. Mr. Keena said that he knew of no neighborhood opposition to their plan to subdivide and explained that their plan would create a lesser density per acre than the maximum allowed by the Ordinance. He described several options the applicants had, which were all less desirable than the one being presented to the Board for acceptance. Mr. Keena summed up by stating that the adjoining property owners were in favor of the application, the character of the area would not be adversely affected, and the density would be less than the maximum allowed. Mr. Keena said that, although pipestems were not encouraged, this application could best be served by the use of a pipestem.

Mrs. Keena asked for permission to come forward to reiterate a few items. She pointed out that the pipestem design was created to keep the access onto Old Courthouse Road to a minimum. By having one driveway to serve three homes, she said, there would be only one shared driveway opening onto Old Courthouse Road instead of three. She said that the 20-foot driveway had always existed and had been used by the existing house for thirty years. Mrs. Keena emphasized the applicants' intention to maintain the character of the neighborhood and keep the density at a less-than-allowed ratio if the application was approved.

Mr. Ribble asked Mrs. Keena if she could comment on consolidation of Parcel X and the extension of Lakeside Drive. Mrs. Keena stated that the Association had refused to sell Parcel X to the applicants for consolidation, and that she had a letter to that effect. She also said that it was her understanding that the idea of extending Lakeside Drive had been abandoned.

Mr. Pannel questioned Mrs. Keena about approaching the Association and asking them if they would sell the property to the applicants, but then allowing the Association to retain an access through the property. Mrs. Keena deferred to Timothy Keena on this question.

Timothy Keena stated that the applicants had discussed easements and every other conceivable option with the Association, but they were unwilling to discuss the possibility under any

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Page 247, April 18, 1991, (Tape 1), (GEORGE C., TIMOTHY E. & JAMES M. KEENA, VC 91-C-012, continued from Page 246)

terms because they feared that the applicants might buy and consolidate other adjoining parcels.

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

Mrs. Thonen made a motion to grant VC 91-C-012, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1991, for the reasons outlined in the Resolution. Mrs. Thonen added a sentence to Condition 4, pertaining to a stormwater management facility, stating, "The Board of Zoning Appeals has no objection to the waiver of the facility on site."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-012 by GEORGE C., TIMOTHY E., & JAMES M. KEENA, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lot 3 having lot width of 20 feet, on property located at 9350 Lakeside Drive, Tax Map Reference 28-4((1))4, 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 18, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.4014 acres.
4. The extent to which the citizens' association and the neighbors have come forward in favor of this application is impressive.
5. The location of the existing house creates an unusual situation and strongly affects the nature of the subdivision possibilities.
6. The attempt by the applicants to preserve the environment is very impressive, especially the attempt to keep the lake protected and not opening the area up to vehicular traffic.
7. The walkway easement is very favorable.
8. The planning is very good and reflects what a variance is meant to be used for, as well as lessening the impact upon the neighborhood.
9. Rezoning the property and bringing it up to the Comprehensive Plan might destroy what otherwise might be a very good plan for the community.

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

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

Page 248, April 18, 1991, (Tape 1), (GEORGE C., TIMOTHY E. & JAMES M. KEENA, VC 91-C-012, continued from Page 247)

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

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

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

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

1. This variance is approved for the subdivision of Lot 4 into three (3) lots as shown on the plat prepared by Coldwell, Sikes & Associates, and dated March 29, 1991.
2. The proposed driveway for Lots 1, 2, and 3 shall meet all applicable standards of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT).
3. Right-of-way to forty-five (45) feet from the existing centerline of Old Courthouse Road shall be dedicated for street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of subdivision plan approval, whichever occurs first. Ancillary easements shall be provided along the northern boundary lines to facilitate future improvement to Old Courthouse Road. The easements shall be a minimum of fifteen (15) feet or as determined by the Virginia Department of Transportation (VDOT) and the Director of the Office of Transportation.
4. The stormwater management facility shall be provided on the site to the satisfaction of DEM (Department of Environmental Management). The Board of Zoning Appeals has no objection to the waiver of the facility on site.

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 this 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 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.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Harris 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, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 248, April 18, 1991, (Tape 1), Scheduled case of:

9:30 A.M. PAUL F. MATH, VC 91-P-020, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (carport) 5.7 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 21,835 s.f. located at 3524 Woodburn Road, zoned R-1, Providence District, Tax Map 59-1((10))2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Math replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totals 21,835 square feet, is zoned R-1, and is located at 3524 Woodburn Road, in an area north of Accotink Creek and its associated stream valley, east of Prosperity Avenue, and west of the Beltway in Fairfax.

Mr. Jaskiewicz said that, in December, 1988, the applicant was granted a variance to allow a carport addition 5.7 feet from the side lot line; however, construction did not begin within eighteen months, and the variance expired.

Mr. Jaskiewicz explained that the applicant was again requesting a variance to the minimum side yard requirement to permit construction of a carport addition 5.7 feet from the side lot line. He said that, since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 District and allows carports to extend 5.0 feet into any minimum side yard, the applicant was requesting a variance of 9.3 feet to the minimum side yard requirement.

The applicant, Paul F. Math, 3524 Woodburn Road, Fairfax, Virginia, presented his statement of justification, along the lines of Mr. Jaskiewicz' explanation. Mr. Math said he was confused by the date on the cover letter being different than the date in the Resolution. Mr. Math gave a history of why he had let the variance expire, none of which could mitigate the expiration, leaving him with no recourse except to reapply.



Page 249, April 18, 1991, (Tape 1), (PAUL F. MATH, VC 91-P-020, continued from Page 248)

Mr. Math stated that the new application was the same in every way to the first application, which had been approved. He was asking for approval on that basis.

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

Mr. Hammack made a motion to grant VC 91-P-020, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1991, for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-P-020 by PAUL F. MATH, under Section 18-401 of the zoning Ordinance to allow construction of addition (carport) 5.7 ft. from side lot line, on property located at 3524 Woodburn Road, Tax Map Reference 59-1((10))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 April 18, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,835 square feet.
4. The lot has a pie-shaped configuration.
5. The topography to the rear of the lot is severely exceptional.
6. There is no other location on the property where the addition could be constructed.

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

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

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

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

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

Page 252, April 18, 1991, (Tape 1), (PAUL F. MATH, VC 91-P-020, continued from Page 249)

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

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 Board of Zoning Appeals (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.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote. Mrs. Harris 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, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 250, April 18, 1991, (Tape 1), Scheduled case of:

9:45 A.M. SANDRA M. AND FREDERICK H. TRAKOWSKI, VC 91-M-014, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 29.0 ft. from front lot line (35 ft. min. front yard required by Sect. 3-207) on approx. 38,000 s.f. located at 6518 Lakeview Drive, zoned R-2, Mason District, Tax Map 60-4((13))388A, pt. A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Trakowski replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totals 38,000 square feet; is zoned R-2; is located at 6518 Lakeview Drive on the southern shore of Lake Barcroft in Section 3 of the Lake Barcroft subdivision; and is developed with a one-story single-family detached dwelling with an attached two-car garage, which had previously been approved as a variance by the Board in 1987.

Mr. Jaskiewicz said that the applicants were requesting a variance to the minimum front yard requirement to permit construction of a one-story addition 29 feet from the front lot line. He pointed out that, since the Zoning Ordinance requires a minimum front yard of 35 feet in the R-2 District, the request was for a variance of 6 feet to the minimum front yard requirement.

Mrs. Thonen asked the applicants what they proposed to use the addition for and they replied that it would be used for additional bedrooms.

Mrs. Trakowski, 6518 Lakeview Drive, Falls Church, Virginia, presented the statement of justification, stating that the dwelling was a one-story house with no basement. She said that they did not plan to change the look of the house, they just planned to extend it.

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

Mr. Ribble made a motion to grant VC 91-M-014, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1991, for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-014 by SANDRA M. AND FREDERICK H. TRAKOWSKI, under Section 18-401 of the Zoning Ordinance to allow construction of addition 29.0 ft. from front lot line, on property located at 6518 Lakeview Drive, Tax Map Reference 60-4((13))388A, pt. A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 18, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.

Page 251, April 18, 1991, (Tape 1), (SANDRA M. AND FREDERICK H. TRAKOWSKI, VC 91-M-014, continued from Page 250)

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- 3. The area of the lot is 38,000 square feet.
- 4. The lot is exceptionally narrow.
- 5. There are existing easements on the property.
- 6. The exceptional topographical conditions limit where the addition could be built.

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

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

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

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

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

- 1. This variance is approved for the location 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.

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 Board of Zoning Appeals (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.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mrs. Harris 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, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 251, April 18, 1991, (Tape 1), Scheduled case of:

10:00 A.M. MARY HORVATH, VC 91-D-015, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 4 lots, proposed Lot 3 having a width of 19.98 ft. (150 ft. min. lot width required under Sect. 3-106) on approx. 4.0 acres located on Spring Hill Rd. and Eaton Dr., zoned R-1, Dranesville District, Tax Map 20-4((1))86C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Keith Martin, the applicant's agent, replied that it was.

Page 252, April 18, 1991, (Tape 1), (MARY HORVATH, VC 91-D-015, continued from Page 251)

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located south of Old Dominion Drive, between Spring Hill Road and Eaton Drive. She said that the subject property and surrounding lots are zoned R-1 and are developed with single-family detached dwellings. Ms. Dickey said that the request resulted from the applicant's proposal to subdivide the property into four lots, with Lot 3 having a lot width of 19.98 feet, whereas a minimum lot width of 150 feet is required by the Zoning Ordinance and, accordingly, the applicant was requesting a variance of 130.2 feet to the minimum lot requirement for Lot 3.

Ms. Dickey noted in regard to the surrounding uses that the existing single-family dwellings are located on Lot 7, 30.5 feet from the western lot line; Lot 8, 48.5 feet from the northern lot line; and Lot 12, 39.5 feet from the northern lot line. She said that staff believed this application failed to meet several of the standards for variance approval, which are discussed on page 4 of the staff report.

To summarize, Ms. Dickey stated that, in staff's opinion, the physical hardship required by Standards 2, 4, 5, and 6 had not been demonstrated. She said that staff noted that this property is similar in size and shape to several other large, non-subdivided lots of record in the area; and that staff cannot conclude that undue hardship would result without a variance, nor that all reasonable use of the property would be restricted, since the property can be developed by right with three lots, without a variance. Any hardship appears to be equally shared by the nearby properties, according to Ms. Dickey, who further stated that staff was concerned about setting a precedent by approval of a variance in order to increase the number of saleable lots on the property.

Chairman DiGiulian advised the applicant's representative, Keith Martin, of the law firm of Walsh, Colucci, Stackhouse, Smich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, that the Board was in receipt of a request by a number of citizens for a deferral and asked Mr. Martin if he would like to address that request.

Mr. Martin stated that he had just seen the request that day and that he would be happy to accommodate the request, although he had been prepared to go forward. Mr. Martin said that he had notified the persons making the request but, unfortunately, the Homeowners Association had been just recently created at the time he notified them and the Association was being run by Stanley Martin Communities, the builder. The Association had been most recently transferred to the owners and Mr. Martin's letters were also conveyed; however, he had not had an opportunity to meet with the Association, although he had spoken with the President and several of the members.

Mrs. Thonen remarked that there seemed to be a great deal of opposition and, until the situation was worked out, she believed that the application should be deferred.

Christianne R. Ricchi, 1009 Eaton Drive, McLean, Virginia, came to the podium and said she lived on Lot 7, abutting Lot 1 of the proposed development. Ms. Ricchi said that she had received a phone call about a week ago from the President of the Association, saying that she had just received notification from Stanley Martin about the subject application, and asked Ms. Ricchi what she knew about it. At that point, they contacted Stanley Martin, asked for the plats, and proceeded with as much haste as possible, but still failed to arrange a meeting of the Homeowners Association. Ms. Ricchi said they would like to have an opportunity to fully understand any effect this application might have upon the community, since the ingress and egress of the development would be through the community. She said they were also concerned about the aesthetics, the affect on property values, and the affect of drainage and storm runoff on their properties.

Chairman DiGiulian said that some of the members of the Association had indicated a desire to have the case deferred and Mr. Martin stated that he had no objection.

Chairman DiGiulian asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, for a suitable date, suggesting a thirty-day deferral. Mr. Martin stated that the only date he would not be available would be May 11, 1991.

Ms. Kelsey suggested May 28 for hearing the case, and Mrs. Thonen made a motion to schedule it for that date at 10:45 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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Page 253, April 18, 1991, (Tape 1), After Agenda Item:

Request for Date and Time  
Markey Business Center IV Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that Mr. Hammack had requested that this decision be deferred until he had an opportunity to read all of the documents before he made a decision. Ms. Kelsey said that the appellant had requested an extended deferral on the appeal until it had been before the Planning Commission and the Board of Supervisors. Ms. Kelsey stated that the zoning Administrator had recommended that the appeal not be scheduled at all. Mr. Hammack stated that he had read the Zoning Administrator's Memorandum and Mr. Spring's letter and believed that the Zoning Administrator

Page 253, April 18, 1991, (Tape 1), (REQUEST FOR DATE AND TIME, MARKEY BUSINESS CENTER IV APPEAL, continued from Page 252 )

may have inadvertently led Mr. Spring to believe that he was really receiving a deferral on all of the issues contained in her letter of September 5, 1991. Because of this, Mr. Hammack moved that the appeal be scheduled for hearing in the reasonably near future. Mrs. Thonen seconded the motion to schedule the appeal for June 4, 1991, which carried by a vote of 5-0-1; Mr. Pammel abstained because of a business relationship of a conflicting nature.

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Page 253, April 18, 1991, (Tape 1), After Agenda Items:

Request for Additional Time  
Groveton Baptist Church, SP 88-v-079  
New expiration date of April 26, 1992

Request for Additional Time  
Floris United Methodist Church, SP 88-C-057  
New expiration date of January 19, 1992

Request for Additional Time  
Sydenstricker United Methodist Church, SPA 78-S-264-3 & 4  
New expiration date of April 7, 1992

Approval of Minutes from February 12, 1991, February 21, 1991,  
February 26, 1991 and March 5, 1991 Meetings

Mr. Pammel made a motion to approve all of the above After Agenda Items. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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Mrs. Thonen made a motion to have the staff provide a report to the Board of Zoning Appeals on the status of the appeal of David C. Buckis who, she believed, had his special permit revoked but was still operating. Mrs. Thonen requested that a copy of the motion be also forwarded to James P. Zook, Director, Office of Comprehensive Planning; Jane W. Gwinn, Zoning Administrator; Office of the County Attorney; and Martha Pennino, Supervisor, Centreville District. Mrs. Thonen objected to someone operating in defiance of a notice of violation and asked that staff report back to the BZA within thirty days. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mrs. Harris was absent from the meeting.

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

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The Board reconvened at 10:50 a.m. for reconsideration of the minutes from the February 26, 1991 meeting, which had been approved earlier in the meeting.

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Page 253, April 18, 1991, (Tape 1), After Agenda Item:

Reconsideration of Minutes from February 26, 1991 Meeting  
Approved Earlier in the Meeting

Mr. Hammack made a motion that the approval of the Minutes for February 26, 1991, be reconsidered, and that staff review the tapes from the February 26, 1991 meeting and reflect in more detail the statements of the Board regarding actions and statements of a member of the Department of Environmental Management (DEM) in the rejection of an appeal application on a technicality, while having advance knowledge that the applicant had inadvertently used the wrong plan number on the application. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mrs. Thonen and Mr. Ribble were not present for the vote. Mrs. Harris was absent from the meeting.

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Page 254, April 18, 1991, (Tape 1), (ADJOURNMENT)

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

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 4/30/91

APPROVED: 5/7/91

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 30, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; James Pammel; and, John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 25, April 30, 1991, (Tape 1), Scheduled case of:

9:00 A.M. JARVIS A. BOYKIN, VC 91-V-018, appl. under Sect. 18-401 of the zoning Ordinance to allow addition 23.9 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307) on approx. 13,792 s.f. located at 1201 Collingwood Rd., zoned R-3, Mt. Vernon District, Tax Map 102-4((10))27A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Boykin replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report prepared by Lori Greenleaf. He stated that the subject property contains 13,792 square feet, is zoned R-3, and is developed with a single family detached dwelling. The surrounding lots to the south, east, and west are also zoned R-3; the lots to the north are zoned R-2 and all are developed with single family detached dwellings.

He stated that the applicant was requesting approval of a variance to the minimum front yard requirement in order to construct a garage on the north side of the dwelling 23.9 feet from the front lot line. The zoning Ordinance requires a minimum front yard of 30 feet in this district, thus the applicant was requesting a variance of 6.1 feet to the minimum front yard requirement.

In closing, Mr. Riegler stated that staff's research revealed that the carport of the dwelling on adjacent Lot 27B is located approximately 20 feet from the shared lot line.

The applicant, Jarvis A. Boykin, 1906 Toll Bridge Court, Alexandria, Virginia, came forward and presented his statement of justification. He stated that he was requesting a 6 foot variance from the 30 feet that is required by the zoning Ordinance. Mr. Boykin explained that he would like to construct a garage in order to facilitate parking on the property as well as for safety and convenience. He stated that the house sets diagonally on the lot and if the house had been built straight on the lot there would be no need for a variance. Mr. Boykin stated that there is a 50 foot wide stairwell that goes into the garage that would be located within the proposed garage and that was why he was requesting a 24 foot wide garage.

In response to a question from Mrs. Harris, Mr. Boykin replied that the stairwell is located right next to the house.

Mr. Boykin continued by stating that he would use the existing driveway. He added that he knew that each application stood on its own merit but that in 1989 a similar situation existed on another lot in the neighborhood and that applicant had requested a 14 foot variance and was granted a 10 foot variance. Mr. Boykin stated that the case number was VC 89-V-057 and added that the structure has been built and is a good looking addition to the property.

Mr. Ribble asked the applicant if he lived on the property. Mr. Boykin stated that his son and his son's wife live on the property.

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

Delmus Fagge, 1200 Collingwood Road, Alexandria, Virginia, came forward and stated that he lives directly across the street from the property and that he was representing the neighbors from Lot 16 and Lots 50A. He stated that they objected to the construction of the garage in the proposed location for the reasons of aesthetics and property values. Mr. Fagge stated that when he purchased his property 30 some years ago the subject property was wooded and later developed and at the time of the development the trucks going into and out of the site used his driveway for a turnaround and dumped enough debris into his driveway so that it is now grass. He stated that he had been told by the developer that there was a plan to build sidewalks on the side of Collingwood Road where the subject property is located and that a 10 foot easement had been provided. Mr. Fagge stated that he and the other two neighbors believe that the construction of the structure would degrade the neighborhood aesthetically, ultimately degrade the property values, and set a bad precedent.

In rebuttal, Mr. Boykin stated that he would like proof that the speaker officially represented the two property owners he referenced in his presentation. He stated that he had complied with the notice requirement and had not heard from any of the property owners notified. Mr. Boykin stated that he had discussed the proposed garage with the owner of Lot 27B, who lives directly behind the subject property, and that neighbor had no objection to the request. He stated that he had never heard of an addition degrading property values and that he did not believe that the one he was requesting would.

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Chairman DiGiulian closed the public hearing. He told the applicant that the Board had received letters from the neighbors referenced by Mr. Fagge in opposition to the request.

Mr. Pammel made a motion to grant-in-part the request subject to the development conditions contained in the staff report. He stated that the garage could be no wider than 22 feet which would reduce the encroachment into the front yard. This granting was subject to the applicant submitting revised plats.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-018 by JARVIS A. BOYKIN, under Section 18-401 of the Zoning Ordinance to allow addition 23.9 feet (THE BOARD GRANTED 25.9, THE GARAGE CANNOT BE MORE THAN 22.0 FEET WIDE) from front lot line, on property located at 1201 Collingwood Road, Tax Map Reference 102-4((10))27A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,792 square feet.
4. There is an extraordinary situation or condition on the subject property, with respect to the location of the dwelling unit located therein, which precludes the location of an addition in any other area than that proposed by the applicant.

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

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

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

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

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



1. This variance is approved for the location and the specific garage 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.
3. The applicant must submit new plats reflecting the Board's approval.

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.

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.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1991. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack arrived at 9:35 a.m.

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Page 251, April 30, 1991, (Tape 1), Scheduled case of:

9:15 A.M. HARRY E. KENNEDY, SP 91-L-004, appl. under Sect. 8-917 of the Zoning Ordinance to allow pigeons on approx. 4,711 s.f. located at 2709 Fairhaven Ave., zoned R-8, Lee District, Tax Map 83-3((2))(5)4A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Kennedy replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the subject property is developed with an attached single family dwelling (a duplex), is zoned R-8, and is surrounded by stable attached single family residential development to the north, east, and west. To the south is the Mount Eagle Elementary School.

He stated that the applicant was requesting approval of a special permit to allow a modification to the limitation on the keeping of animals to permit 50 exhibition pigeons to remain on the subject property. Because the Zoning Ordinance sets forth 10,000 square feet as the minimum lot size for keeping pigeons in Fairfax County, no pigeons are permitted by right. The applicant currently has 46 pigeons which are housed in two accessory sheds.

Mr. Jaskiewicz stated that in an attempt to address the next door neighbor's concerns regarding the pigeons, the applicant has agreed to relocate the large shed and install a privacy fence on the western lot line and a privacy screen near the porch area. Staff believed that these measures would only help alleviate the visual adverse impacts upon the adjacent property to the west, and simply moving the shed and providing visual screening on one side of the property would not eliminate the potential problems and adverse impacts on all properties. Staff also believed that the Zoning Ordinance provisions requiring a minimum lot area of 10,000 square feet for the keeping of any pigeons is a direct response to the understanding that the potential adverse impacts caused by pigeons both on and off-site are minimized if they are located in low-density areas. He stated that staff did not believe that a residential property that is less than one-half the minimum allowable area for the keeping of any pigeons is suitable to house 50 pigeons, especially when the dwelling thereon is an attached (duplex) unit and is located in an established residential area with similarly-sized lots. In closing, Mr. Jaskiewicz stated that staff recommended that this Special Permit application be denied. He stated that if it was the Board's intent to grant the request development conditions were contained in the appendix of the staff report and that Development Condition 4 should be corrected to read "Flying Birmingham".

The applicant, Harry E. Kennedy, 2709 Fairhaven Avenue, Alexandria, Virginia, came forward and stated that he had pigeons on his property for 6 years without any complaints. He stated that he believed that if the keeping of the pigeons on his property had caused adverse impacts on his neighbors' properties that the Board would have heard about it a long time ago. Mr. Kennedy stated that he planned to limit the keeping of the pigeons to 100 percent on site, therefore eliminating the concern of potential adverse impacts caused by the pigeons to the adjacent properties. He addressed staff's comments contained in the staff report with respect to the shed by stating that he would be willing to construct a 6 foot solid wood fence around his property, thereby meeting the requirement of paragraph 1. Mr. Kennedy called the Board's attention to page 4 of the staff wherein staff stated that they had observed no adverse impact to the adjacent properties from the pigeons during their site visit. He stated that he would eliminate entirely the "Flying Birmingham" pigeons and that he believed that by doing this, as well as constructing the fence, he could assure the Board

that the keeping of the pigeons would not adversely impact the adjacent properties. Mr. Kennedy stated that by eliminating the "Flying Birminghams" the number of pigeons would be reduced to 30. He stated that he was a honest person and that the Board could be assured that he would keep only the number and the breed pigeons that he had agreed to. With respect to paragraphs D and E, Mr. Kennedy stated that he would relocate the large shed to comply with the R-8 zoning requirements.

Mr. Kennedy addressed the standards in Sect. 8-006 by stating that 1) with the suggestions that he proposed, the keeping of the pigeons would be in harmony with the Jefferson Manor subdivision; 2-3) in the 6 years that he has kept pigeons on the property this is the first complaint and during the site visit there was no adverse impacts to the adjacent property; and, 5) a solid wood fence will be constructed around his entire property.

Mr. Kennedy stated that in correspondence with staff he outlined four possible plans that he would be willing to do to increase his chances of being allowed to keep the pigeons. Mr. Kennedy stated that he had been told by staff that it would be possible but that would require a new application and then only one suggestion could be brought to the Board. He outlined one suggestion as follows: c) remove all the buildings on site and erect one 8 x 12 x 7 foot tall building, thereby reducing the height of the existing building. In closing, Mr. Kennedy stated that he would like to keep 30 non-flying pigeons in a 8 x 12 x 7 foot tall building on a completely enclosed property. He stated that he honestly believed that he had met all the requirements for a special permit. He pointed out that his property borders Mount Eagle Elementary School parking lot, therefore the impact of keeping the pigeons affects relatively few people adversely, if any. Mr. Kennedy stated that he believed that the total square footage of his property was not a matter of concern because of the close proximity of his property to the school parking lot. He stated that he has worked very hard with his pigeons for 6 years, has managed the pigeons in a professional manner, the neighbors enjoy the pigeons and believe that it would be a shame for him to lose them after all these years. (Mr. Kennedy called the Board's attention to the petition signed by his neighbors and read another letter from his neighbor at 2705 Fairhaven Avenue into the record.)

In response to questions from Mr. Hammack, Mr. Kennedy replied that the neighbor on his right was reluctant to sign the petition until he told her that he was willing to erect the privacy fence. He added that his property is basically a wooded lot making the building virtually invisible to the neighbors. Mr. Kennedy stated that he would prefer to keep the 8 x 16 x 10 foot building but that he would be willing to eliminate all the existing buildings and purchase a smaller one to better increase his chances for approval.

Mr. Hammack asked the applicant if he had read the proposed development conditions. Mr. Kennedy answered that he agreed with the conditions but objected to the wording that prevented him from purchasing any new pigeons upon the demise of the existing ones.

In response to questions from the Board regarding the Flying Birminghams, Mr. Kennedy stated that the staff report indicates that the Board cannot enforce the number of flying pigeons, therefore he was going to eliminate any doubt as to how many pigeons were flying. He added that he would love to keep the flying pigeons but he believed that his chances for the special permit being approved would be increased if he agreed to eliminate them.

Mrs. Thonen asked staff if the Board could only limit the number of "walking" pigeons. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board could limit the number of flying pigeons in the development conditions. She added that staff's concern was how staff would determine what is a Flying Birmingham and what is not when they have little expertise in this field. She stated that this was only the second application dealing with pigeons.

Mr. Hammack asked the applicant how much additional height the privacy fence would give above the 6 foot high solid wood fence. Mr. Kennedy stated approximately 4 feet. Mrs. Thonen stated that she could understand a concern with pollution from the pigeons but was confused with the reasoning behind wanting to screen the pigeons from sight. Mr. Kennedy agreed.

There were no speakers to address the request, either in support or opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report. He deleted the requirement for the privacy fence along the porch in Development Condition Number 6 and modified it to read as follows:

- "6. The existing chain link fence along the shared western property line shall be replaced with a six (6) foot high solid wood fence."

Mrs. Thonen seconded the motion and stated that she was glad that part of the fence came down because she was afraid that the property was going to look like a storm shelter.

Mr. Ribbie stated that the Board heard a similar case that was denied and that applicant's property had a lot more square footage than this applicant's property and everyone is not in harmony on the application since a complaint had been filed. He added that he could not support the motion since the square footage was half the amount allowed by the zoning Ordinance.

Page 259, April 30, 1991, (Tape 1), (HARRY E. KENNEDY, SP 91-L-004, continued from Page 258),

Mrs. Harris agreed with Mr. Ribble's comments and added that she did not have anything against pigeons and it was very obvious that the applicant takes very good of the pigeons. She noted that the applicant would have to have twice the lot size that he has now just to have one pigeon under the Zoning Ordinance, therefore she could not support the motion.

Mrs. Thonen asked the maker of the motion if he would be willing to limit the number of pigeons to 30 rather than 46. Mr. Hammack stated that he would not object to reducing the number and added that he believed that the applicant should be given an opportunity to dispose of the Flying Birminghams in a humane way.

Following a discussion among the Board members with respect to the number of pigeons to be kept on site, Mrs. Thonen withdrew her amendment and the condition was left as written 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 91-L-004 by HARRY E. KENNEDY, under Section 8-917 of the Zoning Ordinance to allow pigeons, on property located at 2709 Fairhaven Avenue, Tax Map Reference 83-3((2))(5)4A, 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 30, 1991; 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-8.
3. The area of the lot is 4,711 square feet.
4. There was no testimony that this applicant is abusing his neighbors or the use of his property by maintaining the pigeons, in the number that he has on the property.
5. The neighbor who lives next door gives no explanation for having them obscured from her view.
6. Based on the testimony, the birds are being taken good care of and no one else really has a problem.
7. The proposed development conditions proposed by staff are pretty fair in their application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-917 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 dated February 4, 1991, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit shall be made available to all departments of the County during working hours.
4. This approval shall be for a maximum of forty-six (46) pigeons, a maximum of twelve (12) of the forty-six (46) may be of the Flying Birmingham variety, which shall be the only pigeons allowed to fly outside of the shed and then only for one (1) sixty (60) minute time period each Saturday and Sunday. If any of the Flying Birmingham pigeons or the other pigeons die, or are sold or are given away, no other pigeons shall replace them.
5. In compliance with Sect. 10-104 of the Zoning Ordinance which specifies the location of accessory structures, the existing large shed shall be relocated to ten (10) feet from and parallel to the shared western lot line and to ten (10) feet minimum from the rear lot line such that its wire outside enclosure faces east. Furthermore, all pigeons allowed on the property shall be housed within this shed.

Page 260, April 30, 1991, (Tape 1), (HARRY E. KENNEDY, SP 91-L-004, continued from page 259)

6. The existing chain link fence along the shared western property line shall be replaced with a six (6) foot high solid wood fence.
7. To keep the large shed and yard free of pigeon debris, removal and disposal of pigeon waste shall occur not less than once daily.
8. This Special Permit shall be approved for a period of five (5) years from the final approval date of SP 91-L-004.
9. An Electrical Permit shall be obtained for the sheds, if such is required by the Department of Environmental Management.

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.

Mrs. Thonen seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mrs. Thonen, Mr. Hammack, and Mr. Pammel voting aye; Mrs. Harris and Mr. Ribble 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 May 8, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 260, April 30, 1991, (Tape 1), Scheduled case of:

9:30 A.M. MOST REV. JOHN R. KEATING/ST. LAWRENCE CATHOLIC CHURCH, SPA 82-L-081-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 82-L-081 for church and related facilities to allow building additions and additional parking on approx. 11.12456 acres located at 6222 Franconia Rd., zoned R-3, HC, Lee District, Tax Map 81-3(1)59A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant's agent, Peter Juanpere, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report and stated that the surrounding properties are zoned for and developed with a variety of residential and commercial uses. There are retail and commercial uses to the south and east and abutting residential uses along the remaining lot lines. The site is planned for residential use at 2-3 dwelling units per acre. The adopted policy plan recommends that screening, buffering, and urban design be used to enhance the compatibility of a non-residential uses in a residential area. These citations are in appendix 5 of the staff report.

He explained that the applicants are requesting approval of a special permit amendment to allow construction of three small building additions and to increase parking by 32 spaces. The three building additions collectively add 3,065 feet of development to the site. The additional parking spaces are already on site and were added a few years ago without an special permit amendment. There are no operational changes and pursuant to the previous approval the church will be conducting services seven days a week.

Mr. Riegler stated that it was staff's opinion that the building and parking additions are of a size, height, and location that would not have an adverse visual impact adjacent property. Specifically, the additions will be the same height as the existing structures, the FAR only increases by .05-.056, which is well within the .2, the parking will be located in the area of the site furthest from the abutting residential development. The impacts are further lessened by the applicants commitment to increase the screening, buffering, and landscaping.

He added that it was staff's understanding that the applicant agreed with the Proposed Development Conditions. In closing, Mr. Riegler stated that staff concluded that the application was in harmony with the recommendations of the Plan, and all of the other applicable zoning Ordinance provisions; therefore, staff recommended approval.

Peter Juanpere, 10201 Lee Highway, Fairfax, Virginia, stated that the proposed development is four-fold, the first being the addition of a small storage facility to house a lawn mower and gardening equipment. The second stage is for an increase in the size of the narthex of the church for future development, not really to increase the seating capacity of the church itself, but to be able to redesign the existing toilets so they can accommodate handicapped facilities sometime in the future. The third stage would be for an expansion of the rectory to provide additional living space for the priests and additional garage space. The fourth stage would be for additional parking spaces so that all parking would be on site. Mr. Juanpere stated that the applicant was in agreement with all the development conditions.

There were no speakers to address the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Page 261, April 30, 1991, (Tape 1), (MOST REV. JOHN R. KEATING/ST. LAWRENCE CATHOLIC CHURCH, SPA 82-L-081-1, continued from Page 260)

Mrs. Thonen made a motion to grant the request for the reasons noted in the resolution and subject to the revised development conditions dated April 26, 1991.

Mr. Pammel suggested that Development Condition Number 10 be modified to read, "Stormwater management shall be provided in the form of BMP's, specifically infiltration trenches should be explored and provided if soil conditions will permit. In the event that soil conditions are not satisfactory for such infiltration trenches, stormwater management shall be provided as determined by DEM, no waiver will be granted for stormwater detention or stormwater treatment." The Board members did not agree with Mr. Pammel's suggestion as they believed the changes being requested were minor.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-L-081-1 by MOST REV. JOHN R. KEATING/ST. LAWRENCE CATHOLIC CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 82-L-081 for church and related facilities to allow building additions and additional parking, on property located at 6222 Franconia Road, Tax Map Reference 81-3(1)59A, 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 30, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3, HC.
3. The area of the lot is 11.12456 acres.
4. There was no opposition to the request.
5. The staff recommended approval.
6. The applicant agreed to all the revised proposed 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 8-303 of the zoning Ordinance.

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

1. This approval is granted to the applicant only, and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Intec Group, Inc. dated November 22, 1990 and revised through February 18, 1991 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 number of seats in the main area of worship shall be 750 with a corresponding minimum of 188 parking spaces. There shall be a minimum of 2 parking spaces provided for the rectory. The maximum number of parking spaces on site shall be 270 as shown on the special permit plat. All parking for the use shall be on site.
6. To preserve the existing vegetation on the site, the limits of clearing and grading shall be as shown on the special permit plat. The existing vegetation governed by the limits of clearing and grading shall be deemed to fulfill the requirements for transitional screening, provided that the existing vegetation is supplemented with evergreen trees along the western lot line to provide a continuous row of evergreen

trees planted 10 feet on center, as may be acceptable to the County Arborist. Existing evergreen trees in excess of six (6) feet in height may be used to fulfill this requirement as may be acceptable to the County Arborist. All evergreen trees required as supplemental plantings along the western lot line shall have a minimum planted height of six (6) feet.

7. Along the southern lot line, in the area west of the exit only driveway, two rows of deciduous shade trees shall be planted 20 feet on center. These rows shall be staggered such that a tree is planted every ten (10) linear feet as measured from east to west, as may be acceptable to the County Arborist. Along the southern lot line, in the area between the entrance/exit driveway and the exit only driveway, the existing deciduous trees shall be supplemented to provide a row of deciduous trees placed 15 feet on center, as may be acceptable to the County Arborist. To accommodate future road improvements, all plantings on the southern lot line shall be located at least 85 feet from the existing centerline of Franconia Road. All deciduous trees planted based on these requirements shall have a caliper of at least two and one half (2 1/2) inches at the time of planting, as may be acceptable to the county Arborist. The species of trees selected shall be subject to approval by the county Arborist.
8. The barrier requirement shall be waived.
9. Right-of-way dedication to 70 feet from the centerline of Franconia Road shall be provided for future road improvements. This right-of-way shall convey to the Board of Supervisors in fee simple at such time as a road project is initiated by the Virginia Department of Transportation (VDOT). A 15 foot wide ancillary construction easement shall be provided to facilitate this improvement. A copy of the approved resolution setting forth this requirement for right-of-way dedication shall be sent by the Clerk to the BEA to VDOT and the Land Acquisitions Division of the Department of Public Works.
10. Stormwater management shall be provided as determined necessary by DEM. The adequacy and capacity of the existing methods used to convey and detain stormwater runoff, including the open space governed by the limits of clearing and grading, shall be reviewed by the DEM at the time of site plan review. If the existing methods for stormwater management are deemed to be adequate by DEM, no improvements or additional measures shall be required. However, if it is determined by DEM that the existing system stormwater management system and the open space are not sufficient to manage the additional runoff generated by the building and parking additions, improvements to the on-site collection system, pro-rata share contributions to the improvement of the off-site detention facilities, or other improvements shall be made as determined by DEM. The requirements of this Condition shall not preclude the applicant from obtaining a waiver of the requirements for storm water detention or a site plan waiver should such waivers be deemed appropriate by DEM.
11. The exit only driveway shall be marked with "One-Way and "Do Not Enter" signs.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established 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 which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 263, April 30, 1991, (Tape 1), Scheduled case of:

9:45 A.M. CATARINO MARQUEZ, SP 91-M-005, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of side yard requirement based on error in building location to allow existing garage to remain 2.0 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 11,314 s.f. located at 3123 Graydon St., zoned R-4, Mason District, Tax Map 50-4((20))324.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Marquez replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the property is zoned R-4, contains 11,314 square feet, and is developed with a single family detached dwelling and a detached garage. The surrounding properties are also zoned R-4 and are developed with single family detached dwellings.

He stated that the request was for approval of a special permit for a modification to the minimum side yard requirements to allow the detached garage/workshop to remain 2 feet from the side lines. The Zoning Ordinance requires a minimum side yard of 10 feet, thus the applicant was requesting a modification of 8 feet to the minimum side yard requirement.

Mr. Riegle stated that the records of the Zoning Administration Division indicated that a building permit was not obtained. The applicant's statement contained in appendix 2 of the staff report indicated that he had not realized one was required. This special permit application was prompted by a complaint and subsequent Notice of Violation. The General Standards for special permit approval require a finding that the use will not have an adverse impact on the use or enjoyment of adjacent property. Staff's primary concern was that the location of the garage 2 feet from the side lot line could cause an adverse visual impact to the adjoining properties and the fact that the 2 foot of available space between the garage and the side lot line made it difficult to provide any screening which might lessen the impacts. He pointed out that staff had received one letter in support of the request.

The applicant, Catarino Marquez, 3123 Graydon Street, Falls Church, Virginia, came forward. He stated that he had obtained a building permit for a second story addition that he had constructed last year and that he had not realized that he would need a separate building permit for the garage.

Chairman DiGiulian called for speakers in support of the request.

Michael Hayden, 3122 Graydon Street, Falls Church, Virginia, came forward. He stated that the neighbors he had talked to about the addition had voiced no objections and believed that it was an attractive structure. Mr. Hayden stated when the applicant purchased the property there was a very old large shed on the property where the garage is now located which he demolished in the belief that he was improving the property.

In response to questions from the Board, Mr. Hayden replied that the garage was constructed several feet forward of the location of the previous shed. He stated that he believed that the applicant's trade was hanging dry wall.

Mrs. Harris asked if the shed had been located on the concrete pad shown on the plat. Mr. Hayden stated that as he recalled the shed was further forward on the site than the concrete pad. He added that many of the neighbors on his side of the street see the structure as a cleaner, more attractive addition.

Mrs. Thonen stated that the Board had received a very nice letter from Mrs. Underwood, owner of 3124 Graydon Street. Mr. Hayden used the viewgraph to show the location of Mrs. Underwood's property. Mrs. Thonen suggested that a copy of the letter be given to the applicant and Chairman DiGiulian provided the applicant with a copy.

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

Mrs. Harris made a motion to deny the request for the reasons noted in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-M-005 by CATARINO MARQUEZ, under Section 8-914 of the Zoning Ordinance to allow reduction of side yard requirement based on error in building location to allow existing garage to remain 2.0 ft. from side lot line, on property located at 3123 Graydon Street, Tax Map Reference 50-4((20))324, 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 30, 1991; and

Page 264, April 30, 1991, (Tape 1), (CATARINO MARQUEZ, SP 91-M-005, continued from Page 263)

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 11,314 square feet.
4. The applicant did not intentionally put the garage in the location; it was only a matter of his not investigating the Zoning Ordinance with respect to the setbacks from the lot line.
5. There are other locations on the property where this size garage could go without a variance.
6. Perhaps the applicant could make the garage into a carport and have a lesser variance at the same location, but there is no way to mitigate the impact on the adjoining neighbor.
7. A two foot distance off the side lot line is not a good idea because it could set an undesirable precedent.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Chairman DiGiulian, Mrs. Harris, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; 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 May 8, 1991.

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Page 264, April 30, 1991, (Tape 1), Action Item:

McLean Bible Church, SPA 73-D-151-2 and VC 88-D-095  
Additional Time Request

Mrs. Thonen made a motion to grant the applicant's request making the new expiration date July 25, 1991. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 264, April 30, 1991, (Tape 1), Action Item:

Approval of March 19, 1991 Minutes

Chairman DiGiulian stated that Mr. Pammel had asked that staff listen to the tapes to clarify a discrepancy.

Mr. Pammel stated that he thought that he had been present for all but the first item.

Chairman DiGiulian stated that the approval would be carried over to the next meeting.

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Page 264, April 30, 1991, (Tape 1), After Agenda Item:

Memo Regarding Reconsideration of February 26, 1991 Minutes

Chairman DiGiulian stated Mr. Kelley had asked for information pertaining to the minutes and since Mr. Kelley was absent he believed the item should be carried over to a time when he was present.

Mrs. Harris asked for a clarification as to why the Board was reconsidering the minutes. Chairman DiGiulian explained that the Board had expressed concern that the minutes did not accurately reflect the words and attitude of the Department of Environmental Management's (DEM) staff in the Louise and Zane Mason appeals. Mrs. Harris asked if the action was to reconsider the final outcome of the case and Chairman DiGiulian stated that it was only to reconsider the minutes as written. He suggested that the item be passed over to another meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she had listened to the tapes of the case and what she believed the Board to have perceived had taken place was not on the tape. She asked the Board for guidance and stated that the clerk could not put something in the minutes that was not actually said. Chairman DiGiulian agreed. Mr. Ribble stated that perhaps papers were being rattled and the comment could not be heard.



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Mrs. Harris asked what the issue was. Ms. Kelsey stated that the issue was whether or not it is DEM's policy to accept an appeal knowing that there is an error and not bring it to the appellant's attention until the staff report is provided.

Chairman DiGiulian stated that there was a statement in response to Mr. Kelley's question that on the first page of the appeal the wrong plat was called for, but on the second page under the justification it was clear what plat they were talking about. He stated that there was kind of comment from DEM "well, we didn't look at the second page" or something like that. Mr. Ribble stated that he thought that DEM knew it was wrong and went ahead anyway and didn't tell them. Mr. Pammel agreed and stated that was the impression that he had gotten.

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Page 266, April 30, 1991, (Tape 1), Action Item:

R. L. Wilson & Associates, Inc.  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the next available date would be June 11 or June 18. Mrs. Thonen made a motion to grant the applicant's request and schedule the out of turn hearing for June 11. Mr. Hammack seconded the motion. The motion carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 265, April 30, 1991, (Tape 1), Action Item:

Change in Meeting dates for July Night Meeting

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that at Mr. Pammel's request the Clerk had checked to see if the Board room was available for the evenings of July 9 and July 23, 1991, both dates are available.

Chairman DiGiulian and Mr. Ribble stated that they were not available on the evening of July 23. Mrs. Thonen stated that she would like to stick to the scheduled meeting date of July 16, 1991. Mr. Pammel agreed.

Mrs. Thonen stated that she would be absent from the May 14, 1991 meeting but would be back for the May 23 meeting.

Ms. Kelsey asked the Board to check their July schedules and called their attention to the "if needed" date of Thursday, July 25, 1991.

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

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: 5/23/91

APPROVED: 5/28/91

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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, 7, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 267, May 7, 1991, (Tape 1), Scheduled case of:

9:00 A.M. DEBRA P. & ROBERT H. MASNIK, SP 90-A-079, appl. under Sect. 8-917 of the Zoning Ordinance to allow 4 dogs (12,500 s.f. min. lot size required for 3-4 dogs by Sect. 2-512) on approx. 11,606 s.f. located at 8915 Victoria Rd., zoned R-3, Annandale District, Tax Map 69-4((5))247. (DEF. FROM 2/26/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Masnik replied that it was.

Dorothy E. Olin, 8461 Thames Street, Springfield, Virginia, addressed the Board and stated that she was representing Robert Hunt, 8910 Crowwell Drive, Springfield, Virginia. She said that Mr. Hunt could not attend the public hearing because he had business in Denver, Colorado. Ms. Olin asked the Board to defer the case until Mr. Hunt could be present.

Mr. Ribble stated that the Board had received a letter from Mr. Hunt.

Mr. Pammel made a motion to hear the case as scheduled. Mr. Ribble seconded the motion which carried by a vote of 3-1 with Chairman DiGiulian, Mr. Pammel, and Mr. Ribble voting aye; Mrs. Thonen voting nay. Mr. Kelley, Mrs. Harris, and Mr. Hammack abstained from the vote.

Greg Riegler, Staff Coordinator, presented the staff report for Bernadette Bettard who was on vacation. Mr. Riegler stated that the applicants were requesting a modification to the limitation of the keeping of animals to permit four (4) dogs to remain on the property. He stated that the minimum lot sizes for keeping four (4) dogs in Fairfax County is 12,500 square feet. Mr. Riegler noted that the dogs live in the basement of the house, and are exercised in an approximately 1,000 square foot area which is surrounded by a chain link fence.

Mr. Riegler stated that at staff's request, the Department of Animal Control visited the site and indicated that there was adequate room to exercise the animals, and had also noted there was no evidence of mistreatment of the animals.

Although staff believed there could be a potential adverse impact in the form of noise, Mr. Riegler stated that the proposed development conditions would adequately mitigate any detrimental impacts, and said that staff recommended approval of the special permit. He noted that staff had received a significant amount of correspondence regarding the case.

In response to Mrs. Harris' question regarding the board-on-board fence that had recently been constructed by the applicants, Mr. Riegler deferred to the applicant.

The applicant, Robert H. Masnik, 8914 Victoria Road, Springfield, Virginia, addressed the Board and submitted pictures which depicted that a board on board fence had replaced the chain link fence. He explained to the Board that the situation would be temporary and would not last any longer than the lives of the two eldest dogs. Mr. Masnik said that all the dogs had been neutered, were well cared for, the yard would be kept clean, a seven foot acoustical fence had been erected around the entire back yard, and that there would be no detrimental impact on the neighborhood. He noted that many neighbors had expressed their support for the request. Mr. Masnik expressed his belief that the dogs provided security for his young daughter. He explained that due to the accidental death of his mother, the family, which was already distressed, would be devastated by the removal of their pets.

Mr. Masnik said that the dogs are kept in the basement of the house, no more than two dogs would be allowed in the yard at any one time, the two small terriers would not be allowed in the yard at the same time, and the yard would be kept clean at all times. He expressed his belief that these measures, along with the wood fence, would allow the dogs to be managed in a way that would mitigate any noise impact to the community.

Chairman DiGiulian called for speakers in support of the request.

Mary Devin, 8917 Victoria Road, Springfield, Virginia, addressed the Board and stated that the Masniks' were outstanding neighbors and took excellent care of their dogs. She said that she lived next door to the applicants and the dogs have never presented any problems.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition.

Ms. Olin asked the Board to give full weight to Mr. Hunt's letter. She noted that Mr. Hunt was also a neighbor and that he believed the dogs presented a detrimental impact on the neighborhood.

Page <sup>268</sup> 268, May 7, 1991, (Tape 1), (DEBRA P. & ROBERT H. MASNIK, SP 90-A-079, continued from  
Page <sup>267</sup> 267)

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 90-A-079 subject to the development conditions contained in the staff report dated February 19, 1991.

In response to Mr. Ribble's questions regarding the Development Condition Number 6, as contained in the staff report, Mr. Riegler stated that the existing house does not meet the 30.0 foot setback requirement; therefore, the applicant should address the issue with the Permit Plan Review Branch. With respect to Development Condition Number 5, Mr. Riegler explained that the fourteen (14) year old dog would not be replaced upon its demise.

Mr. Ribble suggested that the wording of Development Condition Number 5 be changed to reflect that if any one of the dogs should die, it would not be replaced. The maker of the motion agreed to the change.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-A-079 by DEBRA P. AND ROBERT H. MASNIK, under Section 8-917 of the Zoning Ordinance to allow 4 dogs, on property located at 8915 Victoria Road, Tax Map Reference 69-4((5))247, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,606 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-917 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 purpose(s), structure(s) and/or uses(s) indicated on the special permit plat (dated December 7, 1990), by Caldwell, Sikes and Assocs. and approved with this application, as qualified by these Development Conditions. This Special Permit shall be limited to the four (4) dogs specified in this application. The dogs are Floofy, Fuzzy, Soonee and Sandy.
3. The yard shall be kept free of animal waste and debris. The yard used to exercise the dogs shall be cleaned on a daily basis.
4. The applicant shall install a seven (7) foot high board fence around the entire rear yard within thirty (30) days from the date of approval of this special permit.
5. At no time shall all four dogs be allowed within the rear fenced yard at once. The terriers shall not be within this area at the same time. If any one of the four (4) dogs dies, it shall not be replaced upon its demise.
6. An administrative variance shall be requested from the Office of Zoning Administration within thirty days of the approval of this application.

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

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

Page <sup>269</sup> 268, May 7, 1991, (Tape 1), (DEBRA P. & ROBERT H. MASNIK, SP 90-A-079, continued from Page 268)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page <sup>269</sup> 269, May 7, 1991, (Tape 1), Scheduled case of:

9:15 A.M. GERALD F. & SHARON C. RENALDS, SP 91-C-006, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 9.6 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 21,800 s.f. located at 10009 Murnane Street, zoned R-1, Centreville District, Tax Map 37-2((9))92.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Renalds replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report for Bernadette Bettard who was on vacation. Mr. Riegle stated that the applicant was requesting approval of a reduction of the minimum yard requirements based on an error in building location to allow a detached storage shed to remain 9.6 feet from the side lot line.

Mr. Riegle said that staff's research of the zoning Administration Division records indicated that the 10 year old shed was constructed without a building permit. He noted that correspondence from the Health Department had indication that due to the location of the septic field, the shed could not be moved. He explained that the Health Department's primary concern was that no heavy equipment be driven across the septic field.

The applicant, Sharon L. Renalds, 10009 Murnane Street, Vienna, Virginia, addressed the Board and stated they did not realize that by placing the shed in its present location, it would be in violation of the Zoning Ordinance. She said that they had merely placed the shed in a location that would add aesthetic value to the property. Ms. Renalds stated that the first indication of violation was when a new neighbor, who is a renter, filed a complaint. She noted that the three (3) adjacent neighbors have submitted letters of support. Ms. Renalds said that due to the property's septic field and soft ground restrictions, the shed could not be moved to another location. She explained that the shed was used for storage of motor cycles, lawn mower and other gasoline powered vehicles. Ms. Renalds asked the Board for approval of the special permit.

In response to Mrs. Harris' question regarding an alternate location for the shed, Ms. Renalds stated that because of the soft ground, the shed could not be placed in the suggested location.

In response to Mr. Hammack's question on how close the garden was to the septic field, Ms. Renalds stated the distance was approximately 10.0 to 15.0 feet.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-C-006 subject to the development conditions contained in the staff report dated April 30, 1991.

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

After a brief discussion it was the consensus of the Board that no evergreen screening would be necessary.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-C-006 by GERALD F. AND SHARON C. RENALDS, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 9.6 feet from side lot line, on property located at 10009 Murnane Street, Tax Map Reference 37-2((9))92, 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 7, 1991; and

WHEREAS, the Board has made the following conclusions of law:

Page 20, May 7, 1991, (Tape 1), (GERALD F. & SHARON C. RENALDS, SP 91-C-006, continued from Page 209)

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

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

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

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

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

1. This special permit is approved for the location of the specified structure shown on the plat submitted with this application (dated November 26, 1990) and prepared by Payne and Associates and is not transferable to other land.
2. This Special Permit is granted only for the shed indicated on the Special Permit Plat approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and inspections finalized for the shed if required by The Department of Environmental Management.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 210, May 7, 1991, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT J. & MIRA POZZI, VC 91-M-021, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 9.4 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,323 s.f. located at 4112 Bennett Dr., zoned R-3, HC, Mason District, Tax Map 60-4((26))7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Pozzi replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirement to permit construction of a one story addition to 9.4 feet from the western side lot line. Since the Zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 District, the applicants were requesting a variance of 2.6 feet to the minimum side yard.

In response to Mrs. Harris' questions, Mr. Jaskiewicz stated that the measurement of the proposed addition would be 9.3 by 17.0 feet. He said that most of the existing concrete

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patio would be covered by the addition which was needed in order to expand the kitchen. Mr. Jaskiewicz stated that the 4.7 by 7.2 feet covered area depicted on the plat was an area way which led to an outside entrance.

The applicant, Robert J. Pozzi, 4112 Bennett Drive, Annandale, Virginia, addressed the Board. He stated that the addition would add aesthetic value to the property and also provide privacy to both his and his neighbor's property. He explained that his existing entrance and patio faces his neighbor's entrance and patio, thereby depriving both houses of privacy. He noted that this situation had caused the neighbor to construct a privacy fence. Mr. Pozzi expressed his belief that by providing a larger kitchen, the addition would add to the quality of his family's life.

The applicant's wife, Mira Pozzi, 4112 Bennett Drive, Annandale, Virginia, addressed the Board. She explained that because of the noise generated by the children playing in the neighbor's yard and the lack of privacy, she would like to rearrange the entrance to the house. Ms. Pozzi stated that this solution would provide both privacy and a noise barrier to the property.

In response to Mr. Hammack's question as to the distance between the two houses, Mrs. Pozzi said that the neighbor's house is approximately 12.0 feet from the property line.

Mrs. Thonen stated that she believed the problem stemmed from the fact that in 1977, the subdivision had been granted a variance that allowed the property to have less than the minimum required lot width.

Mr. Jaskiewicz stated that the dwelling on Lot 8 was approximately 12.4 feet from the property line.

Mrs. Harris expressed her belief that the large addition would have an adverse impact on the neighbor. Ms. Pozzi stated that neighbor had submitted a written statement supporting the request.

Mr. Pammel asked staff if the request was for two variances. Mr. Jaskiewicz stated although the original application requested two variances, upon further investigation it was found only one would be needed.

In response to Mrs. Thonen's question regarding the pipestem drive, Mr. Jaskiewicz stated that the required 25.0 feet had been met.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 91-M-021 for the reasons stated in the Resolution and subject to the development conditions contained in the staff report dated April 30, 1991.

Mr. Hammack seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Harris stated that she could not support the request. She noted that the applicant could build an 7.7 foot wide addition by right and did not believe that a hardship existed.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-021 by ROBERT J. AND MIRA POZZI, under Section 18-401 of the Zoning Ordinance to allow construction of addition 9.4 feet from side lot line, on property located at 4112 Bennett Drive, Tax Map Reference 60-4((26))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 May 7, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,323 square feet.
4. The property was rezoned. The 1977 variance that allowed the house to be built on a lot having less than the minimum required lot width has caused the need for this variance.
5. The lot has a double front yard.

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- 6. There is no other suitable location on the property for the addition.
- 7. The application meets the standards necessary for the granting of a variance.

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

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

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

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

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

- 1. This variance is approved for the location 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.

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.

Mr. Hammack seconded the motion which carried by a vote of 5-2 with Chairman DiGiulian, Mrs. Thonen, Mr. Hammack, Mr. Kelley, and Mr. Pammel voting aye; Mrs. Harris and Mr. Ribble voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1991. This date shall be deemed to be the final approval date of this variance.

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9:45 A.M. LILLY H. & ROBERT D. PINER, VC 91-P-022, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 11.2 ft. and 9.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,858 s.f. located at 3419 Gallows Road, zoned R-3, Providence District, Tax Map 59-2((8))(2)10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Piner replied that it was.



Page 273, May 7, 1991, (Tape 1), (LILLY H. & ROBERT D. PINER, VC 91-P-022, continued from Page 272)

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Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirement to permit construction of a one-story addition to 11.2 and 9.7 feet from the western lot line. Since the zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 District, the applicants were requesting a variance of 0.8 feet and 2.3 feet to the minimum side yard requirement.

The applicant, Robert D. Piner, 3419 Gallows Road, Falls Church, Virginia, addressed the Board and stated he would like to expand the 883.28 square feet living area of the house. He said that he plans to remodel the house by adding a kitchen, a bath, and extend the existing bedrooms by 2 feet. Mr. Piner explained that the house was constructed with posts and beams on a 4 foot center, with beams across the ceiling. He stated that the variance was necessary to continue the architectural design of the house.

Mr. Piner stated that the problem was caused by placement of the existing structure crosswise and to the rear of the property. He noted that many of the neighbors had constructed additions, but because of the placement of their houses on the lots, no variances were necessary. Mr. Piner said that he had the neighbors' support and asked the Board to grant the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-P-022 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 30, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-022 by LILLY H. AND ROBERT D. PINER, under Section 18-401 of the Zoning Ordinance to allow construction of addition 11.2 feet and 9.7 feet from side lot line, on property located at 3419 Gallows Road, Tax Map Reference 59-2((8))(2)10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,858 square feet.
4. There is an unusual situation on the property. Because of the contemporary influence when the house was built, it was placed in an odd position on the lot.
5. The variance will allow the addition to conform to the architectural construction of the existing structure.
6. The variance is minimal.
7. There will be no detrimental impact on the community.
8. There is no opposition to the application.

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mrs. Thonen seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 274, May 7, 1991, (Tape 1), Scheduled case of:

10:00 A.M. JAY B. BRILEY & LUCILLE WOODEN, VC 91-P-033, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 17.5 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 3,937 s.f. located at 2800 & 2802 Liberty Ave., zoned R-4, Providence District, Tax Map 50-2(9)52, 53. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Briley replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated the applicants were requesting approval of a variance in order to construct a single family detached dwelling on two consolidated lots. Since the Zoning Ordinance requires a minimum front yard of 30.0 feet in the R-4 District, the applicants were requesting a variance of 12.5 to the minimum front yard requirement.

Mr. Riegle stated that staff's research had indicated that a variety of dwellings in the area do not conform to the current zoning Ordinance requirements.

The applicant, Jay Briley, 8420 Woodyard Road, Clinton, Maryland, addressed the Board and stated he would like to construct a three story structure. He explained that the first floor would consist of a two car garage and recreation room; the second floor would consist of a living room, a dining room, and a kitchen; and, the third floor would consist of the bedrooms.

In response to Mr. Hammack's question as to the setbacks on Lots 50 and 51, Mr. Riegle stated that the houses sit back approximately 25.0 feet from Liberty Street. He noted that the structures, which were constructed under a previous Zoning Ordinance, are approximately 5.0 feet closer to the front lot line than the proposed structure would be.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-P-033 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 30, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-033 by JAY BRILEY AND LUCILLE WOODEN, under Section 18-401 of the Zoning Ordinance to allow dwelling 17.5 feet from front lot line, on property located at 2800 and 2802 Liberty Avenue, Tax Map Reference 50-2((9))52, 53, 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 7, 1991; and

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

1. The applicants, respectively, are the contract purchaser and the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 3,937 square feet.
4. This is a consolidation lot.
5. The application meets the front setback.
6. The property has double front lot lines on a corner lot.
7. The size of the proposed house is reasonable for the area.
8. The situation is not general enough that it would set a precedent.
9. The granting of the variance will clearly relieve a hardship.

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

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

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

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

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

1. This variance is approved for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

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

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.

Mr. Kelley seconded the motion which carried by a vote of 6-1 with Mrs. Thonen voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 276, May 7, 1991, (Tape 1), Action Items:

Approval of Resolutions from April 30, 1991 Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the new plat, with the revision as requested by the Board, had been submitted for the Jarvis Boykin variance, VC 91-V-018.

In response to Mr. Hammack's question regarding the motion on the Harry B. Kennedy special permit, SP 91-L-004, Ms. Kelsey stated that the Clerk believed that Mr. Hammack had not completely removed Development Condition Number 6. She explained that it was her understanding that the whole condition was to be removed and that a clarification of the matter was needed. Mr. Hammack stated that he had revised the Condition as reflected in the Resolution.

Mr. Hammack stated that he would like to further revise the Resolution. He said that he would like the condition to read, "A solid wood fence shall be constructed," and leave the decision as to whether the chain link fence should be removed to the applicant. Ms. Kelsey asked if he would like the condition to read, "A six foot high solid wood fence shall be constructed along the shared western property line," and Mr. Hammack said he would concur with that wording. He expressed his appreciation to Ms. Kelsey for requesting clarification.

Chairman DiGiulian called for discussion on approval of the Resolution. Hearing no further discussion, the Chair moved approval of the Resolutions as submitted by the Clerk.

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Page 276, May 7, 1991, (Tape 1), Action Items:

Approval of Minutes from March 26, 1991 and April 18, 1991 Hearings

Mrs. Harris made a motion to approve the Minutes as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 276, May 7, 1991, (Tape 1), Action Items:

Chairman DiGiulian stated that the Board had two other sets of Minutes that needed attention. He noted that Mr. Pammel had a question regarding the Minutes from March 19, 1991. Mr. Pammel stated that staff was still working on the issue and requested the approval of the Minutes be carried over until the next public hearing.

Chairman DiGiulian noted that Mr. Kelley had a question regarding the Minutes from February 26, 1991.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a verbatim had been prepared for Mr. Kelley. Mr. Kelley said that he would prefer to carry the approval over until the next public hearing so that he could prepare an amendment to the Minutes. He noted that Mr. Pammel was also interested in this issue. Chairman DiGiulian expressed his desire to read the verbatim.

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Page 276, May 7, 1991, (Tape 1), Action Items:

Request for Scheduling of Appeal  
Bell Atlantic Mobil Systems, Inc.

Mr. Hammack made a motion to schedule the public hearing on June 25, 1991, at 10:20 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 277, May 7, 1991, (Tape 1), Action Items:

Request for Scheduling of Appeal  
John J. Magill

Mrs. Thonen made a motion to schedule the public hearing on July 2, 1991, at 9:50 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 277, May 7, 1991, (Tape 1), Action Items:

Request for Scheduling of Appeal  
Wayne V. Jordan

Mrs. Thonen made a motion to schedule the public hearing on July 16, 1991, at 8:00 p.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 277, May 7, 1991, (Tape 1), Action Items:

Request for Scheduling of Appeal  
Douglas W. Fague

Mrs. Thonen made a motion to schedule the public hearing on July 9, 1991, at 10:15 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the zoning Administrator had questioned the timeliness on a portion of the appeal. Mr. Hammack expressed his belief that the timeliness issue, as well as the appeal, should be heard at the same time.

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

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Page 277, May 7, 1991, (Tape 1), Action Items:

Request for Out of Turn Hearing  
Stanley Martin Communities, VCA 89-S-071

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the application had resulted from the Board's granting of a variance which stipulated a specific amount of lot width along the frontage of one of the lots. Subsequent to that, an additional amount of dedication had to be provided. She noted that since the side lot lines were not parallel, it caused the applicant to need a greater variance than the Board had originally granted. Therefore, the applicant was requesting an amendment to the variance.

Mr. Ribble made a motion to schedule the public hearing on July 2, 1991, at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 277, May 7, 1991, (Tape 1), Action Items:

Request for Out of Turn Hearing  
Herman Koenig

Mrs. Harris stated that the applicant's wife had suffered a stroke and would be confined to a wheelchair. She stated that under the Ordinance, the necessary handicap ramp would be considered a deck; therefore, a variance would be needed. Mrs. Harris asked that every effort be made to expedite the matter.

Mrs. Harris made a motion to schedule the public hearing on July 2, 1991, at 9:15 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

*Helen C. Darby*  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

*John P. DiGiuliano*  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: June 4, 1991

APPROVED: June 14, 1991

B/ANK



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 14, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mrs. Harris gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 279, May 14, 1991, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS W. & LYNN W. OSBORNE, VC 91-L-023, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of additions 5.6 ft. and 11.6 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,042 s.f. located at 4403 Dartmoor Lane, zoned R-3, Lee District, Tax Map 82-1((12))71.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Osborne replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property is located north of Franconia Road; consists of 11,042 square feet; is zoned R-3; and is developed with a single-family detached dwelling and an attached carport.

Mr. Riegle said that the applicant was requesting permission to construct two additions: a garage 5.6 feet from the side lot line and a Florida room 11.6 feet from the same side lot line. Mr. Riegle said that a minimum side yard of 12 feet is required in an R-3 district; accordingly, a variance of 6.4 feet was being requested for the garage and a variance of 0.4 feet was being requested for the proposed Florida room.

Mr. Riegle said that research indicated that the dwelling on adjacent Lot 70 is located approximately 21 feet from the shared side lot line.

The applicant, Thomas W. Osborne, 4403 Dartmoor Lane, Alexandria, Virginia, presented the statement of justification, stating that their request was being made to enable them to expand the existing carport into a two-car garage because their needs had changed since the time they bought the house. They now need enclosed space for two cars, as well as storage and work space, which the carport cannot provide. He said that the proposed Florida room would provide an enjoyable year-round, indoor-outdoor facility, unlike the present patio where the proposed Florida room was to be located. Mr. Osborne described at great length the reasons why he believed the Board should grant his request.

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

Mr. Pammel made a motion to deny VC 91-L-023 because the applicant's testimony shows that the request does not meet Required Standards 2 and 6, and that denial would not result in unnecessary hardship, nor would it deprive the user of all reasonable use of the land and buildings involved.

Mr. Pammel said he sympathized with the applicant but, according to the Standards, he believed the applicant had not made a case to the effect that reasonable use of the property would be lost if the request were denied. He said that a one-car garage and a Florida room could be placed on the property with a very minor reduction in area and no need for a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-023 by THOMAS W. & LYNN W. OSBORNE, under Section 18-401 of the Zoning Ordinance to allow construction of additions 5.6 ft. and 11.6 ft. from side lot line, on property located at 4403 Dartmoor Lane, Tax Map Reference 82-1((12))71, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,042 square feet.

- 4. The applicant's testimony shows that the request does not meet Required Standards 2 and 6.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1991.

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9:10 A.M. CLYDE W. AMONETT, VC 91-P-024, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 15.7 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 11,606 s.f. located at 8219 Colby Court, zoned R-3, Providence District, Tax Map 49-1(9)(A)19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Amonett replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the site is located north of I-66 and west of Gallows Road; consists of 11,606 square feet; is zoned R-3; and is presently developed with a single-family detached dwelling.

Mr. Riegler said that the applicant proposed building an addition 15.7 feet from the rear lot line end, since a minimum rear yard of 25 feet is required in the R-3 District, a variance of 9.3 feet was being requested.

Mr. Riegler said that research indicated that the dwelling on adjacent Lot 9 is located approximately 46 feet from the shared lot line.

The applicant, Clyde W. Amonett, 8219 Colby Road, Vienna, Virginia, presented the statement of justification, stating that he lived in a cul-de-sac on a pie-shaped lot, and the house is set fairly deep into the required setback area. Mr. Amonett said that



he had letters from the people on either side of his lot, who he said would be most affected by his application, stating they had no objection to his request. Mr. Amonett said that he had one of the most shallow lots in the subdivision and that there was no other place on the lot where he could build the proposed addition.

Mrs. Harris questioned the configuration of the addition and asked the applicant what it was going to be used for. Mr. Amonett said that it would be an extension of the living room at the rear of the dwelling, similar to a family room. Mrs. Harris asked if there was any way Mr. Amonett could change the configuration to have the addition make less of an intrusion into the rear of the lot. Mr. Amonett said that the configuration he proposed was the most comfortable one for the family's needs.

Chairman DiGiulian asked Mr. Amonett if he had stated that, if the house had been placed as close to the street as the setback would allow, the addition would probably have fit on the back of the house without a variance. Mr. Amonett replied that it was true.

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

Mr. Hammack made a motion to grant VC 91-P-024 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-024 by CLYDE W. AMONETT, under Section 18-401 of the Zoning Ordinance to allow construction of addition 15.7 ft. from rear lot line, on property located at 8219 Colby Court, Tax Map Reference 49-1(9)(A)19, Mr. Hammack moved that the Board of zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,606 square feet.
4. The lot is pie-shaped and the house is set back almost on the rear lot line, as positioned by the original builder.
5. There really is no other place where the applicant could build the addition without requiring some kind of variance or running into extremely difficult problems.
6. The house on the lot at the rear of the applicant's property is set back 31 feet from the property line, eliminating any great impact upon that property; there is also a lack of objection expressed by that property owner.
7. There is a stairway to one side of the proposed addition, a bedroom to the other side, and the request is for 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

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Page ~~281~~<sup>282</sup>, May 14, 1991, (Tape 1), (CLYDE W. AMONETT, VC 91-P-024, continued from Page ~~281~~<sup>282</sup>)

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mr. Pammel seconded the motion which carried by a vote of 5-1; Mrs. Harris voted nay. Mrs. Thonen was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 9:34 a.m. and reconvened at 9:44 a.m.

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Page ~~281~~<sup>282</sup>, May 14, 1991, (Tape 1), Scheduled case of:

9:35 A.M. STEPHEN KELLER AND KATHY REGAN, VC 91-D-027, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 20.0 ft. from front lot line and allow addition 4.6 ft. from side lot line (40 ft. min. front yard and 20 ft. min. side yard required by Sect. 3-107) on approx. 28,218 s.f. located at 2000 Lorraine Avenue, zoned R-1, Dranesville District, Tax Map 41-1((7))52.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Keller and Ms. Regan replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totalled 28,218 square feet; is zoned R-1; is located east and south of Kirby Road and west of the Arlington County line in Section 3 of the Franklin Forest subdivision in McLean; and is developed with a one-story single-family detached dwelling with an integral carport.

Mr. Jaskiewicz described the two part variance as: (1) variance to the minimum side yard requirement to permit construction of a one-story addition, converting the carport to a dining room, 4.6 feet from the side lot line; and (2) variance to the minimum front yard requirement to permit construction of a garage addition 20.0 feet from the front lot line.

Mr. Jaskiewicz said that, since the Zoning Ordinance requires a minimum side yard of 20 feet and a minimum front yard of 40 feet in the R-1 District, the applicants were requesting both a variance of 15.4 feet to the minimum side yard requirement and a variance of 20 feet to the minimum front yard requirement.

Mr. Jaskiewicz alerted the Board to two items in the staff report: first, Johns Road abutting the subject property to the north is currently unimproved and not slated for future construction; and second, staff had included a Proposed Development Condition that requires the existing driveway to be removed and replanted, given the proposed existence of a new driveway and garage.

Mr. Pammel referred to the original plat dated June 1, 1959, on which the addition was predicated, which Mr. Pammel stated showed a side yard of 12 feet, and which he assumed had complied with the Ordinance at that point in time. Mr. Pammel stated that what was really built left much less than the 12 foot requirement, and he asked the staff coordinator if there was any explanation as to how that had occurred. Mr. Jaskiewicz said he did not have the answer and believed that, perhaps, the applicants might shed some light on the issue. Ms. Regan said that she did not know exactly how the plat could have been approved for a 12 foot setback, when the size of the carport is 17 feet, which is what the present applicants show on their plat. A discussion concerning possibilities ensued. Mr. Pammel asked if a variance would have been required at the time the carport was built 4.6 feet from the side lot line. He suggested that, perhaps, a special permit might be required to overcome an error. Mr. Jaskiewicz said that research had indicated a variance granted in 1954 for the subject property to permit the erection of a carport not closer than 8 feet from the lot line. Mr. Jaskiewicz said that he had looked through the minutes and found testimony to the fact that the requested variance was for the carport to be built to within 5 feet of the side lot line, and that the carport variance was granted for the carport to be built no closer than 8 feet from the side lot line.

Mrs. Harris asked Mr. Jaskiewicz if, according to his research, he found that the variance granted in 1954 was never acted upon, and that the carport actually was not built until 1959. Chairman DiGiulian stated that a permit was obtained in 1959 to build a carport 12 feet from the side lot line, which did not require a variance, and the variance of 1954 was null and void by that time.

Ms. Regan said that she had requested information which she never received regarding construction of a carport versus construction of an enclosed structure, because there are several other carports in the neighborhood which are also constructed close to the side lot lines. She said she would question whether in 1954 there was a distinction made between an enclosed structure and an open carport, which is basically a slab with a roof, when determining side yard requirements. Ms. Regan said she had never received the requested information.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the information had not been requested from her branch; however, the research done by staff on this request was done through the street files in the Zoning Administration Division. Ms. Kelsey stated that, perhaps, there may have been a request made for additional time in order to begin construction and the records going back that far may not be readily available.

Mr. Pammel made a motion to request that staff research this case further and come back to the Board within a month to advise whether a special permit is required under the error section. Mr. Kelley seconded the motion. Ms. Regan stated that she believed that Carolyn Blevins had done some research on this case and had advised her to proceed to seek a variance and not a special permit. Mr. Stephen Keller said that the applicants had been advised to make a notation on their application to the effect that they would remove the existing carport roof and walls if they were granted a variance. This would make Mr. Pammel's motion unnecessary, since the object of the proposed special permit was going to be removed. Chairman DiGiulian called for a vote on the motion on the floor and the motion failed by a vote of 2-4; Chairman DiGiulian, Mrs. Harris, Mr. Hammack and Mr. Ribble voted nay. Mr. Kelley asked to hold up on the vote temporarily and stated that his inclination would be to remove the carport, allow the garage and, if they need more room, they can build to the rear. Chairman DiGiulian explained that the question of a special permit would be moot because the applicants proposed removal of the carport if the variance were to be granted.

Ms. Regan proceeded with her presentation, stating that there were many existing similar situations in the neighborhood. Ms. Regan stated that their plans included preserving the existing large old oak trees by placing the addition as proposed. The applicants presented a large drawing of the dwelling with the proposed additions, as well as the existing dwelling and appendages.

The discussion continued with a variety of suggestions and questions. A great deal of time was devoted to describing the present dwelling and the various possible ways to expand and add to it.

Mr. Pammel asked for and received photographs of the trees described as 90 feet in height and approximately 2 feet in diameter, stating that he was more interested in seeing where the trees were actually located than in seeing pictures of the trees themselves.

Mrs. Harris questioned the applicants about the proposed porch being used to increase the dining room and was told that the concrete block walls would preclude such a move. Mrs. Harris stressed the need to consider topographic land use aspects of a situation as opposed to the need to move a concrete wall. It was Mrs. Harris's belief that approving the application would amount to compounding an existing error. The discussion continued along these lines.

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

Mr. Pammel made a motion to defer decision on this application until June 25, 1991, at 9:00 a.m., for the purpose of allowing the applicants to submit a plat to the Board, showing the location of the trees in the rear yard, how close they are to the residence, the size of the trees, and what type of a problem the location of the trees would pose for any expansion to the rear.

Mr. Kelley seconded the motion, stating that he would like to see written information from some of the affected neighbors, confirming what Ms. Regan had stated was their support of her request.

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

Ms. Kelsey stated that, for the record, the Board would also need a copy of the building plan which the applicants had been using to demonstrate their need for a variance.

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9:45 A.M. ALFRED W. & PATRICIA WHITTAKER, VC 91-D-025, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 30.25 ft. from front lot line of corner lot and 12 ft. from side lot line (35 ft. min. front yard required and 15 ft. min. side yard required by Sect. 3-207) on approx. 22,613 s.f. located at 6121 Long Meadow Rd., zoned R-2, Dranesville District, Tax Map 31-1((6))26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Whittaker replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the site is located on the west side of Rockland Terrace and the south side of Long Meadow Road, zoned R-2, developed with a single-family dwelling, and abutted on the south, north and west by other lots which are zoned and developed similarly with single-family dwellings. She said that the property to the east is zoned R-1 and also developed with single-family dwellings.

Ms. Bettard said that the applicants' lot contains 22,613 square feet in the Clearview Manor subdivision and that they were requesting a variance to allow an addition to be located 30.25 feet from the front lot line of a corner lot and 12.0 feet from the side lot line. She said that, since Section 3-207 of the Zoning Ordinance requires a minimum front yard of 35.0 feet and a minimum side yard of 15.0 feet in the R-2 District, the applicants were requesting variances of 4.75 to the minimum front yard requirement and 3.0 feet to the side yard requirement.

Ms. Bettard stated that research had revealed that the dwelling on the adjacent lot is located 15.3 feet from the shared lot line on the side where the proposed construction would take place.

The applicant, Alfred Whittaker, 6121 Long Meadow Road, McLean, Virginia, presented the statement of justification, stating that the variances were required to construct a conservatory addition to the existing dwelling and described the variances as modest. Mr. Whittaker said that the position of the house on the property and the unique shape of the lot necessitated the variances in order to make the addition aesthetically pleasing and economically worthwhile. Mr. Whittaker said that he had gone to great lengths and reviewed many plans with his architect before making a selection. Mr. Whittaker stated that he and his wife had informed their neighbors of their intentions, in detail, finding none who voiced any objections, as evidenced by the various letters attached to the application.

Mrs. Harris said that she believed the addition to be beautiful but that the applicant had not covered the hardship aspect as opposed to a convenience. She said she would like the applicant to address the hardship issue and asked what hardship precluded use of the property if the variance were denied. Mr. Whittaker said that, the way the house is set up now, there is no large room for doing any real entertaining. He went on to describe the rooms in the sizable house, which he said were not suitable for the entertaining that was required by his wife's position as a legislative assistant and his own business as a lawyer. Mr. Whittaker said that he also will begin teaching a class at George Mason University Law School, beginning this fall, and he intended to hold some of the classes at the house. Mrs. Harris said that she understood the need for the room, but requested a reason for the variance requested to build the room. Mr. Whittaker's explanation was that it would not be economically feasible to build the room any smaller than proposed in the selected plan. He said that, if the room were built to conform to the lot line, it would look bizarre. Mr. Whittaker said that conservatories come in rather standard types and shapes and the plan they selected was best for their situation.

Page 28, May 14, 1991, (Tape 1), (ALFRED W. & PATRICIA WHITTAKER, VC 91-D-025, continued from Page 284)

Mr. Pammel asked Mr. Whittaker what the height of the fence is along Rockland Terrace and it was suggested that the perspective in the photographs was responsible for the fence looking taller than the 4 foot description.

Carroll Curtice, 2513 Fowlers Lane, Reston, Virginia, the applicant's architect, was asked to come to the podium. Mr. Ribble said that it seemed that the conservatory was a standard package and that the cost would be greater if there was a deviation from the standard design. He asked Mr. Curtice to confirm that. Mr. Curtice said that one of the first governing features was the connection located near the chimney, which was a standard manufactured section. He said that if the standard section were not used, it would influence other features. Mr. Curtice went into detail to describe how changing the standard design could influence the end result, stating that it could almost double the cost.

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

Mr. Ribble made a motion to grant VC 91-D-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1991.

Mr. Pammel stated that he believed the variances requested were minimal, given the exceptional shape of the lot and the existing restrictions on a choice of where the addition might be located.

Chairman DiGiulian stated that he supported the motion because of the unusual location of the dwelling on the lot.

Mrs. Harris stated that she could not support the motion because the hardship which was alluded to was basically cost effectiveness, which she considered to be a convenience. Mrs. Harris believed that, because the addition had not yet been constructed, the design could be altered to fit within the building restriction lines. In the case of the double front yard, Mrs. Harris acknowledged that it does exist, but stated that the variance request had nothing to do with the one front yard on Long Meadow Road, only the one on Rockland Terrace. While sympathetic to the applicant's need for more space, Mrs. Harris said she did not believe denial approached confiscation of the land and that hardship was not demonstrated to her satisfaction.

Mr. Ribble suggested that, if the applicant is planning on teaching classes at his home, he might need a permit for doing so.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-025 by ALFRED W. & PATRICIA WHITTAKER, under Section 18-401 of the Zoning Ordinance to allow addition 30.25 ft. from front lot line of corner lot and 12.0 ft. from side lot line, on property located at 6121 Long Meadow Rd., Tax Map Reference 11-1(6)26, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 22,613 square feet.
4. The lot has an unusual shape with a double front yard.
5. Testimony from the applicant and the architect shows that the proposed plan is the best way to proceed under the 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

Page 286, May 14, 1991, (Tape 1), (ALFRED W. & PATRICIA WHITTAKER, VC 91-D-025, continued from Page 285)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 addition to the specific dwelling shown on the plat (dated December 4, 1990) prepared by Carroll C. Curtice and submitted with this application.
2. A Building Permit shall be obtained prior to any construction.

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.

Mr. Kelley seconded the motion which carried by a vote of 5-1; Mrs. Harris voted nay. Mrs. Thonen was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 286, May 14, 1991, (Tape 1&2), Scheduled case of:

9:55 A.M. GREGORY L. GORDON, VC 91-D-026, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 10,027 s.f. located at 1861 Patton Terrace, zoned R-2, Dranesville District, Tax Map 41-1((11))22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gordon replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject site is located south of Kirby Road, on the east side of Patton Terrace, zoned R-2 and developed with a single-family dwelling; abutted on the north, south, east, and west by other lots in the Chesterbrook subdivision which are also zoned R-2 and developed with single-family dwellings.

Ms. Bettard went on to say that the applicant was requesting a variance to allow an addition to be located 8.0 feet from the side lot line, consisting of a deck approximately 2.5 feet in height, enclosed by a 7.0 foot high privacy fence on the east and a 4.0 high privacy fence on the south. Section 3-207 of the Zoning Ordinance requires a minimum side yard of 15.0 feet; thus, a variance of 15.0 feet to the minimum side yard was being requested. It was noted by Ms. Bettard that, under Section 2-412 of the Zoning Ordinance, decks with sides less than 4 feet in height may extend into a required side yard. Since the structure has sides exceeding 4 feet in height, Ms.

Page 287, May 14, 1991, (Tape 1&2), (GREGORY L. GORDON, VC 91-D-026, continued from Page 286)

Bettard said that the side yard requirement for a variance must be met or a variance must be granted.

Ms. Bettard said that research of the files had revealed that the dwelling on adjacent Lot 23 is located approximately 25.0 feet from the shared lot line and the house location plat indicates that the subject dwelling on Lot 22 was originally built 10.0 feet from the lot line with a variance from the Board of Zoning Appeals. She said that a copy of the minutes of that hearing was attached to the staff report.

The applicant, Gregory L. Gordon, 1861 Patton Terrace, McLean, Virginia, presented the statement of justification, stating that he and his wife were seeking a variance because their hardship stemmed from the fact that their house is located on a corner, requiring setbacks for two front yards. Mr. Gordon stated that, some 46 years ago, the Board of Zoning Appeals granted the owners of the property a variance which allowed them to build the house very close to the side lot line. At the time, he said the owners poured a cement patio that extends to the side property line off the rear door of the house leading to the kitchen. Mr. Gordon said that now, 46 years later, the patio does not look good and it is quite cramped. He said that the location of the dwelling restricts their ability to make use of their property and approaches confiscation of their right to make full use of it. Mr. Gordon recited some of the options which had been presented to him as possible without a variance. He stated that it was his understanding that it was the combination of the fence and the deck which constituted an enclosed structure under the zoning Ordinance and which necessitated the variance. He said he was simply proposing to cover the existing slab with decking and extend a small new section of deck another 13 feet north. Mr. Gordon said he proposed to construct the deck as low as 1 foot off the ground and there was only one small section which would be as much as 29 inches, although the staff report said the deck would be 2.5 feet high. Mr. Gordon claimed the project would be completely unobtrusive and would not be seen from Patton Terrace and doubted that it would be seen from Franklin Avenue. He said that his neighbors had no objections and had signed letters to that effect. Mr. Gordon said he had made an error in making the application. He said he should have asked to Board to waive the height of the fence a foot or two higher than 4 feet on the 10 foot span facing Franklin Avenue because the decking will be a foot above grade at that spot and they would be left with a 3 foot fence at that point, which would reduce the privacy benefits. He requested that, if it was within the Board's authority, and would not interfere with the application, that the Board amend the request and permit him to raise the fence.

Mr. Kelley asked if his understanding was correct that, if the applicant was not raising the deck 2.5 feet, he would not have been required to seek a variance.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, replied that what Mr. Gordon was building actually constituted an addition, because a deck is very limited and is allowed to extend, provided the sides of the deck are no more than 18 inches high and are open. Some discussion ensued regarding the classification of an addition and the various contributing factors.

Mr. Gordon expressed some confusion, but said he understood that the deck was considered to be enclosed because the fence was considered to be a wall; and he was not sure, but he believed his deck might exceed the number of square feet a deck was allowed above a foot or above 6 inches off the ground.

Mrs. Harris asked Mr. Gordon if he intended to enclose his deck or put a top on it sometime in the future. He responded that he did not. Mr. Gordon invited the Board to include a restriction to ensure his compliance.

Mrs. Harris referred to the time that the house received the original variance to build 10 feet from the side lot line and asked if the present house was in the same footprint or if a subsequent addition had been put on. Mr. Gordon said that he believed that an addition had been put on because most of the houses in that area had been 1,200 square foot and their house had 300 or 400 additional square feet, but he did not know what the year of the addition was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that, in response to Mrs. Harris' question, the house had been extended since the time the Board of Zoning Appeals had granted the first variance.

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

Mr. Kelley made a motion to grant VC 91-D-026, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1991, as amended. Mr. Kelley added Condition 3, stating that, "The special permit is for a deck only, in accordance with the plat submitted on May 14, 1991. The applicant shall observe a 7-foot fence limitation in all areas."

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Page <sup>288</sup> 288, May 14, 1991, (Tape 1&2), (GREGORY L. GORDON, VC 91-D-026, continued from Page <sup>287</sup> 287)

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-026 by GREGORY L. GORDON, under Section 18-401 of the Zoning Ordinance to allow addition 0.0 ft. from side lot line, on property located at 1861 Patton Terrace, Tax Map Reference 41-1((11))22, 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 14, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,027 square feet.
4. The lot is exceptionally shallow.

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

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

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

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

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

1. This variance is approved for the addition to the specific dwelling shown on the plat (dated February 25, 1991) prepared by Steven J. Karraia included with this application, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.
3. This special permit is for a deck only, in accordance with the plat submitted on May 14, 1991. The applicant shall observe a 7-foot fence limitation in all areas.

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



Page ~~287~~ 289, May 14, 1991, (Tape 1&2), (GREGORY L. GORDON, VC 91-D-026, continued from Page ~~288~~ )

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1991. This date shall be deemed to be the final approval date of this variance.

Mrs. Harris left the meeting at 11:00 a.m.

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Page ~~289~~ 289, May 14, 1991, (Tape 2), Scheduled case of:

10:05 A.M. DERYLE C. AND LOUISE J. CUDDY, SP 91-L-008, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 1.83 ft. from side and rear lot lines (12 ft. min. side yard required by Sect. 3-307 and 13.0 ft. min. rear yard required by Sect. 10-104) on approx. 15,000 s.f. located at 5816 Pratt Court, zoned R-3, Lee District, Tax Map 81-2((6))(5)65.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Cuddy replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the site is located on the northwest corner of Pratt Street and Pratt Court; zoned R-3; developed with a one-story single-family brick dwelling; and abutted on all sides by other lots also zoned R-3 and developed with single-family dwellings.

Ms. Bettard went on to state that the applicant was requesting approval of reduction to the minimum yard requirement based on an error in building location to allow an accessory structure to remain 1.83 feet from both the side and rear lot lines. She said that the height of the accessory structure is 13.0 feet; whereas Section 3-307 requires a minimum side yard of 12.0 feet in the R-3 District and Section 10-104 requires that an accessory structure which exceeds 8.5 feet in height should not be located nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the minimum required side yard on such lot to the rear. Ms. Bettard pointed out that Lot 66, to the rear of the subject property is also zoned R-3; therefore, modifications of 10.17 feet from the side lot line and 10.17 from the rear lot line are requested.

Ms. Bettard said that research had revealed that the dwellings on Lot 66 and Lot 40 are located approximately 20.9 and 25.0 feet, respectively, from the shared lot lines. She said that research also revealed that no other special permits or building errors have been granted in the immediate area.

Ms. Bettard further stated that the use must meet the provisions of Section 8-006, General Standards for All Special Permit Uses and, in staff's opinion, these Standards would be met with the adoption of proposed Development Conditions in Appendix 1 of the staff report, in which staff had suggested that the height of the accessory structure be reduced by a minimum of 3.0 feet. Staff also suggested that a 6 foot board fence be provided in the area along the western lot line which is currently occupied by a 4.0 foot chain link fence.

The applicant, Deryle C. Cuddy, 5816 Pratt Court, Alexandria, Virginia, came to the podium to present the statement of justification and gave the Board an overview of his background: 45 years in the construction industry as a carpenter, carpenter foreman and superintendent on residential and commercial highrise office buildings in the Metropolitan area and a journeyman carpenter in the Brotherhood of Carpenters and Journeymen since 1946 and still a member in good standing.

Mr. Cuddy said he had built his workshop without obtaining a building permit because he did not know at the time that he needed one. Mr. Cuddy said that he located his workshop approximately 2.0 feet from an existing chain link fence, similar to where he said other persons in the community have erected their shops or sheds. Mr. Cuddy introduced photographs to defend his actions and to show the Board of Zoning Appeals, he said, that this is the manner in which the community has been developing.

Referring to staff's comments on research revealing that no other special permits for building errors had been granted in the immediate area, Mr. Cuddy stated that, in the immediate area that he had visited the previous day, he had located 15 structures similar to his accessory structure, or larger than his structure.

Mr. Cuddy described his accessory structure in great detail, emphasizing the superb workmanship and materials. He said that the reason why he built the structure 13 feet high was that he lives on a corner lot, has no basement, has no storage space, so he planned to use the upper portion of the structure for storage and the lower portion as a workshop. Mr. Cuddy said that a maple tree, apple tree and other plants he wished to preserve, also restricted the location of the workshop.

Mr. Cuddy said that in November of 1989, Paul McAdams, Zoning Inspector, came to his home and told him that he understood that Mr. Cuddy had put a building up without a permit and asked to see it. Mr. Cuddy said that he told Mr. McAdams he would show him the building and that he had not realized that he needed the permit or he would have gone to Joe Bertoni and got one. He said he had worked with Joe Bertoni in Arlington County for twenty years. Mr. Cuddy said that the Zoning Inspector told him he would contact him again around Thanksgiving. Mr. Cuddy said he did not hear anything else for a year. He said that in November of 1990, a Mr. Biedler came out and said a complaint had been received which he had been asked to check on. The Zoning Inspector said that he would go back to his office to check the records and would probably send Mr. Cuddy a Notice of Violation. Mr. Cuddy said he received the Notice of Violation which gave him four options: (1) tear down the building; (2) lower the roof; (3) move the structure; or (4) apply for a special permit. Mr. Cuddy said that, in the same letter, an application for a special permit had been included, with instructions to contact Carolyn Blevins. Mr. Cuddy said that he contacted Carolyn Blevins in December of 1990 and was told by her what was needed to apply for a special permit.

Mr. Cuddy said that he worked closely with County personnel, he sought and received advice from County personnel, and appreciated the help he received during the process.

Mr. Cuddy stated that the last correspondence he had received from the County came the previous week in the form of a staff report with Proposed Development Conditions. Mr. Cuddy recited the Proposed Development Conditions, saying he had no problem except for Condition 4 which proposed the reduction in height. Mr. Cuddy became very emotional because of the enormous amount of tearing down and reconstruction he said would be required and which he said he was not up to doing at his present age. Mr. Cuddy had assumed from the first letter that, if he applied for a special permit, he would not be asked to take any of the other proposed options.

Mr. Cuddy said that his next door neighbors, who were the complainants, had watched him build his structure and received his leftover material and advice on how to do construction on their own home. Sometime after the first visit from a Zoning Inspector, Mr. Cuddy said his neighbor came over to his shop one night when he was cleaning a vacuum cleaner and had the light turned on at the top of his shop. Mr. Cuddy said his neighbor expressed his objection to the light in very strong terms, swearing and stating that it was shining into his bedroom window. Mr. Cuddy said that he responded by asking the neighbor to leave his property. It was Mr. Cuddy's opinion that the disagreement he described was the reason for his neighbor "turning him in."

Mr. Cuddy said that he had three neighbors come to him after seeing the posting concerning the hearing and asked him if there was any way they could help him. They were: Mr. French, Pat Degon and Tom Knorr. Mr. Cuddy summed up by asking the Board to grant his request for a number of reasons, stating that he could find at least 100 other buildings similar to his own, or in greater violation than his own, in the surrounding area.

Mr. Ribble asked Mr. Cuddy if there was anything he could do about the light at the apex of his workshop because of the fact that it was causing a major objection, and a discussion ensued.

Mr. Pammel asked Mr. Cuddy if it was correct that he is or formerly was a building inspector for Arlington County and Mr. Cuddy said no, he had been a safety inspector for Arlington County. Mr. Pammel asked Mr. Cuddy to explain the distinction. Mr. Cuddy said that his function was to inspect highrise buildings prior to placing the concrete, just as the critical structures man in Arlington County does, and went on to add some detail. Mr. Pammel pursued this line of discussion with Mr. Cuddy and stated that the structure in question was far from being a shed. Mr. Cuddy said it was not a shed, but it was a workshop. Mr. Pammel admonished Mr. Cuddy, stating that, because of his background, he should have known that a building permit was required for the type of structure he had built. Mr. Cuddy said that his experience in Arlington County did not indicate to him that he needed a building permit.

Co-applicant Louise J. Cuddy came to the podium and defended her husband's good faith in not knowing that a building permit was required and reiterated some of her husband's statements. She stated that she had helped her husband to build the workshop, but that neither of them are in good enough health now to do any work of that type at this point in their lives. She also said that they could not afford the major work which would be involved in having the structure modified.

There was no one to speak in support of the application.

Page <sup>291</sup> 291, May 14, 1991, (Tape 2), (DERYLE C. AND LOUISE J. CUDDY, SP 91-L-008, continued from Page <sup>290</sup> 290)

Richard Brunina, 5818 Pratt Court, Alexandria, Virginia, a contiguous property owner and the complainant, came forward with his wife, Diane J. Brunina, to speak in opposition to the applicant's request. Mr. Brunina admitted that words between the two neighbors were precipitous in bringing this situation to a head. Mr. Brunina said that the major issue was the light at the apex of the roof of the shed. He said that the light intruded into their bedroom, that he complained to Mr. Cuddy, and that Mr. Cuddy did ask him to leave his property at that time. According to Mr. Brunina, he had asked Mr. Cuddy to redirect the light to a more suitable angle and that Mr. Cuddy swore at him and told him to get off his property.

Mr. Brunina spoke at length about the workshop, his major complaints being the intrusion of the light and the operation of power tools early in the morning and late at night. Other than the specified complaints, he said there was no real problem.

Mr. Kelley asked, if Mr. Brunina was living there when the shed was built, why it took him 8 years to complain. Mr. Brunina said that it took him until 1989, when he requested that the light be lowered. Mr. Brunina emphasized that the shed's construction was of superior workmanship. Mr. Kelley suggested to Mr. Brunina that, if he were going to complain about the shed, the time for him to complain would have been during the time it was being built or shortly thereafter. Mr. Kelley further stated that the Board did not sit in judgment on personal neighborhood disputes and that he could find no reason why Mr. Brunina could not have reported the violation before a personal dispute with Mr. Cuddy prompted him file a complaint.

Mr. Ribble advised Mr. Brunina that the problem of Mr. Cuddy's light imposing on his property could have been handled by calling the police.

Mr. Hammack questioned Mr. Brunina about the hours of operation of Mr. Cuddy's power equipment, proximity to Mr. Brunina's bedroom, etc. Mr. Hammack pointed out that the Board could require Mr. Cuddy to move the shed 13 feet, which would give him the right to do what he wanted to, including moving the shed closer to Mr. Brunina's bedroom window, by right.

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Chairman DiGiulian took this opportunity to welcome the third grade from Fox Hill Elementary School as they viewed the proceedings from the rear of the Board Room.

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Chairman DiGiulian asked if there was anyone else to speak in opposition and Mrs. Brunina came to the podium. Mrs. Brunina requested that the Board add two Development Conditions: (a) that the light at the top of the shed be changed, lowered or removed, and (b) that the hours of operation of equipment be stated to be sure that Mr. Cuddy has guidelines in order to ensure the neighbors of their quiet time. Further discussion ensued along the lines of compliance with the Noise Ordinance.

Chairman DiGiulian advised Mr. and Mrs. Cuddy that they could have two minutes for rebuttal. Mr. Cuddy explained that he did not operate on a schedule or a clock since he retired, but he did not feel that he was guilty of working at inappropriate times on very many occasions. Mr. Cuddy said that the light on his workshop was no brighter than the street light. He also said that his shop is insulated very well, which would muffle noise somewhat. Mr. Cuddy also stated that he believed that the Noise Ordinance prohibited noise from 11 p.m. to 6 a.m., to which Mr. Ribble responded that he did not believe that to be true concerning the type of activity Mr. Cuddy was engaging in. Mr. Ribble said he thought that the earliest time a lawn mower may be run is 10:00 a.m. This discussion continued along the same lines, with Mrs. Cuddy contributing assurances of only very marginal infractions by her husband.

Mr. Pammel remarked that, during the hearing, Mr. Cuddy had made the observation that there were a number of sheds and accessory structures throughout the neighborhood which were within at least the same distance from the rear property line as his shed, referring to the pictures which Mr. Cuddy had provided to the Board to support his allegations. Mr. Pammel stated that he was concerned that there were, perhaps, a number of situations in the area which could be violations. Mr. Ribble advised Mr. Pammel that the Zoning Enforcement Branch did not follow up on suspected violations, such as Mr. Cuddy had alluded to, unless a specific complaint were received. Mr. Ribble guessed that there might be as many as 10,000 existing violations.

Mr. Hammack said the fact that eight to ten years had elapsed since the construction of the structure in question had something to do with his motion, even though it is an accessory structure and much too substantial to be called a shed. Mr. Hammack said that, if Mr. Cuddy had come in and asked for a variance to build the structure, he would not have gone along with it. However, after eight years, Mr. Hammack said he would go along with it.

Mr. Hammack said that the real issue here was whether or not good faith was used. He said he had a very difficult time dealing with builders, subcontractors, carpenters, and

Page <sup>292</sup> 292, May 14, 1991, (Tape 2), (DERYLE C. AND LOUISE J. CUDDY, SP 91-L-008, continued from Page 291)

people in the trades, who make their living from this type of situation, when they come in and say they did not know that a building permit was required. Mr. Hammack said he had a very difficult time resolving this issue in Mr. Cuddy's favor, but he was going to do that.

Mr. Hammack made a motion to grant SP 91-L-008, subject to the Proposed Development Conditions, as amended and set forth in the Resolution. The concerns of the neighbors in regard to the light on the workshop apex, the operation of power tools during designated hours, and compliance with the Noise Ordinance, as well as the requirement that all final inspections shall be obtained, are now addressed in the Proposed Development Conditions. The Proposed Development Condition requiring that the height be reduced by 3 feet has been deleted. The Condition regarding the 6-foot fence will remain.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-008 by DERYLE C. AND LOUISE J. CUDDY, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 1.83 ft. from side and rear lot lines, on property located at 5816 Pratt Court, Tax Map Reference 81-2((6))(5)65, 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 14, 1991; and

WHEREAS, the Board has made the following conclusions of law:

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

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

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

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

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

1. This special permit is approved for the location of the specified structure shown on the plat submitted with this application (dated June 27, 1956) and prepared by B. Calvin Burns. The location of the accessory structure is certified by S.V. Wickinson and dated February 23, 1991.
2. This Special Permit is granted only for the accessory structure indicated on the Special Permit Plat approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and final inspections shall be obtained for an accessory structure under the applicable provisions of the zoning and Building Ordinances.
4. A six (6.0) foot board fence shall be provided in that area along the western lot line presently occupied by the existing four (4.0) foot chain link fence.
5. The security light on the peak of the roof shall be removed and shall not be replaced.
6. No power tools shall be operated in the shed prior to 9 a.m. on weekends and holidays or prior to 8 a.m. on other days during the year, or after 8 p.m. in the evening; and all applicable Noise Ordinances of the County shall be complied with.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 293, May 14, 1991, (Tape 2), Action Item:

Approval of Resolutions from May 7, 1991 Meeting

Approval of Minutes from April 2, 1991 Meeting

Mr. Pammel made a motion to approve the above-referenced Action Items as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 293, May 14, 1991, (Tape 2), Action Item:

Approval of Minutes from 3/19/91 Meeting

Mr. Pammel made a motion to approve the minutes as submitted by the Clerk, subject to the notation that he arrived at the Board Meeting at approximately 8:20 p.m. and did participate in the Grimsley application and all applications that followed. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 293, May 14, 1991, (Tape 2), Action Item:

Memo from Barbara Byron dated May 3, 1991  
regarding Policy and Procedures

Chairman DiGiulian advised that Mr. Kelley and Mrs. Harris had expressed a desire to be present and suggested that the full Board be present when this item was voted upon. Mr. Hammack said that, after reading the memo over, he would like to think about it for a couple of days.

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Page 294, May 14, 1991, (Tape 2), Action Item:

Request for Out-of-Turn Hearing for  
Riverside Gardens Recreation Association

Mr. Pammel made a motion to grant an out-of-turn hearing to Riverside Gardens Recreation Association. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the application for this request still had not been received, that the applicant had requested a waiver of submission requirements, and that she had not yet seen the plat. Mr. Ribble seconded the motion, saying that he was familiar with the potential application and that the applicant had redone the swimming pool and was adding a deck. Ms. Kelsey said that the plat did not show the deck and Chairman DiGiulian said that the applicant would need to have all of their documents in order before the hearing. Chairman DiGiulian asked Ms. Kelsey what the shortest time was after receiving an application that an application could be heard. Chairman DiGiulian asked Ms. Kelsey to assume that she would receive the application by the end of the week. Ms. Kelsey said that the application was in, but the plat did not show what the applicant was proposing to build and they had not submitted a new plat to cover the new request. After a discussion along these lines, Mr. Ribble asked Ms. Kelsey for a date when the application could be heard, subject to the receipt of a proper application, including an appropriate plat. Ms. Kelsey advised the Board that advertising was now being submitted for June 25, 1991. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 294, May 14, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing for  
Kwang KO, DBA Hobby Hanger, SP 91-S-015

Mr. Pammel made a motion to deny an out-of-turn hearing for SP 91-S-015. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 294, May 14, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing for  
Sports Junction, John J. & Sandra G. Barter, SP 91-A-018

Mr. Pammel made a motion to deny an out-of-turn hearing for SP 91-A-018. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 294, May 14, 1991, (Tape 1), Action Item:

Approval of Minutes from February 26, 1991 Meeting

In Mr. Kelley's absence, Chairman DiGiulian made a motion on his behalf to insert the following paragraphs.

Chairman DiGiulian reiterated that the County has an obligation to look at the entire appeal, not just pick and choose what they want to address.

Mr. Hammack asked Mr. King whether he felt he had any obligation to look at the third disapproval date. Mr. King stated that he didn't think so, that Mr. McGinnis was a competent attorney and he would think he would have the data down and submit it correctly. Mr. Hammack asked if that was the policy of DEM and Mr. King responded that DEM's reasons were laid out in the staff report. Mr. Hammack stated that many times the County makes a mistake and they want BZA to correct it in their favor, that Mr. McGinnis' appeal does reference the September disapproval date. He stated that he did file the plat that shows the September disapproval date and DEM chose to not even consider it and that DEM is standing behind a technicality.

Mr. Kelley said that Mr. King has acknowledged that it was an incorrect submission and that Mr. King knew it was incorrect and did nothing to correct the error.

Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 295, May 14, 1991, (Tape 1), Action Item:

Request for Deferral  
United Land Company Appeal

Mr. Pammel made a motion to issue an Intent to Defer the United Land Company Appeal, now scheduled for June 11, 1991. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 295, May 14, 1991, (Tape 2), Adjournment:

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

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: July 9, 1991

APPROVED: July 16, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 23, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Robert Kelley; James Pammel and John Ribble. Mary Thonen and Paul Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 297, May 23, 1991, (Tape 1), Scheduled case of:

8:00 P.M. EKOJI BUDDHIST TEMPLE, SP 90-S-089, appl. under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities on approx. 13.5769 acres located at 7208 and 7216 Wolf Run Shoals Rd., zoned R-C, WS, Springfield District, Tax Map 86-4((1))8A, 8B. (DEF. FROM 3/19/91 AT APPLICANT'S REQUEST)

Mr. Ribble made a motion to withdraw SP 90-S-089, He explained that a letter requesting withdrawal had been received from the applicant.

Mr. Kelley seconded the motion. He requested that the contents of the letter of withdrawal be added to the minutes. The motion carried by a vote of 4-0 with Mrs. Harris not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

The following is the contents of the letter:

"The captioned case was deferred from a hearing on March 19th to May 23, 1991, to better evaluate the issues and concerns raised by the citizens against the application. During this time it was learned that a significant amount of asbestos-laden fill had been dumped on the site. The applicant has requested the owner to remove this material to preclude any unanticipated cost in the future development of the property. The owner has elected to satisfy the minimum requirements presently established by the County, which is not acceptable. Therefore, the applicant desires to withdraw the application for the special use.

We would like to express our appreciation for the service and consideration that both the Planning Commission and the Board have extended us. It is with regret that we must take this present position."

Mr. Pammel expressed his concern regarding the asbestos situation, and the apparent inability of the County to take any further action because of the statute of limitation, on the property as reflected in the staff report and in recent correspondence.

Mr. Pammel made a motion to request that the County Attorney's Office investigate thoroughly to see if any Federal Laws have been violated, that would be the Environmental Protection Agency, EPA, Standards, and what actions would be appropriate if they have, and to follow that up with the appropriate actions or requests in the Federal Court in Alexandria. Mr. Ribble seconded the motion.

Chairman DiGiulian asked that Mr. Pammel add to the motion a request that the County Attorney's Office report their findings to the Board of Zoning Appeals. Mr. Pammel agreed and stated that the Board of Supervisors should also receive the report.

The motion carried by a vote of 4-0 with Mrs. Harris not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

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Page 297, May 23, 1991, (Tape 1), Action Item:

Scheduling of R. L. Wilson & Associates, Inc. Appeal

Mr. Ribble made a motion to schedule the public hearing on June 18, 1991, at 8:35 p.m. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

(Note: At the BZA meeting of June 4, 1991, this date was changed at the request of the zoning Administrator and with the concurrence of staff and William Donnelly, the appellant's agent. The new scheduled date is September 17, 1991.

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Page 297, May 23, 1991, (Tape 1), Action Items:

Intent to Defer  
Markey Business Center IV Appeal, A 91-S-002  
Scheduled for Public Hearing on June 4, 1991

At the request of the appellant's agent, John R. Spring, Jr., and after a brief discussion, it was the Board's consensus to defer the appeal until the Planning Commission can hear the proffered condition amendment application. Mr. Kelley made a

Page 298, May 23, 1991, (Tape 1), (MARKEY BUSINESS CENTER IV APPEAL, A 91-S-002, continued from page 297)

motion of intent to defer A 91-S-002 to a date following the Planning Commission hearing. Mr. Ribble seconded the motion which carried by a vote of 3-0-1 with Mr. Pammel abstaining from the vote. Mrs. Harris was not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

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Page 298, May 23, 1991, (Tape 1), Action Item:

Intent to defer  
Wolftrap Meadows Appeal, A 89-D-018  
Scheduled for Public Hearing on May 28, 1991

The Board was in receipt of a request for deferral from Philip W. Leber, the appellant's agent.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant and the Department of Environmental Management, DEM, were trying to resolve the issue.

Mr. Kelley made a motion of intent to defer the case until the end of September. The motion carried by a vote of 4-0 with Mrs. Harris not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

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Page 298, May 23, 1991, (Tape 1), Action Item:

Out-of-Turn Hearing  
Kings Ridge Swim Club, SPA 76-A-292-2

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board of Zoning Appeals had previously approved expansion of the hours of operation to allow swim team meets in the early morning hours. The special permit had been approved for a (two) 2 year period with the Zoning Administrator empowered to grant (two) 2 additional (one) 1 year extensions. She noted that the second extension granted by the Zoning Administrator had expired on April 29, 1991. Ms. Kelsey stated that although the application had been filed in April it had just been accepted. She said that staff could not schedule the case before the swim team meets.

Mr. Pammel made a motion to deny the request for an out-of-turn hearing for SPA 76-A-292-2. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Mrs. Thonen and Mr. Hammack were absent from the meeting.

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Page 298, May 23, 1991, (Tape 1), Action Item:

Out-of-Turn Hearing  
Riverside Gardens Recreation Association, SPA 71-V-216-1

Jane Kelsey, Chief Special Permit and Variance Branch, stated that an out-of-turn hearing had been granted on May 14, 1991, and scheduled for June 25, 1991, subject to the submission of a plat depicting the deck. Ms. Kelsey stated that although Barbara Byron, Director, Zoning Evaluation Division, had not officially waived the submission requirements, she believed the case could be heard on the scheduled date.

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Page 298, May 23, 1991, (Tape 1), Action Items:

Mrs. Harris arrived at 8:07 p.m.

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As there was no other business to come before the Board, the meeting was adjourned at 8:10 p.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of zoning Appeals

SUBMITTED: June 25, 1991

APPROVED: July 2, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 28, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

Chairman John DiGiulian called the meeting to order at 8:25 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 299, May 28, 1991, (Tape 1), Scheduled case of:

9:00 A.M. WOLFTRAP MEADOWS APPEAL, A 89-D-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Evaluation Director's decision that Tax Map 19-3((13))K satisfies the Zoning Ordinance definition of usable open space and therefore meets the provisions of Condition Number 22 of Special Exception SE 83-D-106 on approx. 4 acres located on Days Farm Drive, zoned R-1, Dranesville District, Tax Map 19-3((13))K. (DEF. FROM 3/13/90, 5/22/90, 9/20/90, 12/20/90, AND 2/26/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian stated that the Board had issued an intent to defer the appeal on May 23, 1991.

Mrs. Thonen made a motion to defer A 89-D-018 to October 1, 1991, at 9:00 a.m. She stated that the Board would not grant any additional deferrals. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 299, May 28, 1991, (Tape 1), Scheduled case of:

9:15 A.M. MICHAEL S. KELLY & MARI K. MCDONALD, SP 91-L-009, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow addition to remain 0.1 ft. from side lot line and roofed deck to remain 5.5 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 6,211 s.f. located at 6001 Bangor Dr., zoned R-4, Lee District, Tax Map 83-3((9))(5)34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. McDonald replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and noted that the staff report had erroneously stated that the property was located in the Lee District when it is actually in the Mount Vernon District. She stated that the applicant was requesting approval of a special permit based on error in building location to allow an addition (enclosed deck) to remain 0.1 feet from the side lot line and an addition (roofed deck) to remain 5.5 feet from the side lot line. The zoning Ordinance requires a minimum 10.0 foot side yard in the R-4 District. Therefore, a modification of 9.9 feet to the minimum side yard requirement for the enclosed deck and a modification of 4.5 feet to the minimum side yard requirement for the roofed deck was requested.

Ms. Dickey said that with regard to the surrounding uses, the dwelling on adjacent Lot 33 is approximately 10.0 feet from the shared lot line. The dwelling on adjacent Lot 35 is located approximately 10.0 feet from the shared side lot line and is set back a similar distance from the front lot line as the dwelling on the subject property.

In response to Mr. Hammack's question regarding the lattice work attached to the deck causing the need for a variance, Ms. Dickey stated that even without the lattice work the deck would be in violation. She explained that while the deck could extend to within 5.0 feet, it extended to within 1.0 feet from the side lot line.

The applicant, Mari K. McDonald, 6001 Bangor Drive, Alexandria, Virginia, addressed the Board and stated that when the 4.0 foot high deck was constructed, she did not realize it was in violation of the Zoning Ordinance. She explained that when they purchased the house there was an existing concrete platform, the yard had not been maintained, and there was a drainage problem. Ms. McDonald stated that the double front yards on the corner lot restricted the building of an addition within the Zoning Ordinance.

Ms. McDonald stated the small house had limited living space and that the deck provided an eating area. She expressed her belief that the deck had no detrimental impact on the community, and noted that two of the neighbors were present to express their support for the application. Ms. McDonald also presented a petition of support that had been signed by the neighbors to the Board. She expressed her willingness to adopt any suggestions the Board may have to improve the aesthetic value of the property.

Chairman DiGiulian call for speakers in support of the application. The following citizens came forward.

Roger Grossement, 2505 Byrd Lane, Alexandria, Virginia, addressed the Board and stated that the applicants had purchased a neglected property and had remodeled the dwelling. Mr.

Page 300, May 28, 1991, (Tape 1), (MICHAEL S. KELLY & MARI K. MCDONALD, SP 91-L-009, continued from Page 299.)

Grossement said that the deck, as well as the other improvements, had added aesthetic value to the property.

Lang Field, 6003 Bangor Drive, Alexandria, Virginia, addressed the Board and stated that the deck has improved the appearance of the property. He said that before the applicants had purchased the property, the yard was a dirt bowl with dust blowing onto his property. Mr. Field said that the deck compliments the appearance of the house and asked the Board to grant the request.

The President of the Fairhaven Civic Association, Via Taylor, 2506 Fairhaven Avenue, Alexandria, Virginia, addressed the Board. She stated that the deck was not detrimental to the community and expressed the Association's support for the request.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-L-009 subject to the development conditions contained in the staff report dated May 21, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-009 by MICHAEL S. KELLY AND MARI K. MCDONALD, under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow addition to remain 0.1 feet from side lot line and roofed deck to remain 5.5 feet from side lot line, on property located at 6001 Bangor Drive, Tax Map Reference 83-3((9))(5)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 28, 1991; and

WHEREAS, the Board has made the following conclusions of law:

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

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

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

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

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

Page 301, May 28, 1991, (Tape 1), (MICHAEL S. KELLY & MARI K. McDONALD, SP 91-L-009, continued from Page 300)

1. This special permit is approved for the location and the specified additions as shown on the plat (prepared by Alexandria Surveys, Inc., dated January 9, 1991) submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.
3. Columnar-style plantings shall be installed along the south lot line within the existing chain link fence within six (6) months of BZA approval, subject to the review and approval of the County Arborist.
4. A building permit and all necessary final inspections shall be obtained for the enclosed deck within 120 days from the final approval date of this special permit. The applicants shall be responsible for the submission of building/construction plans or other submissions as determined by the Department of Environmental Management (DEM), assuring that all construction meets applicable building codes.
5. All appropriate inspections and final approval for the covered deck shall be obtained within 120 days from the final approval date of this special permit as determined by DEM.

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.

Mrs. Harris seconded the motion which 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 June 5, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 301, May 28, 1991, (Tape 1), Scheduled case of:

9:30 A.M. TONY T. S. YANG APPEAL, A 91-V-001, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that subject property contains 2 separate dwelling units which are in violation of Sect. 2-501 of the Zoning Ordinance on approx. 6,602 s.f. located at 6111 North Kings Highway, zoned R-4, Mt. Vernon District, Tax Map 83-3(9)(3)15. (DEF. FROM 4/2/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called for staff to locate the property.

The Zoning Administrator's representative, William E. Shoup, Deputy Zoning Administrator, addressed the Board and stated that the property was located at 6111 North King's Highway, Tax Map Reference 83-3(9)(3)15.

Mr. Shoup stated that the evidence demonstrated that there are two (2) separate dwelling units on the property. He said that each facility functioned as an independent living facility containing a separate entrance, a living area, a bedroom, a bath, and a complete kitchen. Mr. Shoup noted that each of the units satisfied the definition of a dwelling unit as set forth in the zoning Ordinance. He stated that the two (2) dwelling units on the one lot violated Sect. 2-501 of the Zoning Ordinance which precludes the establishment of more than one (1) dwelling unit on the lot. He noted that although there are several exceptions to the Ordinance, the exceptions are not applicable to the subject property.

Mr. Shoup said that the primary question was if the two (2) units were legal, nonconforming uses. He explained that in order to fall under this category, the uses would have to have been established either prior to the first Zoning Ordinance in March 1941, or pursuant to the Board of Zoning Appeals (BZA) approval of a Special Exception between August 5, 1946 and September 1, 1959. He stated that during this time frame, a window had existed which granted the BZA the authority to approve second units in an individual dwelling.

He stated that the original dwelling unit on the subject property was not constructed until 1942, and there is no record of a BZA approval for a Special Exception. Mr. Shoup noted that although the two (2) units may have existed for many years, this fact alone was not a basis for declaring that it is a legal, nonconforming use because the evidence ascertained that the two (2) units were never lawfully established. Therefore, it was the Zoning Administrator's position that they are not a legal, nonconforming use, and are in violation Sect. 2-501.

In response to Mrs. Thonen's question on the options open to the appellant, Mr. Shoup stated that the only way a second unit could be kept on the property would be as an accessory dwelling unit. However, this would require one of the units to be owner occupied.

Page <sup>302</sup> May 28, 1991, (Tape 1), (TONY T. S. YANG APPEAL, A 91-V-001, continued from Page <sup>307</sup>)

The appellant's attorney, John S. Lawrence, 3900 University Drive, Fairfax, Virginia, addressed the Board and stated that in 1968, the Fairfax County Zoning Enforcement had sent a notice of violation to the owner of the subject property. This notice would establish that the use had been in existence at that time. He noted that since 1974, Fairfax County has taxed the property as a two unit dwelling. Mr. Lawrence stated that this matter was bound by the principle of finality, legal term *res judicata*. He expressed his belief that the issue was bound by the ruling in the case of *Gwinn v. Alward*. Mr. Lawrence presented copies of the case to the Board. He explained that in 1988, the Virginia Supreme Court held that a decision by the Zoning Administrator was a thing decided and unless the decision was appealed, the decision was not subject to a later attack. Article 18-301 of the Zoning Ordinance provides that any person affected by any decision in the administration of the Ordinance may appeal the decision to the Board of Zoning Appeals. Mr. Lawrence stated that while it was clear that there has never been an appeal until today, there have been two decisions rendered by Zoning Enforcement. He noted that the previous owner, Emily P. Corbin, 8727 Stockton Parkway, Alexandria, Virginia, has sworn in an affidavit that Zoning Enforcement had notified her that the use was unlawful. She had stated that when she contacted Zoning Enforcement, she was told that the use was valid and the file was closed. Mr. Lawrence said that this decision constituted a thing decided, and after that decision was made, there was no appeal or administrative reconsideration. In 1984, Zoning Enforcement noted that the dwelling had two (2) units, and again no action was taken. Mr. Lawrence stated that the fact that no action was taken was a decision final and reaffirmed the 1968 decision.

Mr. Lawrence stated that in 1988, Mr. Yang had purchased the property as a two dwelling unit. The two (2) unit use had been in existence for many years, the County had taxed the property as a two (2) unit rental property, and Zoning Enforcement by its acceptance of the use had validated that the use was a legal, nonconformance use. Mr. Lawrence asked that the Zoning Administrator's decision be reversed on the basis that the issue had already been decided by the County; therefore, it is final and binding upon them. He expressed his belief that to do so otherwise would mean that anytime a new zoning official was appointed, the official could reverse any decision made in the past.

Mrs. Harris asked why Mr. Yang had misled Zoning Enforcement by stating that only one kitchen existed in the dwelling. Mr. Lawrence explained that the Mr. Yang did not communicate well in English, and that it was the language problem and not misrepresentation that had led to the misunderstanding. Mrs. Harris expressed her concern with the lack of documentation regarding the appellant's statement that the use had been in existence for many years. She asked Mr. Lawrence if he had any evidence to validate this statement and Mr. Lawrence stated that the former owner, Mrs. John Corbin, had submitted an affidavit. Mr. Lawrence stated that he too would be more comfortable if he had more documentation to substantiate the case, but he expressed his belief that Zoning Enforcement should be held accountable for record validation. He stated that Mr. Yang should not be punished because Zoning Enforcement cannot produce the documentation regarding the decision made in 1968.

In response to Mr. Pammel's question as to whether a building permit was obtained for the 1983 remodeling made by Mrs. Cobin, Mr. Lawrence stated that he did not have that information. He explained that Mrs. Corbin was very elderly and was unable to be present at the public hearing. Mr. Shoup stated that a building permit had been obtained by the Corbins and presented it to the Board. Mrs. Harris noted that the building permit stated that the structure was a single family dwelling. Mr. Lawrence stated that when Mr. Yang purchased the property it had been represented by the realtor and by the owner as a two (2) family dwelling.

Mr. Lawrence stated that Zoning Enforcement had been cognizant of the use and on two separate occasions had failed to prosecute. He said he did not agree that the failure to prosecute was an act of malfeasance, and again said that a conscious decision was made and the decision should be binding.

In response to Chairman DiGiulian's question as to how long the two dwelling units had been in existence, Mr. Lawrence stated that he had documentation that the two separate dwelling units had been in existence in 1964. However, there was an indication in the staff report that the two unit use may have been established in the late 1940's and most certainly existed in the 1950's. Mr. Lawrence stated that although a window which would have allowed a variance to be granted for the use had existed from 1946 to 1959, there was no record of an application having been filed.

Mrs. Harris stated that Attachment 9 of the staff report indicated that when Zoning Enforcement investigated the use in 1968, the property was used as a single family dwelling with the owner's son living on the property.

In response to questions from the Board, Mr. Lawrence stated that Mr. Yang received a bank mortgage when he purchased the house in 1987.

There being no speakers in support of the request, Chairman DiGiulian called for speakers in opposition. The following citizens came forward.

Page 303, May 28, 1991, (Tape 1), (TONY T. S. YANG APPEAL, A 91-V-001, continued from Page 302)

The President of the Fairhaven Civic Association, via Taylor, 2506 Fairhaven Avenue, Alexandria, Virginia, addressed the Board. She stated that many investors were buying single dwelling units and attempting to convert them into apartments. Ms. Taylor said that these actions have had a detrimental impact on the community. She expressed her belief that the granting of the use would set a precedent in the community and asked the Board to uphold the Zoning Administrator's decision. Ms. Taylor asked that the name of the realty firm that had listed the property as a two family dwelling be given to the Civic Association.

In response to Mrs. Harris' question as to whether Mrs. Corbin had resided on the property, Ms. Taylor stated that it was her understanding that it had been a rental property.

Ernest Taylor, 2506 Fairhaven Avenue, Alexandria, Virginia, addressed the Board. He stated that although the Zoning Inspector had been remiss, the house should be retained as a single family dwelling.

Ron Carls, 6023 Rixey Drive, Alexandria, Virginia, addressed the Board and stated that he had resided in the community since 1974. He expressed his belief that the R-4 zoning should be retained and the illegal use should not continue.

There being no further speakers, Chairman DiGiulian called for rebuttal from Mr. Shoup.

Mr. Shoup stated that the case of Gwinn v. Alward was not applicable to the request. He explained that a thing decided not subject to attack was made by Mr. Alward who was the violator in the case. Mr. Shoup stated that in the present circumstances, the Zoning Administrator would have had to appeal her own decision. He noted that in the 1968 and the 1984 contact between the County and the owner of the property, the information was very sketchy and no written determination could be found. Mr. Shoup said that in researching the records, the property was recorded as a single family dwelling and the use had never been considered a legal, nonconforming use.

Mrs. Harris asked whether there had been any indication in the files that in 1984, the Zoning Administrator had rendered a decision on the use. Mr. Shoup assured Mrs. Harris that a thorough search of the files indicated that no formal notice of violation had been issued.

Mrs. Thonen noted that in 1982 the Board of Zoning Appeals had denied a similar appeal, A 81-L-012, Michael Fanshel. She noted that the community preferred to maintain the single family status.

Chairman DiGiulian called for rebuttal from Mr. Lawrence.

Mr. Lawrence noted that Appeal A 81-L-012, had been decided by a 3-2 vote. He stressed the fact the Gwinn v. Alward decision was not rendered until 1988, well after the Michael Fanshel Appeal.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator in Appeal A 91-D-001, Tony T. S. Yang. He stated that while his sympathy was with Mr. Yang, it was his belief that the law was on the side of the Zoning Administrator. Mr. Hammack stated that he did not believe that the Gwinn v. Alward case was really on point. He noted that Mr. Lawrence had made some good arguments, but he believed that Gwinn v. Alward dealt with a situation where the appellant failed to do exactly what Mr. Yang was doing in this case. He explained that Mr. Alward had been granted permits for approximately 34 years before he was found to be in violation, and noted that the use on Mr. Yang's property had also existed for many years. Mr. Hammack stated that Gwinn v. Alward also set forth the principle that the defense of estoppel was ineffective because it does not run against a government in the discharge of its duties. He said that the Board had no documentation on the legitimate establishment of a second unit, and although the notices of violation were never followed up, the County consistently maintained that there was a violation. Mr. Hammack stated that for these reasons and for the reasons set forth in the staff report he would uphold the decision of the Zoning Administrator.

Mr. Pammel seconded the motion. He stated that it was his belief that Mr. Yang was a victim of questionable representation made when he acquired the property. However, it was Mr. Yang's responsibility to verify whether a two family unit was permitted at the residence.

Chairman DiGiulian stated that he would support the motion to uphold the Zoning Administrator. He stated that while there is no documentation for the Yang Appeal, when the Michael Fanshel Appeal was heard the Board had received written documentation that a former Zoning Administrator had determined the use was a grandfathered nonconforming use.

Mrs. Thonen stated that she would support the motion. She expressed her belief that the Board had to consider the land use issue and should not rule either for or against Zoning Enforcement.

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

Page <sup>304</sup> 304, May 28, 1991, (Tape 1), (TONY T. S. YANG APPEAL, A 91-V-001, continued from Page <sup>303</sup> 303)

In response to Mr. Pammel's question as to whether a certificate of occupancy is a requirement when an existing residence property was resold, Mr. Shoup stated that it was not.

Mr. Pammel stated that in order to avoid these types of misrepresentations, he would make a motion to ask staff to draft amendments to the Zoning Ordinance that would require a certificate of occupancy for any change of ownership in a residential unit. In other words, new owners buying a property would be required to obtain a certificate of occupancy from the County.

Mrs. Harris stated that she would have to investigate the matter thoroughly before she could support the motion and asked Mr. Pammel to table the motion. Mr. Pammel stated that staff could research the issue, evaluate all the ramifications, and report its findings to the Board. Mrs. Harris stated that she would be more comfortable with a study of the matter before rendering a vote. Chairman DiGiulian stated that he too would be hesitant of creating any more red tape for the citizens of the County. Mr. Pammel expressed his belief that the certificate of occupancy would help eliminate the opportunity for misrepresentation by a seller or realty firm. The motion died for the lack of a second.

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The Board recessed at 10:25 a.m. and reconvened at 10:40 a.m.

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Page <sup>304</sup> 304, May 28, 1991, (Tape 2), Scheduled case of:

9:45 A.M. RON & LYNETTE GIRVAN, VC 91-P-029, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.5 ft. and 13.0 ft. from side lot lines (20 ft. min. side yard required by Sect. 3-107) on approx. 6,500 s.f. located at 1642 LaSalle Ave., zoned R-1, Providence District, Tax Map 30-3((2))202.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Daniel P. Burke replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirement to construct a building addition at a location 10.5 feet and 13.0 feet from the two (2) side lot lines. Sect. 3-107 of the Zoning Ordinance requires a minimum side yard of 15 feet. Accordingly, the applicants were requesting variances of 4.5 feet and 2.0 feet to the minimum side yard requirement. He noted that research had indicated that the dwellings on Lots 201 and 203 on the adjoining properties are approximately 10.0 feet from the shared lot lines.

Mr. Riegler noted that the location of the existing dwelling does not comply with the current minimum side yard requirements of the R-1 District. He stated that the existing dwelling had met the minimum yard requirement when it was constructed under the requirements of a previous Zoning Ordinance.

The applicants' agent, Daniel P. Burke, 701 Park Avenue, Falls Church, Virginia, stated that the applicants would like to construct a two story addition comprising of an enclosed porch and laundry facility on the lower level and a study and computer room on the second level. He stated that the exceptional narrowness and shape of the property had caused the need for the variance. He explained that without the variance, the 50.0 foot width of the lot would restrict the size of the addition. Mr. Burke submitted three letters of support for the request from the adjacent neighbors and asked the Board to grant their request. He stated neighboring Lots 206 and 207 had been granted a variance for a structure on their pie shaped lots.

In response to Chairman DiGiulian question as to whether the proposed addition would extend any further into the existing side yard, Mr. Burke stated that it would not.

Mrs. Harris asked if the applicant could reduce the amount of variance requested. She expressed her belief that a 312.0 square feet addition was too large. Mr. Burke stated that the builder and the applicant believed that for aesthetic, practical, and architectural reasons, the proposed addition would be best.

There being no speakers in support of the request, Chairman DiGiulian call for speakers in opposition.

Robert McGinnis, 120 North Lee Street, Falls Church, Virginia, addressed the Board. He stated that he was representing Lorraine Berez, the owner of the property at 1636 and 1638 LaSalle Avenue. He stated that Ms. Berez objected to the addition. Mr. McGinnis said that the addition would increase the house size by approximately 50 percent and would reduce the open space between the dwellings. He stated that the size could be reduced and an addition could be built by-right.



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 May 28, 1991, (Tape 2), (RON & LYNETTE GIRVAN, VC 91-P-029, continued from

In response to Chairman DiGiulian's question as to the 50 percent increase of the living area, Mr. McGinnis stated that the size of the proposed addition would be 624.0 square feet.

In response to Mrs. Harris' question, Mr. McGinnis stated that Ms. Berez has been living in California but plans to return to this area.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

The applicant, Ronald Garvin, 1642 LaSalle Avenue, McLean, Virginia, addressed the Board and stated his family needed the additional living space in order to enhance the quality of their lives. He said that Ms. Berez's house has been a rental property since 1979.

In response to questions from the Board, Mr. Garvin stated that Ms. Berez was the owner of Lot 201. He said that the structure was a two story house with a basement. Mr. Garvin stated that the front alignment of the structures on the street were approximately the same. He explained that the addition would also provide a larger bedroom for his son.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-P-029 for the reasons as reflected in the Resolution and subject to the development conditions contained in the staff report dated May 21, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-029 by RON AND LYNETTE GIRVAN, under Section 18-401 of the Zoning Ordinance to allow addition 10.5 feet and 13.0 feet from side lot lines, on property located at 1642 LaSalle Avenue, Tax Map Reference 30-3((2))202, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 6,500 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. 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.

Page 306, May 28, 1991, (Tape 2), (RON & LYNETTE GIRVAN, VC 91-P-029, continued from Page 305)

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mrs. Harris 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 June 5, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 306, May 28, 1991, (Tape 2), Scheduled case of:

9:55 A.M. HERMAN AMELINK, VC 91-C-031, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.0 ft. from side lot line such that side yards total 29.4 ft. (40 ft. total min. side yard required by Sect. 3-107) on approx. 23,664 s.f. located at 3126 Trenholm Dr., zoned R-1 (developed cluster), Centreville District, Tax Map 46-2(18)10.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board was complete and accurate. Ms. Strobel replied that it was.

Greg Riegle, Staff Coordinator, stated that the applicant was requesting a variance to the minimum side yard requirement to enclose an existing deck at a location 16.0 feet from the side lot line, such that the side yards total 29.4 feet. Sect. 3-107 of the Zoning Ordinance requires a minimum side yard of 12 feet and a total minimum side yard of 40 feet. Accordingly, the applicant was requesting a variance of 10.6 feet to the total minimum side yard requirement. He noted that the proposed structure does comply with the minimum side yard requirement.

The applicants agent, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board. She stated that the applicant was requesting a variance of the total side yard requirement. Ms. Strobel noted that the existing deck would be enclosed and that the property was well screened with mature trees. She said that the corner, pie shaped lot had exceptional narrowness, and had an exceptional topographic condition in that the lot slopes downward from north to south. Ms. Strobel stated that these conditions, as well as the position of the house on the lot, had caused the need for the variance. She noted that any deck or addition to the rear portion of the property would require a variance. She stated that there would be no detrimental impact on the community, submitted nine letters of support from the neighbors, and asked the Board for approval.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

In response to Mrs. Thonen's question as to why the plat had been dated October 3, 1990, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the application had been accepted on March 5, 1991. She explained that although an application may be filed earlier, it is not accepted until it meets all the submission requirements. Ms. Kelsey noted that the property is not a corner lot.

Mrs. Thonen made a motion to grant VC 91-C-031 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 21, 1991.

Page 307, May 28, 1991, (Tape 2), (HERMAN AMELINK, VC 91-C-031, continued from page 306 )

Chairman DiGiulian called for discussion.

Mr. Ribble stated he would support the motion based on the excellent presentation by Ms. Strobel. He noted that Ms. Strobel addressed the nine standard necessary for the granting of a variance. Mrs. Thonen concurred with Mr. Ribble's statement.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-031 by HERMAN AMELINK, under Section 18-401 of the Zoning Ordinance to allow addition 16.0 feet from side lot line such that side yards total 29.4 feet, on property located at 3126 Trenholm Drive, Tax Map Reference 46-2((18))10, 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 28, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 23,664 square feet.
4. The placement of the house on the lot has caused the need for the variance.
5. The septic field on the property further restricts the location of an addition.
6. The lot is pie shaped.
7. The application meets the standards necessary for the granting of a variance.

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

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

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

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

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

Page 308, May 28, 1991, (Tape 2), (HERMAN AMELINK, VC 91-C-031, continued from Page 307)

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

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.

Mr. Ribble seconded the motion which 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 June 5, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 308, May 28, 1991, (Tape 2), scheduled case of:

10:05 A.M. JAMES E. & GAIL K. FRAHM, VC 91-A-032, appl. under Sect. 18-401 of the Zoning Ordinance to allow additions 13.9 ft. and 15.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 37,690 s.f. located at 9409 Athens Rd., zoned R-1, Annandale District, Tax Map 69-2((2))L.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Frahm replied that except for his middle initial which is F., it was.

Greg Riegler, Staff Coordinator presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirement to construct two (2) building additions at locations 13.9 feet and 15.5 feet from the western side lot line. Sect. 3-107 of the Zoning Ordinance requires a minimum side yard of 20.0 feet. Accordingly, the applicants were requesting variances of 6.1 feet and 4.5 feet to the minimum side yard requirement. He noted that the dwellings on the abutting Lots 5A, 6A, and 7 are in excess of 40.0 feet from the shared lot line.

The applicant, James F. Frahm, stated that he had purchased the property in 1980. He said that he would like an addition to the single story structure in order to accommodate his growing family. He explained that the unusual shape of the lot had restricted the options for an addition. Mr. Frahm stated the other lots in the area are rectangular; therefore, the granting of a variance would not set a precedent in the community. He noted that the variance had the support of the neighbors and asked the Board for approval.

Mrs. Harris' asked what the 20.0 by 30.0 foot room would be used for and why the addition could not be placed at another location on the lot. Mr. Frahm stated that it would be used as a family room, a play room, and a workshop. He said that the existing living room windows are centered on the back side of the house. Mr. Frahm stated that the proposed site was the most practical and would also maintain the integrity of the structure by preserving the living room windows.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-A-032 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 21, 1991.

Mr. Pammel seconded the motion.

In response to Mr. Ribble's question as to how far the addition would be from the well, Mr. Riegler stated that he did not know. Mr. Frahm stated that the well was not used. He explained that it was his intention to cap the well.

Mrs. Harris stated that she would like to withdraw the motion. Mr. Frahm stated that the application was not based on the location of the well. In response to Mrs. Harris question as to why the addition could not be located in another area, Mr. Frahm said that the deciding factor for the placement of the addition was his desire to retain the large picture windows.

Mr. Ribble made a motion to grant VC 91-A-032 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 21, 1991.

Chairman DiGiulian called for discussion.

Mrs. Harris stated that she withdrew the motion because the saving of the four picture windows was not inherent in the land use but was a convenience. She explained that if the well had been an active well that would have constituted a physical hardship of the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-A-032 by JAMES E. AND GAIL K. FRAHM, under Section 18-401 of the Zoning Ordinance to allow additions 13.9 feet and 15.5 feet from side lot line, on property located at 9409 Athens Road, Tax Map Reference 69-2((2))L, 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 28, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 37,690 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The lot is pie shaped and has converging lot lines towards the rear of the property.
6. By placing the addition in the proposed location, the applicant has insured the existing picture windows would be retained, thereby preserving the architectural integrity of the structure.

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

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

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

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

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

1. This variance is approved for the location and the specific additions 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.

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

Page 310, May 28, 1991, (Tape 2), (JAMES E. & GAIL K. PRAHM, VC 91-A-032, continued from Page 309)

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.

Mr. Pammel seconded the motion which 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 June 5, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 310, May 28, 1991, (Tape 2), Scheduled case of:

10:15 A.M. DAVID D. & PATRICIA D. JOY, VC 91-V-028, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 18,261 s.f. located at 7120 Marine Dr., zoned R-3, Mt. Vernon District, Tax Map 93-4(3)(2)27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Joy replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow the construction of an addition to be located 4.0 feet from the side lot line. The proposed addition would consist of a 12.0 by 26.0 foot garage. Section 3-307 of the zoning Ordinance requires a minimum side yard of 12.0 feet. Thus, a variance of 8.0 feet to the minimum side yard was requested.

Ms. Bettard stated that research of the files in the zoning Administration Office indicated that the dwelling on the adjacent Lot 28 is located approximately 15.38 feet from the shared lot line. Research also indicated that on September 22, 1988, the Board of Zoning Appeals (BZA) approved a variance, VC 88-V-101, on Lot 112 to allow the extension and enclosure of an existing carport/porch 10.0 feet from the side lot line.

The applicant, David D. Joy, 7120 Marine Drive, Alexandria, Virginia, addressed the Board and stated that he has lived in the house for 14 years. He explained that he is semi-retired and although he is a resident of Virginia, he lives in California for the winter months. Mr. Joy stated that while he was in California, his car which sat in the driveway was exposed to the elements and had deteriorated.

Mr. Joy stated that the proposed location was the only practical site for the garage. He said that the site was picked for aesthetic reasons and because many mature tree would have to be removed if the garage were located in the back yard. Mr. Joy noted that the neighbors had expressed approval for the request and asked the Board to grant the variance.

In response to Mrs. Harris' question as to whether a carport would be sufficient, Mr. Joy stated a closed garage would not only protect the car but would serve as a noise barrier.

Mr. Ribble asked the Board to defer decision on the case until the next public hearing. He stated that he had received a letter that stated the covenants in the subdivision would not allow an addition to be closer than 15.0 feet from the side lot line. He said that the letter also stated that drainage problems existed on the property and there was a 5.0 foot utility easement around the property. Mr. Joy stated that he had no information regarding the utility easement. Mr. Ribble stated that the easement was part of the covenant agreement and did not relate to the zoning Ordinance.

In response to Mr. Pammel's question as to whether the garage could be constructed on the front portion of the property, Mr. Joy stated that it would ruin the aesthetic value of the property.

In response to Mrs. Thonen's question regarding the front yard 50.0 feet setback requirement on the property, Ms. Bettard stated that the setback requirement was 30.0 feet.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to defer decision on VC 91-V-028 to June 4, 1991 at 10:20 a.m. so that additional information could be obtained. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 311, May 28, 1991, (Tape 2), Scheduled case of:

10:25 A.M. MAURICE J. WHEELER, VC 91-S-030, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 22.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 13,854 s.f. located at 7741 Middle Valley Dr., zoned R-3 (developed cluster), Springfield District, Tax Map 91-1((5))39.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wheeler replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow an addition to be located 22.0 feet from the rear lot line. The proposed addition would be approximately 23.0 feet in height. A two level wooden deck, approximately 4.0 to 5.0 feet in height, would also be located 22.0 feet from the rear property line. Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25.0 feet in the R-3 District developed under the cluster provisions of the Ordinance. Section 2-412 of the Zoning Ordinance allows a deck which exceeds 4.0 feet in height to extend 12 feet into a required rear yard but no closer than 5.0 feet to the rear lot line. Thus, the deck could be constructed without a variance and a variance of 3.0 feet to the minimum rear lot line requirement was requested for the addition.

Ms. Bettard stated that research of the files in the Zoning Administration Office indicated that the dwellings on Lots 40 and 41 are located approximately 26.0 feet and 12.6, respectively, from the shared lot lines. She noted that the rear yard of the subject lot abuts a side yard. Ms. Bettard said that a variance for a deck addition (V-81-S-052) on Lot 9 was approved by the Board of Zoning Appeals (BZA) on May 14, 1981. The request was for the deck addition to be located 15.0 feet from the rear lot line. On September 21, 1982, the BZA also approved (V-82-S-133) on Lot 133. The request was for a deck addition to a dwelling to be located 13.1 feet from the rear lot line.

In response to Mrs. Harris' question as to the location of the house on Lot 41, Ms. Bettard stated that it was 12.6 feet from the side lot line.

The applicant Maurice J. Wheeler, 7741 Middle Valley Drive, Springfield, Virginia, addressed the Board. He stated that he had purchased the property in 1980, and would like to construct a sunroom and deck. Mr. Wheeler said that the addition would be architecturally similar to the existing dwelling.

In response to Mr. Hammack's question as to the 23.0 foot height of the proposed sunroom, Mr. Wheeler stated that the sunroom would be a one story structure with cathedral ceilings.

In response to Mrs. Harris' question regarding the additional feet requested, Mr. Wheeler explained that without the variance an addition would not be financially practical and would not provide the needed living space for his family. Mr. Wheeler noted that the lot is well screened with many large trees.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

William George, 7745 Middle Valley Drive, Springfield, Virginia, addressed the Board. He expressed concern that the proposed addition will have a detrimental impact on the property value. He noted that his house was 12.6 feet from the lot line and believed that his privacy would be greatly affected and asked the Board to deny the request.

In response to Mrs. Harris' question as to the ownership of the wood pile depicted in a picture submitted by the applicant, Mr. George stated that the wood pile was on his property but that it was owned by the applicant.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Mr. Wheeler stated that Mr. George had given his permission to stack the wood on the property. Mrs. Harris stated that she had asked the question merely to identify the lot line. Mr. George stated that the tree depicted in the picture splits the lot line in half.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-S-030 for the reasons stated in the Resolution and subject to the development conditions contained in the staff report dated May 21, 1991.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that although he was sympathetic with the applicant's desire to have a comfortable room, 16.0 feet was too deep and would be for convenience rather than for hardship. He said that he could not support such a large request, and noted that a room and a deck 13.0 by 18.0 feet could be constructed without a variance.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-S-030 by MAURICE J. WHEELER, under Section 18-401 of the Zoning Ordinance to allow addition 22.0 feet from rear lot line, on property located at 7741 Middle Valley Drive, Tax Map Reference 91-1(5)39, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,854 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The lot is shallow and has an irregular size.

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

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

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

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

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

1. This variance is approved for the location and the specific building addition shown on the plat (dated March 12, 1979, and recertified on February 21, 1991), prepared by Greenhorne and O'Mara and 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



Page 313, May 28, 1991, (Tape 2), (MAURICE J. WHEELER, VC 91-S-030, continued from Page 312)

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 which FAILED by a vote of 1-5 with Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Hammack and Mr. Ribble 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 June 5, 1991.

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Page 313, May 28, 1991, (Tape 2), Scheduled case of:

10:45 A.M. MARY HORVATH, VC 91-D-015, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 4 lots, proposed Lot 3 having a width of 19.98 ft. (150 ft. min. lot width required under Sect. 3-106) on approx. 4.0 acres located on Spring Hill Rd. and Eaton Dr., zoned R-1, Dranesville District, Tax Map 20-4(1)86C. (DEFERRED FROM 4/18/91 FOR APPLICANT TO MEET WITH HOMEOWNERS ASSOCIATION MEMBERS)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and noted that the case had been deferred from the April 18, 1991, public hearing. She stated that staff had expressed its belief that the variance did not meet several of the necessary standards. Ms. Dickey noted that staff was especially concerned with access, with tree save, and with the precedent the approval would set.

Mrs. Harris noted that she had not been present at the April 18, 1991, and inquired if testimony had been taken at that hearing. Chairman DiGiulian stated that testimony had been taken. He noted that a deferral had been granted so that the applicant and the neighbors could resolve issues of concern. Ms. Dickey stated that staff had made a presentation but before the applicant had introduced testimony, a letter from the Homeowners Association requesting deferral had been introduced and the case was deferred.

The agent for the applicant, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board. He stated that the applicant would like to subdivide a one 4.0 acre parcel into four (4) lots. Mr. Martin stated that Lots 1, 2, and 4 would meeting all Zoning Ordinance requirements, but that Lot 3 would have a minimum lot width of 19.98 feet. He noted that Lot 3 would have a pipestem driveway accessing the Hampton Way cul-de-sac. Mr. Martin said that for safety purposes, the lot fronting on Spring Hill Road would access Hampton Way via an access easement across the interior lots and would not be considered a pipestem drive. He stated that the property has an exceptional narrowness, is exceptionally deep, and the strict application of the zoning Ordinance would cause an undue hardship. Mr. Martin expressed his belief that the subdivision would not have a detrimental impact on the area, would not change the character of the neighborhood, and would be in harmony with the Comprehensive Plan. He noted that the application met all the necessary standards and asked the Board to grant the request.

In response to Mrs. Thonen's question as to whether the applicant had attempted to consolidate any of the land, Mr. Martin stated that the owner of the property to the south was not interested in selling. Mrs. Thonen stated that she did not believe that an unusual condition existed on the property and was reluctant to set a precedent in the area.

In response to Mr. Hammack's question as to whether the applicant could subdivide the property into four (4) lots by-right, Mr. Martin stated that Lot 3 of the proposed subdivision would not meet the interior width requirement.

Mrs. Harris asked why the applicant was not extending Hampton Way across the property to Lot 83. Mr. Martin stated that septic problems on the property would prohibited the road crossing the property.

Chairman DiGiulian called for staff comments.

Ms. Dickey stated that the lots Mr. Martin had outlined in yellow had been developed under the Cluster Division of the Zoning Ordinance rather than through variances.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 91-D-015 for the reason stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-015 by MARY HORVATH, under Section 18-401 of the zoning Ordinance to allow subdivision of 1 lot into 4 lots, proposed Lot 3 having a width of 19.98 feet, on property located on Spring Hill Road and Baton Drive, Tax Map Reference 20-4(1)86C, 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 28, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.0 acres.
4. The application does not meet the standards necessary for the subdivision of the lots.
5. No unusual conditions exist.
6. The property has adequate acreage.
7. The granting of the variance could set a precedent for pipestem lots in the area.
8. The lot can be divided into 3 lots without a variance.
9. The applicant has reasonable use of the land.
10. The variance would not be in harmony with intended spirit of the Zoning Ordinance.

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 which 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 June 5, 1991.

Page 310, May 28, 1991, (Tape 2), Action Item:

Policies and Procedures Memorandum  
From Barbara Byron  
dated May 23, 1991

Mr. Ribble made a motion to carry the action over to the next public hearing so that Mr. Kelley could be present. The motion carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 315, May 28, 1991, (Tape 2), Action Item:

Request for Scheduling of Appeal  
3-E Development Corporation Appeal

Mr. Pammel made a motion to schedule the public hearing on August 6, 1991, at 11:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 315, May 28, 1991, (Tape 2), Action Item:

Approval of Minutes from April 30, 1991, Hearing

Mr. Pammel made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and suggested that the Board return from the August recess on September 10, 1991. The Board adopted the suggestion 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 11:56 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: July 23, 1991

APPROVED: July 30, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Measey Building on June 4, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 317, June 4, 1991, (Tape 1), Scheduled case of:

9:00 A.M. FRANK & SHERRY ALSTON, VC 91-D-034, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard (4 ft. max. height allowed by Sect. 10-104) on approx. 13,671 s.f. located at 1540 Hunting Ave., zoned R-3, Dranesville District, Tax Map 30-3{(2)}56, 57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Bob Shannon, the applicants' agent, replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totalled 13,361 square feet; is zoned R-3; is located on the southwest corner of Chain Bridge Road and Hunting Avenue in McLean, Virginia; and is developed with a two-story, single-family detached dwelling.

Mr. Jaskiewicz said that the applicants were requesting a variance to the maximum height permitted by the Zoning Ordinance for an accessory structure to allow an existing 6 foot high fence to remain in one of the two front yards adjacent to Chain Bridge Road. According to Mr. Jaskiewicz, since the Zoning Ordinance states that, on a corner lot, a fence or wall not exceeding 4 feet is permitted, a variance of 2 feet was being requested.

Robert P. Shannon, 301 S. Kensington Street, Arlington, Virginia, the applicant's agent, stated that Master Builders & Renovators, Inc., 1715 Birch Road, McLean, Virginia, with whom he was employed, had built the house for the applicants. He said that at the time the contract was negotiated on the house, one of the conditions was to install a fence around the rear yard. Mr. Shannon said that they put a contract out for competitive bidding and selected one of the proposals submitted, resulting in the existing fence. He said that, after settlement, it was brought to their attention that the fence was built in error, being 6 feet high instead of 4 feet high around the side yard. Mr. Shannon said that he believed there were several conditions which would warrant having the 6-foot fence remain on the side. He said that the lot is unusual due to having a storm culvert in the corner of the front yard, 30 inches below Chain Bridge Road, making it necessary to grade to 22 inches below street level to block out the embankment along the side of the lot. Mr. Shannon claimed that, whereas most lots slope down to the street, the subject lot slopes up to the street. Mr. Shannon believed that most houses in the area do not share the applicants' unusual circumstances, and went into further detail to make comparisons for the Board's consideration, claiming privacy and a noise buffer as the reasons for allowing the fence to remain in violation of the Ordinance.

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

Mr. Pammel and Mr. Shannon discussed the applicants' use of the lot for outdoor purposes.

Mr. Pammel made a motion to deny VC 91-V-034 because the applicants specifically have not met Required Standard 6 concerning strict application of the Zoning Ordinance creating a hardship.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-D-034 by FRANK & SHERRY ALSTON, under Section 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard, on property located at 1540 Hunting Ave., Tax Map Reference 30-3{(2)}56,57, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,671 square feet.
4. The applicants specifically have not met Required Standard 6 concerning strict application creating a hardship imposition.

Page 318, June 4, 1991, (Tape 1), (FRANK & SHERRY ALSTON, VC 91-D-034, continued from Page 317)

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 which carried by a vote of 4-1; Mr. Kelley voted nay. Mr. Hammack and Mr. Ribble were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991.

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Page 318, June 4, 1991, (Tape 1), Scheduled case of:

- 9:10 A.M. JOHN R. & NANCY J. JOHNSON, VC 91-L-036, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.8 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) and detached accessory structure 5.0 ft. from rear lot line (10.5 ft. min. rear yard required by Sect. 10-104) on approx. 9,909 s.f. located at 6902 Constance Dr., zoned R-3, Lee District, Tax Map 90-4((6))94. (CONCURRENT WITH SP 91-L-010)
- 9:10 A.M. JOHN R. & NANCY J. JOHNSON, SP 91-L-010, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 8.5 ft. and addition (carport) 5.8 ft. from side lot line (12 ft. min. side yard for dwelling required by Sect. 3-307 and 7 ft. min. side yard for addition (carport) required by Sects. 2-412 and 3-307) on approx. 9,909 s.f. located at 6902 Constance Dr., zoned R-3, Lee District, Tax Map 90-4((6))94. (CONCURRENT WITH VC 91-L-036)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Johnson replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totals 9,909 square feet; is zoned R-3; is located in Section II of the Loisdale Estates subdivision, east of I-95 and Loisdale Road; and is developed with a one-story, single-family detached dwelling with an integral carport and existing shed and gazebo. Mr. Jaskiewicz reiterated the description of the applicants' requests as outlined above in the captions of the variance and special permit applications and cited the applicable zoning

Page 319, June 4, 1991, (Tape 1), (JOHN R. & NANCY J. JOHNSON, VC 91-L-036, and SP 91-L-010, continued from Page 318)

Ordinance Sections and their limitations, stating that the applicants were requesting a variance of 6.2 feet to the minimum side yard requirement for the carport enclosure and a variance to 5.5 feet to the minimum rear yard requirement for the proposed shed.

Mrs. Thonen remarked that the houses in the area of the applicants' property were built quite a few years ago and that it appeared to her that the house and the carport were built at the same time, so they had not been in conformance since the time they were built. Chairman DiGiulian said that the carport could encroach into the side setback by 5 feet. Mrs. Thonen remarked that the non-conformance was through no fault of the applicants.

The applicant, John R. Johnson, 6902 Constance Drive, Springfield, Virginia, presented the statement of justification, stating that he and his wife were making their requests to acquire additional living space; he believed that the course they had chosen would require the least amount of variance, and the addition would be finished with materials to match the existing dwelling. He said that their plans were consistent with other carports within the development and that the accessory structure would allow them much-needed storage space. Regarding the special permit application, Mr. Johnson said that he was unaware of the non-conformance issue until he had applied for the building permit, since the modification to the building was made in 1956, pushing it further west into the setback area; whereas the Johnsons did not purchase the property until 1979. Mr. Johnson had copies of letters from neighbors in support of the applications.

Mr. Pammel asked Mr. Johnson about the possibility of using the patio which appeared to be approximately the same size, 200 square feet, for the proposed addition, which would be in accordance with the Zoning Ordinance. Mr. Johnson said that the major objection to that course of action was access.

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

Mrs. Thonen made a motion to grant SP 91-L-010, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1991, because the dwelling was built back in 1956 and, at that time, she said she would assume that many of the dwellings constructed did not meet the setback requirements and she was not even sure what the setback requirements were at that time. Mrs. Thonen believed the non-conformance was through no fault of the applicants, that the applicants purchased the property in good faith, and that they should be allowed to bring their property up to legal standards.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-010 by JOHN R. & NANCY J. JOHNSON, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 8.5 ft. and addition (carport) 5.8 ft. from side lot line, on property located at 6902 Constance Dr., Tax Map Reference 90-4((6))94, 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 4, 1991; and

WHEREAS, the Board has made the following conclusions of law:

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

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

Page 320, June 4, 1991, (Tape 1), (JOHN R. & NANCY J. JOHNSON, VC 91-L-036, and SP 91-L-010, continued from Page 319 )

- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the locations 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 plat dated October 27, 1990, and approved with this application, as qualified by these development conditions.

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

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Thonen made a motion to grant VC 91-L-036, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1991.

Mr. Pammel stated that he did not believe that he could support the motion because of the carport issue. He believed a viable alternative for the situation would be to leave the carport as it is and place the enclosure to the rear. He said he did not have as much of a problem with the shed but, since they were being considered together, he would oppose the motion.

The motion failed due to the lack of four affirmative votes, as recorded in the Resolution.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-L-036 by JOHN R. & NANCY J. JOHNSON, under Section 18-401 of the Zoning Ordinance to allow addition 5.8 ft. from side lot line and detached accessory structure 5.0 feet from rear lot line, on property located at 6902 Constance Dr., Tax Map Reference 90-4((6))94, 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 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,909 square feet.



Page 321, June 4, 1991, (Tape 1), (JOHN R. & NANCY J. JOHNSON, VC 91-L-036, and SP 91-L-010, continued from Page 320)

4. Most of the lots in this area are non-conforming and irregular in shape, with the subject lot having an irregular lot line and an exceptional shape.
5. If the lot had a straight shape, the shed would probably meet the height ordinance and would not need to be moved closer to the line.
6. There will be no impact upon the neighbors.
7. Strict application of the Zoning Ordinance would effectively restrict 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
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 and accessory storage structure shown on the plat included with this application and is not transferable to other land.
2. In order to make the dwelling addition (carport enclosure) visually compatible with the neighborhood and unobtrusive, it shall be constructed of materials that either match or are architecturally compatible with those used on the existing dwelling.
3. A Building Permit shall be obtained prior to any construction.

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.

Mr. Kelley seconded the motion which **FAILED** by a vote of 3-2-1. Mrs. Harris and Mr. Pannell voted nay. Mr. Hammack abstained because he had not been present for the entire hearing. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991. This date shall be deemed to be the final decision date of this variance.

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Page 322, June 4, 1991, (Tape 1), Scheduled case of:

9:20 A.M. BRUCE J. & MARJORIE E. HROUDA, VC 91-V-037, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 24.2 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 12,380 s.f. located at 6225 Tally Ho La., zoned R-4, Mt. Vernon District, Tax Map 83-3((14))(21)26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hrouda replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property totals 12,380 square feet; is zoned R-4; is located in Section 7 of the Belle Haven subdivision, generally south of Richmond Highway and east and north of Quander Road in Alexandria; and is developed with a one-story, single-family detached dwelling with an integral two-car garage. He described the variance as outlined in the above caption. Mr. Jaskiewicz said that, since the Zoning Ordinance requires a minimum front yard of 30 feet in the R-4 District, the request is for a variance 5.8 feet to the minimum front yard requirement.

Mr. Pammel said he was confused about the recordation of the lots. Mr. Jaskiewicz said that it was his understanding that, when the development was originally constructed, Windsor Road ended at the corner of the applicant's property because the adjoining section of the subdivision was not yet built. Mr. Pammel asked if the building permit for the structure on that lot was issued without Windsor Road being there. Mr. Jaskiewicz said that the building permit was issued in 1953 and described the location as Tally Ho Lane, but he had no further information available and would need to do some research.

The applicant, Bruce J. Hrouda, 6225 Tally Ho Lane, Alexandria, Virginia, stated that he had investigated the situation and had looked up all the old records. Mr. Hrouda presented the statement of justification, stating that the subject lot has exceptional narrowness, being 80 feet in width along Olmi Boulevard, which was the street now called Windsor Road. Mr. Hrouda provided the Board with the history of development of the surrounding area, citing confusion created by the nature of the development. Mr. Hrouda said that the lot is exceptionally shallow, being only approximately 80 feet deep rather than 95 feet deep. He said that, if his lot were 15 feet wider, to meet the full minimum of 95 feet, he would not need a variance because he would have at least 22 feet within which to build the addition proposed to be 15 feet by 22 feet. Mr. Hrouda said that he is the only resident on Windsor Road whose dwelling does not face Windsor Road and, while his lot may be similar in width to others, his lot is actually a corner lot of substandard width. In like manner, Mr. Hrouda went through all the Required Standards, explaining how his situation met them. Mr. Hrouda cited the preservation of trees as a mitigating factor in the placement of the proposed addition. He said that he had surveyed sixteen of his neighborhood property owners, all of whom were in favor of his proposed addition.

Mr. Hammack asked the applicant how far back from the street the houses on Windsor Road sit, to which Mr. Hrouda responded that he believed that they sit 31 feet back. Mrs. Thonen called Mr. Hammack's attention to the Background Analysis in the staff report for this information. Mr. Hrouda said that he had physically measured Lot 32 with his engineer and found that the house is exactly 35 feet from the front curb. Mr. Hrouda said that the house across the street, the side of which faces his home, is exactly 25 feet from the curb. Mr. Hrouda explained that, considering the 12.5 foot County easement, his house with the proposed addition would still remain almost 37 feet from the back to the curb.

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

Mr. Kelley made a motion to grant VC 91-S-037, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1991, for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-037 by BRUCE J. & MARJORIE E. HROUDA, under Section 18-401 of the Zoning Ordinance to allow addition 24.2 ft. from front lot line, on property located at 6225 Tally Ho La., Tax Map Reference 83-3((14))(21)26, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 12,380 square feet.

4. The lot is exceptionally narrow.
5. Testimony revealed that the lot was never intended to be a corner lot.
6. An existing easement gives the applicant a setback of 37 feet from the road.
7. The lot is beautifully wooded and forcing the applicant to place the addition elsewhere would make it necessary to remove the vegetation and trees.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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 Board of Zoning Appeals (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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 323, June 4, 1991, (Tape 1), Scheduled case of:

9:30 A.M. HALMAR INCORPORATED, VC 91-S-035, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 166.0 ft. from railroad tracks (200 ft. min. distance required by Sect. 2-414) on approx. 48,538 s.f. located at 5806 Fairview Woods Dr., zoned R-1, WS, Springfield District, Tax Map 77-1((20))6A (formerly 77-1((20))6, pt. 5).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mc Dermott, the applicant's agent, replied that it was.

Page <sup>324</sup> 323, June 4, 1991, (Tape 1), (HALMAR INCORPORATED, VC 91-S-035, continued from Page 323)

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject property is located northwest of the corner of Ox Road and Burke Centre Parkway on the north side of Fairview Woods Drive; is zoned R-C, WSPOD; is proposed to be developed with a single-family dwelling; is abutted on the north by the railroad and on the south, east and west by residential property which is also zoned R-C, WSPOD, and proposed to be developed with single-family dwellings.

Ms. Bettard described the applicant's request for a variance to allow a dwelling to be located 166 feet from the railroad tracks. She said that, since Section 2-414 requires that a residential dwelling be set back a minimum of 200 feet from the railroad tracks, a variance of 34 feet to the minimum requirement was being requested. Ms. Bettard referenced Revised Proposed Development Conditions submitted by the applicant, which were distributed to the Board. She said that staff was in agreement with the change to Condition 1, but preferred standard Condition 3, rather than those prepared by the applicant.

Ms. Bettard advised the Board that Don Heine of the Environment & Heritage Resources Branch of the Office of Comprehensive Planning (OCP), was present to answer any questions regarding the noise level referenced in the Proposed Development Conditions contained in the staff report.

Mrs. Harris addressed staff's request that the applicant furnish information regarding acoustical and noise attenuation measures. Mr. Heine replied that the information had still not been received from the applicant. Mr. Heine explained that the application had been reviewed a couple of weeks ago in an attempt to verify it. He said that a noise model for the railroad had been developed a number of years ago by a consultant with a methodology which relies upon the number of trains, the number of cars, and the number of locomotives passing each day. Mr. Heine said an attempt had been made to verify the information with Norfolk and Southern, but the dispatcher with whom they spoke did not concur with the figures and said he was too busy to go over the entire report, but the numbers could be verified by writing to him. Mr. Heine said that the applicant should write to obtain the information on the number of trains, cars, and locomotives, and put it into the standard methodology, also taking distance into consideration. Mr. Heine also stated that the question of whether the rail was a commuter rail had not been addressed and he believed it was an important consideration to determine frequency.

Mrs. Harris asked, in the worst case scenario, if there was a commuter train running once an hour, would that change the level of noise reaching inside the house. Mr. Heine replied that it would not. Mrs. Harris stated that, when a train passed her church, they would have to stop talking because of the level of noise.

Francis A. McDermott, 3050 Chain Bridge Road, Fairfax, Virginia, Attorney/Agent for the applicant, came to the podium and expressed displeasure over the circumstances surrounding the application. He advised Mrs. Harris that the study she had referred to earlier had been done in 1989 and that this was what he thought was the end of a nine-year saga. Mr. McDermott said that the property was the subject of an approved preliminary subdivision plan going back to 1982 and was part of the Occoquan downzoning case; the Fairfax Station subdivision, which he represented, was the flagship case in the Occoquan downzoning case; it was "...resolved, it was settled, compromised..." in 1983, and a Consent Decree entered in the Circuit Court. He said that the Decree assured, from the County standpoint, to the applicant, to the property owner, that the subdivision plats that had been specifically identified and brought to the preliminary approval stage, would be acted upon in accordance with ordinances, and that the yield would be what was provided in those. Mr. McDermott reviewed the history of this application at great length, relating to the Springfield Bypass, the Master Plan Amendment covering extension of the Burke Centre Parkway all the way up to the Springfield Bypass, explaining that there originally were two lots that were impacted by the noise of the railroad and it was made possible by gerrymandering to get one of them outside of the impact category, leaving only the subject lot. He mentioned that what portion of the lot was left buildable was influenced by factors such as approved septic field sites, Burke Centre Parkway location, Virginia Department of Transportation (VDOT) and County design standards for Fairview Woods Drive, etc. He said that the applicant was left with the County as much as telling them to go in and get the approval, indicating that they had agreed to the settlement, and asking the applicant to go ahead and get approval for the variance for the 75th lot, out of which they were able to get a second lot. The applicant had done a noise study in 1989. Mr. McDermott said that the application had been in the hands of the County staff for about a year, but was not accepted because additional engineering work had been required. He said that, eventually, they withdrew the application and resubmitted it during the earlier part of this year; but the study that supports the application and that the County took issue with was done in 1989 with the information available at that time. Mr. McDermott said that the conditions proposed by the applicant are, verbatim, the kind of conditions used by the County in many zoning cases. He said that the thrust of the staff condition was, in effect, that the applicant must certify to a dBA level inside the house; whereas, the thrust of the applicant's language was that they will use materials certified to achieve that interior noise level. Once the house is constructed, Mr. McDermott rhetorically asked what the remedy should be if a noise test were done inside the house and the dBA was not in conformance, but the certified material had been used to achieve the certified level. He asked if the applicant would be required to tear down the house and start all over again, stating that they obviously should not be required to do that. Mr. McDermott said that accounted for the difference in the applicant's language in the conditions they submitted for

Page <sup>325</sup> June 4, 1991, (Tape 1), (HALMAR INCORPORATED, VC 91-S-035, continued from  
Page <sup>324</sup>)

acceptance. Another element of difference, according to Mr. McDermott, was the information which Mr. Heine obtained from the railroad, compared to what the applicant had obtained two years ago, and the possibility that the noise level may be greater than the 74 dBA which was determined at the time the applicant obtained the information.

Mr. McDermott pointed out that the applicant was being asked to go out and do another study on one lot, as opposed to an entire subdivision, at a cost of \$5,000 to \$10,000. He said the applicant had been carrying this lot since 1982; they had held off on recordation of the subdivision, at the County's request, since late 1986 or early 1987 when the Plan Amendment was started; now they were being asked to go further and spend another \$5,000 to \$10,000 and pass it on to the purchaser; carry the lot for the additional period of time; and to determine whether or not there may or may not be something worse than 75 Ldn/dBA.

Mr. McDermott suggested that what the applicant proposed in their conditions was very reasonable. He said that the other alternative would be for the County to simply compensate the applicant for the lot.

Mrs. Harris asked Mr. McDermott what kind of assurances he could give in the event that there is a commuter rail, that the interior noise will not exceed 45 dBA. Mr. McDermott replied that, if the County wants that assurance, the County should condemn the lot and let the applicant get on with it. Mrs. Harris asked Mr. McDermott how the County could be assured of the anticipated conditions without having the applicant furnish the additional information.

Mr. McDermott said that the only thing the applicant could do was to utilize the results of the study they did two years ago and live up to the conditions proposed. Other than that, he said, they would have to conduct another study.

Mrs. Harris said to staff that she had the impression that they were not requiring another study, but just asking the applicant to write to someone for some additional information which could be incorporated into the study that was already done. She asked staff if she had misunderstood. Mr. Heine said yes, the applicant could write to Norfolk Southern, obtain the updated information, put it into the system of charts and guidelines, and come up with a conclusion. On that basis, they may need an acoustical consultant to figure out the exact STC's, Sound Transmission Classifications, to achieve those for inside levels.

Mrs. Thonen said that she had followed this application very closely over the years and that, with the County proposing new requirements, the applicant might never catch up because, with each one of the new requirements, new conditions were being prescribed. She asked how long it was fair to keep an applicant committed to new requirements because the County was making updates. Mrs. Thonen said she believed that the conditions submitted by the applicant were fair to everyone and that she did not believe that any further studies would help.

Mr. Pammel asked Mr. Heine if, in providing the standards for the noise exposure forecast and, particularly in the Airport Noise Overlay District at Dulles Airport, when issuing Building Permits, was it the policy of the County to issue a Building Permit subject to current conditions as opposed to a projected forecast. Mr. Heine said that the Airport Noise Overlay District is geared to specific regulations set forth for the Airport Noise Overlay District; however, in the review of development proposals within the Airport Noise Overlay Districts, staff utilized the Policy Plan which, essentially, recommended against residential developments in any area over the 65 dBA contour line because outside areas cannot be protected. In this particular case, Mr. Heine said, through the appropriate acoustical design treatment, it would be possible to buffer the outside or exterior areas from the intrusion of the railroad noise. Mr. Heine said that, because of the characteristics of this particular site: the railroad being down in a manmade ravine and the existence of a partial berm, the noise generated by the existing train traffic and the proposed commuter rail traffic would curve over the berm to the home which is upslope. Mr. Heine said his branch relied upon projections and provided some details.

Further discussion ensued concerning the particular location of the lot and the fact that many people have been living in the immediate area for a long time and had not complained of a hardship.

Mr. Hammack asked Mr. Heine why a hypothetical study could not be done, based upon a commuter rail, and figure out what the Ldn and dBA might be. Mr. Heine said the County would need to engage a consultant, write to the agency responsible for the commuter line and get their information, and put it into the guidelines for the consultant. Mr. Hammack asked Mr. Heine how far into the future he wanted the evaluation to be, 5 years, 10 years. Mr. Heine said that they would rely upon whatever information was provided by Norfolk Southern at this time and place and look at the projections on the commuter rail trains. In the ensuing discussion with Mr. Hammack, Mr. Heine said he believed the County was being put into the position of doing the applicant's work. Mr. Hammack pursued the line of possible existing tables and studies on the subject.

Chairman DiGiulian said it appeared to him that the County was trying to get the applicant to do an exorbitant amount of work, from a cost standpoint, for one lot. He said that, if the County has standards that the applicant is required to meet, the County should present them.

Page 326, June 4, 1991, (Tape 1), (HALMAR INCORPORATED, VC 91-S-035, continued from  
Page 325)

Chairman DiGiulian said that he did not believe it was fair to tell the applicant, after all this time, that they needed to conduct another study because, by the time the new study was put together and brought before the Board, it might be outdated also.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out to the Board that Condition 3 in the staff report actually gave the applicant a great deal of flexibility regarding the type of treatment which might be used.

A lengthy discussion ensued regarding the Proposed Development Conditions, with Mr. McDermott proposing that Condition 2 of the applicant's recommended conditions be amended.

Mrs. Thonen said that she believed that the County would need to do some studies to arrive at standards which applicants are required to meet.

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

Mrs. Harris made a motion to grant VC 91-D-035, subject to the Proposed Development Conditions submitted by the applicant, as amended, for the reasons set forth in the Resolution. The conditions were amended by inserting, "Based upon the 70-75 Ldn/dBA noise level previously determined in 1989,..." at the beginning of Condition 3.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In variance Application VC 91-S-035 by HALMAR INCORPORATED, under Section 18-401 of the Zoning Ordinance to allow dwelling 166.0 ft. from railroad tracks, on property located at 5806 Fairview Woods Dr., Tax Map Reference 77-1((20))6A (formerly 77-1((20))6, pt. 5), 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 4, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, NSPOD.
3. The area of the lot is 48,538 square feet.
4. The lot is of exceptional size.
5. The topography is exceptional.
6. The entire situation is extraordinary.
7. The applicant has demonstrated that the variance is necessary in order to build the house, not due to self-imposed hardship, but because accommodation by the applicant for new roads and alignment of streets has carved this lot out in an area not of the applicant's choosing, just where it happened to be located after all the new roads, etc., were built.
8. Unreasonable hardship, akin to confiscation of the land, would be imposed by having the applicant build the house without a variance, and it probably would be impossible.
9. Noise attenuation will be addressed in Proposed Development Conditions.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 Lot 6A of Section 1-A of the Fairview Woods subdivision as shown on the plat (dated October 17, 1989) prepared by Paciulli, Simmons & Associates, submitted with this application.
2. A Building Permit shall be obtained prior to any construction.
3. Based upon the 70-75 Ldn/dBA noise level previously determined in 1989, the following noise attenuation measures shall be provided:
  - a. The applicant shall construct the proposed dwelling unit utilizing construction materials and techniques known to have physical properties or characteristics suitable to achieve a Sound Transmission Classification (STC) of 45 for exterior walls.
  - b. The applicant shall use doors and windows which are known to have physical properties or characteristics suitable to achieve an STC of 37; unless "windows" function as walls, in which case they shall be known to be suitable to achieve an STC of 45.
  - c. The applicant shall implement noise attenuation measures such as fencing, walls, vegetation, berms and/or combinations thereof, at least 6 feet tall, but not to exceed 8 feet tall, along a portion of the rear yard, designed to reduce the exterior noise level in the rear yard adjoining the dwelling to 65 dBA.

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.

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 June 12, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board took a short recess at this time.

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Page 327, June 4, 1991, (Tape 1), Scheduled case of:

9:40 A.M. CHARLES M. MANNING, SP 91-S-011, appl. under Sect. 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow addition and deck 14.0 ft. from side lot line and 13.9 ft. from other side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 10,763 s.f. located at 15304 Blueridge View Dr., zoned R-C, WS, Springfield District, Tax Map 53-4((5))33.

Chairman DiGiulien called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Nancy A. Rinehart, co-owner, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject site is located on the south side of Hidden Canyon Road, west of Blueidge View Drive; is zoned R-C, WS; is developed with a single-family dwelling; is abutted on the north, south, east and west by other lots in the Pleasant Hill subdivision which are zoned R-C, WSPOD and developed with single-family dwellings.

Ms. Bettard described the application as captioned above, stating that the applicant was requesting variances of 6.0 and 5.9 feet to the minimum side yard requirement of the R-C District. She said that staff concluded that the application met the criteria set forth by Section 8-913 of the Zoning Ordinance which establishes criteria for evaluations of proposals for reduction of minimum yard requirements for lots located in the R-C District. Ms. Bettard noted that the Standards were discussed on page 2 of the staff report. She said that the lot received final plat approval prior to July 26, 1982, and the proposal is harmonious with existing development in the area.

Nancy A. Rinehart, co-owner, 15304 Blueidge View Drive, Centreville, Virginia, said that the house was built in 1977 and, at that time, the zoning for all of Pleasant Hill was R-2, cluster housing. She said that the deck which the applicant was proposing to add would meet all of the requirements for R-2 zoning. Ms. Rinehart said that the Act which was enacted in 1982 in reference to the watershed imposed an undue hardship on all of the property owners in the Pleasant Hill subdivision because the houses themselves do not meet the minimum requirement and they were bought as single-family houses.

Mr. Ribble commented to Ms. Rinehart that, in other words, she agreed with staff's recommendation; to which Ms. Rinehart said that she did.

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

Mr. Ribble made a motion to grant SP 91-S-011 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-011 by CHARLES M. MANNING, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow addition and deck 14.0 ft. from side lot line and 13.9 ft. from other side lot line, on property located at 15304 Blueidge View Dr., Tax Map Reference 53-4(5)33, 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 4, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 10,763 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.

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

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

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

1. This special permit is approved for the location of the specific deck addition shown on the plat (dated August 17, 1977) and prepared by Douglas M. Detweiler and Associates, Inc.) and submitted with this application.



Page 329, June 4, 1991, (Tape 1), (CHARLES M. MANNING, SP 91-S-011, continued from Page 328)

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

Under Sect. 8-006 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 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 329, June 4, 1991, (Tapes 1&2), Scheduled case of:

9:50 A.M. DAVID N. & DOROTHY I. HARRINGTON, VC 91-A-039, appl. under Sect. 18-401 of the zoning Ordinance to allow addition (garage) 6.4 ft. from rear lot line of a corner lot ((15 ft. min. rear yard (side yard dimension) required by Sect. 3-207)) on approx. 15,607 s.f. located at 9305 Nester Rd., zoned R-2, Annandale District, Tax Map 58-4((22))23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Harrington replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located south of Little River Turnpike and east of Olney Lane, is zoned R-2, as are the surrounding lots, and all are developed with single-family detached dwellings. Ms. Dickey described the application as captioned above, stating that, on a corner lot the rear lot takes a side yard dimension. She said that, accordingly, the applicants were requesting a variance of 8.6 feet to the minimum rear yard requirement. Regarding surrounding uses, Ms. Dickey said that the dwelling on adjacent Lot 22 is located approximately 22.9 feet from the shared lot line.

The applicant, David N. Harrington, 9305 Nester Road, Fairfax, Virginia, presented the statement of justification, stating he had bought the lot in 1969, had not known of the requirement of the proximity of the boundary on the east, and believed that the 15 foot requirement was a bit constraining for him to get his project done. Mr. Harrington believed his request for a variance was unique to his circumstances and strict application of the Ordinance would cause undue hardship. Mr. Harrington believed that the continued exposure to the forces of nature would be detrimental to his automobiles and other property; he said his age made it difficult for him to extricate his automobiles from the snow and ice. Mr. Harrington also intended to use the addition for storage. Mr. Harrington believed that his addition would enhance the value of other property in the neighborhood.

Mr. Hammack asked Mr. Harrington what he intended to do with the trailer which is parked on blocks in the photographs. Mr. Harrington said he would either get rid of it or take it over to his son's place in Maryland. Mr. Hammack asked Mr. Harrington if he intended to enclose the existing slab and Mr. Harrington said that he did. Mr. Hammack asked Mr. Harrington if he had discussed his plans with his neighbor on Lot 22; he replied that he had discussed it with all of his neighbors and they were agreeable. Mr. Hammack asked Mr. Harrington what the roof line would be on the proposed garage, where the carport is now. Mr. Harrington said it would just extend straight out.

Mr. Pammel asked staff if the existing carport was in violation of the side yard requirements. Ms. Dickey said that it would appear from the plat that it might be in violation; however, there was no notice of violation in the records. Mr. Pammel raised the question of whether the applicant should be seeking a special permit.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the setback requirement is 15 feet and an open carport is allowed to extend 5 feet into the required yard. She said that, if the carport was built prior to 1978, the Board of Zoning Appeals had made an interpretation of the previous Zoning Ordinance that a property owner could have a shed in the back of the carport of a particular size, so that part of the carport could be closed. Mr. Pammel had the impression that the applicant's existing carport was 6.4 feet from the side lot line, leaving 8.8 feet. A discussion ensued during which Ms. Kelsey said that it was her understanding that the application intended to add to the existing carport and Mr. Pammel said he understood.

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

Mr. Hammack made a motion to deny VC 91-A-039 for the reasons set forth in the resolution.

Mr. Pammel seconded the motion. Mrs. Thonen said she would have to vote against denial because the shape of the lot met the requirements for a variance. Chairman DiGiulian said he

Page <sup>330</sup>, June 4, 1991, (Tapes 1&2), (DAVID N. & DOROTHY I. HARRINGTON, VC 91-A-039, continued from page 329)

agreed with Mrs. Thonen, stating that he believed that, if the house were more normally placed on the lot, the applicant would have room to build the addition.

Mr. Pammel seconded the motion which carried by a vote of 3-3; Chairman DiGiulian, Mrs. Thonen and Mr. Kelley voted nay. Mrs. Harris was not present for the vote.

Mr. Kelley made a motion to waive the twelve-month waiting period for rehearing because he believed the applicant might be able to alter the application sufficiently to overcome the objections of some of the Board members. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-A-039 by DAVID N. & DOROTHY I. HARRINGTON, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 6.4 ft. from rear lot line of a corner lot, on property located at 9305 Nester Rd., Tax Map Reference 58-4((22))23, 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 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,607 square feet.
4. The addition of a second carport and its enclosure into a garage is really for the convenience of the applicant.
5. An enclosed one-car garage or possibly a two-car carport might be acceptable, but a two-car garage and the variance it requires is really for the convenience of the applicant and denial does not restrict the reasonable use of the property.

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

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

Page 331, June 4, 1991, (Tapes 1&2), (DAVID N. & DOROTHY I. HARRINGTON, VC 91-A-039, continued from Page 330 )

difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

Mr. Pammel seconded the motion which carried by a vote of 3-3; Chairman DiGiulian, Mrs. Thonen and Mr. Kelley voted nay. Mrs. Harris was not present for the vote.

Mr. Kelley made a motion to waive the twelve-month waiting period for rehearing. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991.

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Page 331, June 4, 1991, (Tape 2), Scheduled case of:

10:00 A.M. KATHLEEN M. AND RICHARD E. CHARTERS, VC 91-C-041, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 4.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 15,352 s.f. located at 1909 Trumpet Ct., zoned R-2, Centreville District, Tax Map 28-3((8))30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Charters replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located in an area west of Beulah Road; the subject property and the surrounding lots are zoned R-2 and are developed with single-family detached dwellings. Ms. Dickey described the application as captioned above, stating that the applicants were requesting a variance of 11 feet to the minimum side yard requirement. Ms. Dickey said that the dwelling on adjacent Lot 31 is located approximately 15.5 feet from the shared lot line.

The applicant, Richard E. Charters, 1909 Trumpet Court, Vienna, Virginia, presented the statement of justification, stating that a single car garage is a hardship because their extra car is always in the driveway, causing an eyesore, and is subject to sun, rain, and vandalism. He said that most property owners in the neighborhood have second car garages. Mr. Charters said that his lot is narrow and the proposed site is the only place he could put the addition. Mr. Charters said that all the homeowners in the community had signed their approval of his plans.

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

Mr. Pammel made a motion to deny VC 91-C-041 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-041 by KATHLEEN M. AND RICHARD E. CHARTERS, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 4.0 ft. from side lot line, on property located at 1909 Trumpet Ct., Tax Map Reference 28-3((8))30, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,352 square feet.
4. The applicant has not met the Required Standards, specifically Standard 6, that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the property.

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

1. That the subject property was acquired in good faith.

Page 332, June 4, 1991, (Tape 2), (KATHLEEN M. AND RICHARD E. CHARTERS, VC 91-C-041, continued from Page 331)

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991.

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Page 332, June 4, 1991, (Tape 2), Scheduled case of:

10:10 A.M. MARKEY APPEAL, A 91-S-002, appl. under Sect. 18-301 of the zoning Ordinance to appeal zoning Administrator's determination that ingress/egress and public access easements for interparcel access must be provided on appellant's property before December 1, 1990 on approx. 4.34 acres located at 14524 and 14524 Lee Road, zoned I-4 & I-5, Springfield District, Tax Map 34-3(8)4522 A-J and 4524 A-J.

Chairman DiGiulian advised that the Board had issued an Intent to Defer at their last meeting. Mrs. Thonen remarked that this would be the last deferral. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Chairman, stating that she believed the new date discussed was either the last Tuesday of September or the first Tuesday in October. Mrs. Thonen said that it was October.

Mrs. Thonen made a motion to defer A 91-S-002 to October 1, 1991 at 9:15 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained because of a conflict of interest and Mrs. Harris was not present for the vote.

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Page 332, June 4, 1991, (Tape 2), Scheduled case of:

10:25 A.M. DAVID D. & PATRICIA D. JOY, VC 91-V-028, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 18,261 s.f. located at 7120 Marine Dr., zoned R-3, Mt. Vernon District, Tax Map 93-4(3)(2)27. (DEFERRED FROM 5/18/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant to the podium and Mr. Joy said that he had appeared before the Board the previous week. Mr. Joy said that the 5 foot easement along the side of

Page <sup>333</sup> 333, June 4, 1991, (Tape 2), (DAVID D. & PATRICIA D. JOY, VC 91-V-028, continued from Page <sup>332</sup> 332)

his house for a water line was news to him. He said he would be willing to give up a foot if the Board wanted the 5 foot easement to remain, but he did not understand why it was necessary.

Mr. Ribble explained that, if the Board granted a variance, one of the homeowners could raise an objection and take it to court. Mr. Joy said he would be willing to chance having to go to court, knowing who the objecting homeowner would be. Mr. Ribble said that the letter he had written on Marlan Forest Citizens Association stationery and signed by the President, and that it stated there was a Restrictive Covenant on the property.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, asked to be enlightened about the easement because it did not show up on the plat. Chairman DiGiulian said that the Restrictive Covenant said that an easement 5 feet wide along the side line is, "...reserved for the construction, maintenance and operation of electricity and telephone service...." Ms. Kelsey said that, normally, if there was a sewer or water line easement, it would show up on the plat. Mr. Joy said that there is no sewer or water line on the side of his house, but that there is a water line which runs along the side of Lot 26 and along the rear of his property.

Mr. Ribble said that the letter also stated that none of the homes in Section 2 of Marlan Forest have garages on the side and asked Mr. Joy if that was true. Mr. Joy said that there is a garage on the side, as his photograph showed, just around the corner from him, four houses away. Mr. Joy was not really sure whether that house is in Marlan Forest.

Mr. Hammack asked Mr. Joy whether the Covenants under discussion were still applicable and enforceable; he assumed they were since Mrs. Hook had written and said they still are. Mr. Hammack said that most Restrictive Covenants have to be renewed after a period of years, 20 or 30 years. Mr. Joy said he had lived in his house 14 years and did remember that when he moved in there were some Restrictive Covenants that existed. Mr. Joy did not know whether they were the same ones which Mrs. Hook had referred to, since he had not seen them since that time. Mr. Hammack pointed out that the particular Covenants under discussion had been drafted in 1949 and that those drafted today would be much more restrictive and exhaustive in many ways.

Since this was deferred only for the additional information, Chairman DiGiulian closed the public hearing.

Mr. Thonen made a motion to deny VC 91-V-028 for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Application VC 91-V-028 by DAVID D. & PATRICIA D. JOY, under Section 18-401 of the Zoning Ordinance to allow addition 4.0 ft. from side lot line, on property located at 7120 Marine Dr., Tax Map Reference 93-4((3))(2)27, 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 4, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 18,261 square feet.
4. The applicants only meet one of the Required Standards, that of acquiring the property in good faith, but fail to meet any of the others.

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 334, June 4, 1991, (Tape 2), (DAVID D. & PATRICIA D. JOY, VC 91-V-028, continued from Page 333)

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

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

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

6. That:

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

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

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

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Mr. Kelley abstained because he was not present for the first hearing. Mrs. Harris was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1991.

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Page 334, June 4, 1991, (Tape 2), Action Item:

Approval of Resolutions from May 28, 1991 Meeting

Mr. Kelley made a motion to approve the Resolutions as submitted by the Clerk. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 334, June 4, 1991, (Tape 2), Action Item:

Fague Appeal

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained to the Board that her office had just received the second appeal and that Mr. Fague already had an appeal scheduled to come before the Board.

Since this was the Board's first opportunity to review this appeal, Mrs. Thonen made a motion to postpone making a decision until the next meeting. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 334, June 4, 1991, (Tape 2), Action Item:

Policy and Procedures

Mr. Pammel brought this item up for review since all but one of the Board members were present. Mr. Pammel made a motion, "That the Board of Zoning Appeals revise its Policy regarding requests for waivers of the twelve (12) month limitation on rehearing an application to delete the requirement that the applicant notify all persons who spoke at the original public hearing of the request to waive the twelve (12) month limitation on rehearing the application."

Mr. Pammel further made a motion, "That the Board of Zoning Appeals (BZA) allow citizens who wish to speak at a BZA hearing to register their names with the Clerk in advance of the public hearing. The advertising and legal notices should be modified to tell citizens where they may call to be placed on the speakers list." Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 335, June 4, 1991, (Tape 2), Action Item:

Board of Zoning Appeals Meeting of June 25, 1991  
Board of Supervisors Using Board Room

Mr. Pammel raised the issue of where this meeting would be held. Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested that the Board defer action until the following week, to allow her more time to research the situation, and the Board agreed to do so.

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Page 335, June 4, 1991, (Tape 2), Action Item:

Wilson Appeal

Jane C. Kelsey, Chief, Special Permit and Variance Branch, referred to the previous week's meeting when it was suggested that the Wilson Appeal be scheduled immediately after the Wilson special permit application on June 18, 1991. She said that both the appellant and the Zoning Administrator would like the appeal to be deferred until September because, if the special permit is granted, the appeal can be dropped.

Mr. Ribble made a motion to schedule the Wilson Appeal for September 17, 1991. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiuliano  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED:

July 23, 1991

APPROVED:

July 30, 1991

Blank





The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 11, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 337, June 11, 1991, (Tape 1), Scheduled case of:

9:00 A.M. UNITED LAND COMPANY APPEAL, A 90-L-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of Department of Environmental Management's decision that all building permits must be obtained in order to extend the approval of a site plan, and that the issuance of a Building Permit for the construction of a retaining wall does not extend the approval of the entire site plan on approx. 13.49 acres of land located at 3701 thru 3736 Harrison Lane and 3600 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEFERRED FROM OCTOBER 30, 1990, AT APPLICANT'S REQUEST) (DEFERRED FROM 2/12/91 AT APPLICANT'S REQUEST) (ON 5/14/91 BZA PASSED A MOTION OF INTENT TO DEFER)

Mrs. Thonen made a motion to grant the applicant's request for a deferral to allow the applicant time to work with the Department of Environmental Management on the site plan.

Lori Greenleaf, Staff Coordinator, suggested October 8, 1991 at 9:00 a.m.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

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Page 337, June 11, 1991, (Tape 1), Scheduled case of:

9:15 A.M. CHARLES M. LEHRHAUPT, VC 91-D-042, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6 ft. high fence to remain in front yard (4 ft. max. height allowed by Sect. 10-104) on approx. 10,503 s.f. located at 1544 Great Falls St., zoned R-3, Dranesville District, Tax Map 30-3((1))70.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lehrhaupt replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the applicant was requesting a 2.0 foot variance to allow a 6.0 foot high fence to remain in the front yard. She added that Sect. 2-505 of the Zoning Ordinance prohibits the location of any structure or plantings on a corner lot where the sight distance formed by the two street lines of the corner lot may be obstructed. Ms. Bettard noted that staff's investigation of the site found that the existing fence does not interfere with the sight distance from Chain Bridge Road or Great Falls Street.

The applicant, Charles M. Lehrhaupt, 1544 Great Falls Street, McLean, Virginia, stated that the fence in question came with the house when he and his wife purchased the house last year. He explained that only approximately 30 feet of the fence is above the height limitation and it is a very attractive board on board fence and cannot be seen from Chain Bridge Road and runs perpendicular to Great Falls Street. Mr. Lehrhaupt stated that the fence is in keeping with the character of the neighborhood and the portion of the fence that is above the height limitation does not front or obstruct any developed property. He stated that there is a row of townhouses directly across the street that is bounded by a high brick fence and in his view it would be more detrimental to lower the fence in the front. Mr. Lehrhaupt pointed out that there is a unsightly, undeveloped lot immediately adjacent to his property that is covered with large trees and wild foliage and has been used on occasions as a dump site for people passing by. In closing, he stated that he believed that to scale down the fence would reduce the property value without any benefit to the community.

In response to questions from Mrs. Harris as to a sight distance problem if the adjacent property were developed, Ms. Bettard replied that she did not believe there would be a problem as any structure constructed on the property would have to meet the setback requirements.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny the request as he believed it to be for convenience. He pointed out that the Board had heard a similar request at its June 4 public hearing and the Board had denied that request. The motion died for the lack of a second.

Mrs. Thonen made a motion to grant the applicant's request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 4, 1991.

Page <sup>338</sup> 338, June 11, 1991, (Tape 1), (CHARLES M. LEHRHAUPT, VC 91-D-042, continued from Page <sup>337</sup> 337)

Mrs. Harris stated that the thing that she believed to be different from the case referenced by Mr. Pammel was the fact that the difference in the front lot lines of the subject property and the adjacent property does not impede the sight distance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-042 by CHARLES M. LEHRHAUPT, under Section 18-401 of the Zoning Ordinance to allow 6.0 foot high fence to remain in front yard, on property located at 1544 Great Falls Street, Tax Map Reference 30-3(1)70, 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 11, 1991, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,503 square feet.
4. The Board does not usually allow 6 foot fences in front yards but when looking at the plat, the majority of the fence is not in the front yard and the setback from the house meets the Ordinance and to force the applicant to take off part of the fence and leave the other is just not going to add to the property.
5. Because of the shape of the property and because the adjacent lot is an empty lot with heavy vegetation, the applicant has a right, for his environment, to want to fence his property from the adjacent 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 so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 ~~338~~<sup>339</sup>, June 11, 1991, (Tape 1), (CHARLES M. LEHRHAUPT, VC 91-D-042, continued from Page ~~338~~)

1. This variance is approved for the fence shown on the plat (dated March 14, 1991) prepared by Runyon, Dudley, Anderson, Associates, Inc. and included with this application, and is not transferable to other land.

Mr. Kelley seconded the motion which carried by a vote of 4-1 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, and Mr. Kelley voting aye; Mr. Paamel voting nay. Mr. Hammack was not present for the vote. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1991. This date shall be deemed to be the final approval date of this variance.

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Page ~~339~~<sup>339</sup>, June 11, 1991, (Tape 1), Scheduled case of:

9:25 A.M. GLENN A. JONES, VC 91-D-043, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 1.5 ft. from side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412) on approx. 10,500 s.f. located at 1106 Carper St., zoned R-3, Bransville District, Tax Map 21-3(9)86.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Jones replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report and stated that the applicant was requesting a 5.5 foot variance in order to construct a carport. Ms. Bettard added that Section 3-307 of the Zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 District and Section 2-412 allows carports to extend 5.0 feet into any minimum side yard but not closer than 5.0 feet to any side lot line; therefore, the applicant could construct the carport 7.0 feet from the side lot line. In closing, Ms. Bettard stated that staff's research revealed that the house on Lot 85 is located approximately 16.0 feet from the shared lot line.

The applicant, Glenn A. Jones, 1106 Carper Street, McLean, Virginia, came forward and explained that he would like to construct a carport large enough to house two vehicles which would allow him to get his vehicles off the street. He stated that he had gotten the idea from similar structures in his neighborhood and he pointed out that his neighbors have no objections.

Mrs. Harris asked the applicant if the other structures he had referenced in his presentation had needed variances. Mr. Jones stated that he did not know, but that the structures are constructed very close to the lot lines.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the resolution.

Mr. Kelley stated that he believed that the character of the zoning district might be changed if the request were granted as he believed that it would set an undesirable precedent.

Mrs. Thonen stated that if the applicant were to reduce the width of the carport to 12.0 feet he could build the carport with a much smaller variance.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-043 by GLENN A. JONES, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 1.5 feet from side lot line, on property located at 1106 Carper Street, Tax Map Reference 21-3(9)86, 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 11, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The property has none of the irregular characteristics. It is extremely regular in size, topography, and shape; therefore, the property has no unusual topographic conditions.

Page 340, June 11, 1991, (Tape 1), (GLENN A. JONES, VC 91-D-043, continued from Page 339)

5. The applicant did not prove a hardship as to why the carport should extend into the side yard required.
6. The carport would be 16.5 feet wide and 32.6 feet long which is an extremely large structure.
7. The applicant could possibly redesign the carport so that it would fit within the normal setbacks and it could adequately serve one car and have extra space at the back.
8. The request is for convenience and not a demonstrable 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. Kelley and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1991.

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Page 340, June 11, 1991, (Tape 1), Action Item:

Approval of the June 4, 1991, Resolutions

Mr. Kelley made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

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Page 340, June 11, 1991,, (Tape 1), Action Item:

Westgate Appeal

Mr. Pammel stated that after reading the memorandum from the Zoning Administrator he agreed that the appeal was not a matter that should be before the Board of Zoning Appeals. He made a motion that the appeal not be accepted.

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

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Page 341, June 11, 1991,, (Tape 1), Action Item:

Approval of Plat for Chesterbrook McLean Little League, SP 90-D-021

Mr. Pammel made a motion to approve the plat as submitted. Mrs. Thonen seconded the motion.

Mrs. Harris stated that she believed that the applicant should be complimented for working so diligently with the staff in arriving at the final plat.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

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Page 341, June 11, 1991,, (Tape 1), Action Item:

Approval of the May 7, 1991, Minutes

Mr. Pammel stated that there appeared to be some confusion with the disposition of the first case and perhaps the pages in his copy of the minutes were out of order. He asked staff to review the minutes and report back to the Board.

Chairman DiGiulian moved that the approval of minutes would be held over until the June 18, 1991 meeting.

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Page 341, June 11, 1991, (Tape 1), Action Item:

Douglas Fague Appeal

Mrs. Harris made a motion to schedule the appeal for August 6, 1991, at 10:30 a.m. as suggested by staff. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mr. Ribble was absent from the meeting.

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Page 341, June 11, 1991, (Tape 1), Action Item:

Reconsideration of Frank and Sherry Alston, VC 91-D-034

Mr. Pammel asked staff to brief the Board as to what the request had been. Lori Greenleaf, Staff Coordinator, explained that the applicant requested approval of a variance to allow a 8.0 foot high fence to remain in the front yard. The Board denied the request on June 4, 1991. She stated that the applicant was requesting that the Board reconsider its decision in light of the pending Zoning Ordinance amendment regarding fences.

Mrs. Thonen stated that she had read the amendment and after reviewing the staff report she did not believe that the applicants met the standards for the 8.0 foot high fence. Chairman DiGiulian pointed out that the amendment had not yet been adopted by the Board of Supervisors. Mrs. Harris stated that the Board could only vote on what the Zoning Ordinance states now and perhaps the applicant could reapply at a later date. She noted that based on the information that was before the Board at the time of the public hearing she would not change her vote.

Mr. Kelley asked if it would be appropriate for the Board to defer decision on the reconsideration until after the Board of Supervisors has acted on the amendment. Chairman DiGiulian stated that the Board could waive the 12-month waiting period for refiling an application but the Board had to act on the request for the reconsideration.

Mr. Pammel made a motion to deny the applicant's request for reconsideration. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Pammel then made a motion to waive the 12-month waiting period for rehearing an application. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

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Page 341, June 11, 1991, (Tape 1), Scheduled case of:

9:35 A.M. SOUTH CONGREGATION OF JEHOVAH'S WITNESSES, ARLINGTON, VA., SPA 89-M-044-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 89-M-044 for church and related facilities to allow reconfiguration of parking, modify transitional screening condition, and increase building size on approx. 1.85319 acres located at 5820 Arnet St. and 3719 Lacy Blvd., zoned R-3, Mason District, Tax Map 61-4((18))17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin, agent for the applicant, replied that it was.

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Michael Jaskiewicz, Staff Coordinator, presented the staff report and noted the location of the property and stated that the property is vacant, and contains a heavy growth of underbrush and numerous trees. The adjacent properties to the north are zoned R-3 but most are owned by VEPCO for utility use, properties to the west and south are also zoned R-3, but are developed with single family detached dwellings. Arnet Street is not a thru-street and deadends at the eastern end of the property.

He stated that the applicant was granted a Special Permit on December 6, 1989, to allow a single-story, 250-seat church and 69-space parking lot on the subject site. Shortly thereafter, the applicant decided to revise the church's floor plan and add approximately 456 square feet of floor area, to reconfigure the parking lot so as to accommodate both the storm water management pond and a vehicular dropoff area near the church's entrance, and to modify the transitional screening requirements previously approved. With this application, staff also discovered a proposed caretaker's apartment inside the proposed church building which was overlooked during the review and approval of the original Special Permit.

Staff was concerned with two aspects of the application, which would be satisfactorily resolved contingent upon the adoption of the Proposed Development Conditions contained in Appendix 1. The first issue was the caretaker's apartment which staff determined was an accessory use and conditioned it to 516 square feet occupied by an employee of the church.

The second issue dealt with the transitional screening modifications. Staff agreed to the reduction in screen yard width and plantings around the stormwater management pond and the proposed foundation plantings near the church structure. Staff did determine that the amount of plantings shown in the areas of Transitional Screening 1 were less intense than that required and conditioned in the previous special permit approval and should be increased to the required level.

Staff believed that, with the inclusion of the Proposed Development Conditions contained in Appendix 1 of the staff report, the application had satisfied the provisions of the Zoning Ordinance; therefore, staff recommended approval.

In response to a question from Mrs. Harris with respect to the parking, Mr. Jaskiewicz replied that the applicant was required to provide 65 parking spaces and they have provided 69. He added that there are 2 parking spaces earmarked for the apartment.

Keith C. Martin, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, represented the applicant. He explained that the request was to amend a special permit plat that had been approved in December 1989 and because the applicant considered the change to be a minor footprint change they had hoped it could be done administratively. Mr. Martin stated that the change was a result of enclosing one of the two areas which now means the area must be calculated in the floor area ratio. He noted that at the time of the original special permit the engineer inadvertently read a notation on the architectural plans as 46 feet when it was actually noted as a 48 foot width, which resulted in the 456 square foot increase. Mr. Martin stated that the request is very similar to what the Board previously approved: the FAR is 0.62 FAR, there are still 69 parking spaces, and the congregation is still limited to 250 members. The caretaker's apartment was included in the original submission which was inadvertently overlooked by staff and because there are excess parking spaces on site, the caretaker's apartment will not impact the number of parking spaces. Mr. Martin explained that the plat before the Board now has the addition of many features and development conditions which were discussed at the previous public hearing such as the vehicular turnaround, the stormwater management pond, and foundations plantings/evergreen hedges. He pointed out that staff did support the modification of Transitional Screening 1 and barrier requirements around the stormwater management pond and around the building in favor of the landscaping plan, subject to the new development conditions being implemented.

Mr. Martin addressed the development conditions by stating that if the development conditions are approved the Transitional Screening 1 requested by staff along the Arnet property and the northern property line will result in an extra row of trees. He stated that would result in a very dense area and another row of trees would make the property look "jungle" like but assured the Board that the applicant will comply if the Board approves the condition. Mr. Martin stated that the parking lot has been reconfigured to provide the vehicular turnaround which will decrease traffic conflicts and the stormwater management pond has been sized. He stated that the church will be a vast improvement to the vacant lot which has recently been operating as an "open air" drug market and has been a concern to the community. (He asked the citizens who were present in support of the request to stand to show their support and several citizens did so.)

In response to a question from Mr. Hammack with regard to the development conditions, Mr. Martin replied that he would like Condition Number 8 changed to read, "shall be modified in accordance with the special permit amendment plat submitted with this application." He stated that staff had been provided with a detailed landscaping plan and that he did not believe there was room to put in an additional row of trees.

Page <sup>343</sup> 343, June 11, 1991, (Tape 1), (SOUTH CONGREGATION OF JEHOVAH'S WITNESSES, ARLINGTON, VA., SPA 89-M-044-1, continued from Page <sup>342</sup> 342)

Mrs. Harris asked which lot line he was referring to and Mr. Martin replied that it was the northern and southern lot lines. (He used the viewgraph to show the location.) A discussion took place between Mrs. Harris and Mr. Martin as to the type of trees that were shown on the plat.

Chairman DiGiulian called for speakers in support of the request and Edward Hicks, 3705 S. George Mason Drive, #17058, Falls Church, Virginia, came forward. He stated that if the request were not approved it would be devastating to the church and asked the Board to approve the request.

Margann Dodge, 8358 Alford Street, McLean, Virginia, asked Mr. Martin if he could describe the stormwater management pond. Mr. Martin stated that the engineer would address the Board.

William G. Hawes, engineer with Matthews, Wheatley & Allison, 3887 Pickett Road, Fairfax, Virginia, explained that it would be basically a small bowl like configuration with a small outlet that would catch water from the north and the parking lot which would reduce the peak flow that would come from the basin discharging the swale that comes off to the south. He stated that the pond would be located just above the cul de sac and would be a grass lined configuration so that, in anything but a storm, it would look like a lawn area.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated June 4, 1991 being implemented. Mr. Kelley modified Condition Number 8 to read:

"Transitional Screening shall be provided in accordance with the plat submitted with this application.

Mr. Pammel stated that in his experience he has learned that it is a lot easier to plant things with space to grow rather than to try to cut out the growth later. He stated that he believed that the applicant had presented a reasonable case to support using the plantings that they have suggested.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 89-M-044-1 by SOUTH CONGREGATION OF JEHOVAH'S WITNESSES, ARLINGTON, VA, under Section 3-303 of the Zoning Ordinance to amend SP 90-M-044 for church and related facilities to allow reconfiguration of parking, modify transitional screening condition, and increase building size, on property located at 5820 Arnet Street, Tax Map Reference 61-4((18))17A, 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 11, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.85319 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 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 amendment plat prepared by Matthews, Wheatley, and Allison dated May 5, 1991 (revised) and approved with this application, as qualified by these development conditions.

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3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit amendment shall be in conformance with the approved Special Permit Amendment plat and these development conditions.
5. The maximum seating capacity in the main area of worship shall be limited to a total of 250 seats with a corresponding minimum of 63 parking spaces. There shall be a maximum of 69 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements.
6. The one-bedroom caretaker's apartment shall be limited to 516 square feet in area. Furthermore, the church shall restrict the occupancy of the apartment to an employee of the church.
7. The parking area shall be designed to provide islands every 10 spaces, landscaped in accordance with Sect. 13-201 of the Zoning Ordinance. Shade trees, the type, size and quantity to be reviewed and approved by the County Arborist, shall be provided within the islands in the parking lot. The purpose of these plantings shall be to provide visual relief from the parking lot and provide shade.
8. Transitional Screening shall be provided in accordance with the plat submitted with this application.
9. Prior to any clearing or grading activities, a tree preservation/replacement plan shall be submitted for review and approval by the County Arborist which shows definitive limits of clearing and grading and identifies, locates, and preserves individual mature, large, and/or specimen trees and tree save areas on the site to the greatest extent possible as determined by the County Arborist. The emphasis shall be given to incorporating these trees into the transitional screen yards shown on the Special Permit Amendment plat dated May 5, 1991. The plan shall also provide for the replacement of any vegetation that will be lost during clearing and grading activities. Replacement trees shall be of a similar species as determined by the County Arborist and shall be generally located in close proximity to those trees which are lost, as may be acceptable to the County Arborist. For the purposes of replacement, deciduous trees shall have a caliper of 2 inches at planting and coniferous trees shall have a planted height of 6 feet. If, during the process of site plan review, it is determined by the County Arborist to be necessary to remove any trees previously designated to be preserved in order to locate utility lines, trails, etc., then an area of additional tree save of equivalent value as determined by the County Arborist may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on site by the County Arborist, then the applicant may elect to replace such trees according to the directions of the County Arborist pursuant to the Public Facilities Manual.
10. Landscaping and building foundation plantings shall be provided along all sides of the proposed building in general conformance with the Special Permit Amendment plat dated May 5, 1991, in order to enhance the visual appearance of the building. These foundation plantings shall be reviewed and approved by the County Arborist at the time of Site Plan review.
11. A geotechnical engineering study shall be provided if deemed necessary by the Department of Environmental Management (DEM) and the recommendations to DEM shall be implemented.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. Stormwater management shall be provided in the form of a detention pond to be placed in general conformance with the Special Permit Amendment plat dated May 5, 1991, as approved by the Director, DEM.
14. A pro-rata share shall be contributed as determined by DEM for present and future road improvements on Arnet Street and Lacy Boulevard.



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15. The height of the proposed structure shall not exceed 18 feet, and its FAR shall not exceed 0.062, as depicted on the Special Permit Amendment plat, dated May 5, 1991.
16. Right-of-way to 25 feet from the existing centerline of Arnet Street necessary for future road improvements and additional right-of-way in accordance with the Public Facilities Manual regarding the provision of a cul-de-sac at the eastern terminus of Arnet Street shall be dedicated for public street purposes and shall convey to the Board of Supervisors (BOS) in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.
17. Right-of-way to 30 feet from the existing centerline of Lacy Boulevard necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors (BOS) in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

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 legally established until this has been accomplished.

Under Sect. 8-015 of the zoning Ordinance, this Special Permit Amendment shall automatically expire, without notice, twenty-four (24) months after the approval date\* of the Special Permit Amendment 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 Amendment. 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 which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 345, June 11, 1991, (Tape 1), Scheduled case of:

9:45 A.M. ROUSE & ASSOCIATES-FAIR OAKS II, AND FAIR OAKS PLAY AND LEARN CHILDREN'S CENTER, SPA 86-P-049-1, appl. under Sect. 4-603 of the Zoning Ordinance to amend SP 86-P-049 for child care center to allow change in hours of operation on approx. 3.86 acres located at 11230 Lee Jackson Memorial Highway, zoned C-6, HC, Providence District, Tax Map 56-2((1))73B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Dykes replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant is requesting approval of an amendment to an existing special permit for a child care center within an office park to allow a change in hours of operation. The previously approved special permit included a condition specifically limiting the hours of operation for the facility from 7:30 a.m. to 6:00 p.m. and the applicant is now requesting a 2 1/2 hour extension in hours of operation from 6:00 a.m. to 7:00 p.m. All other aspects of the facility are to remain as previously approved. As indicated on page 3 of the report, with the implementation of the proposed development conditions, it was staff's judgment that the request met the applicable standards for approval. It was noted that the development conditions from SP 86-P-049 have been carried forward and, no new conditions have been added.

Ms. Dickey noted two minor corrections to Proposed Development Conditions Numbers 4 and 5, adding the wording "limited to". She called the Board's attention to the revised development conditions before them.

In response to a question from Mrs. Harris regarding condition number 6, Ms. Dickey replied that condition had been part of the original special permit. She explained that the other portion of the overall office park had a parking reduction approved but the subject property was not part of that request.

Barbara Dykes, with Play and Learn Services, 1400 Conference Center Drive, Chantilly, Virginia, represented the applicant. She explained that the request was generated by inquiries from parents who were interested in expanded hours.

Mr. Hammack asked the ages of the children who would be dropped off at 6:00 a.m. Ms. Dykes stated that the children who attend the day care center range in ages from 3 months to 5

Page 346, June 11, 1991, (Tape 1), (ROUSE & ASSOCIATES-FAIR OAKS II, AND FAIR OAKS PLAY AND LEARN CHILDREN'S CENTER, SPA 86-P-049-1, continued from page 345)

years and there are no restrictions on what age can be dropped at any particular time. A discussion took place between Mr. Hammack and Ms. Dykes as to whether there are limitations set by the Department of Social Services on the hours children can be dropped off.

There were no speakers, either in support or in opposition, and Chairman DiGiulien closed the public hearing.

Mr. Hammack made a motion to grant the request subject to the revised development conditions dated June 6, 1991 being implemented.

Mrs. Harris asked the maker of the motion if he would be willing to delete the second sentence from condition number 6. Mr. Hammack agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 86-P-049-1 by ROUSE & ASSOCIATES-FAIR OAKS II, AND FAIR OAKS PLAY AND LEARN CHILDREN'S CENTER, under Section 4-603 of the zoning Ordinance to amend SP 86-P-049, on property located at 11230 Lee Jackson Memorial Highway, Tax Map Reference 56-2((1))73B, 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 11, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-6.
3. The area of the lot is 3.86 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 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 specified addition as shown on the plat (prepared by Patton Harris Rust and Associates, dated July 1986 and revised July 31, 1986) submitted with this application and is not transferable to other land. This special permit is approved for 5,665 square feet of interior building/outdoor play area and associated parking and does not encumber the remainder of the 3.86 acres of this site.
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 Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available during the hours of operation of the permitted use.
4. The hours of operation shall be limited to 6:00 A.M. to 7:00 P.M., Monday through Friday.
5. The maximum daily enrollment shall be limited to 74 children.
6. Fourteen (14) on-site parking spaces shall be provided.
7. The outdoor play area shall be no less than 2,115 square feet in size.
8. The outdoor play area shall be fenced with a six (6) foot high solid wood and brick fence that is architecturally compatible with the building, as approved by the Office of Comprehensive Planning at the time of site plan approval.

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

Page 347, June 11, 1991, (Tape 1), (ROUSE & ASSOCIATES-FAIR OAKS II, AND FAIR OAKS PLAY AND LEARN CHILDREN'S CENTER, SPA 86-P-049-1, continued from page 346 )

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 347, June 11, 1991, (Tape 1), Scheduled case of:

9:55 A.M. EDWARD & LILLIAN SREDNICKI, VC 91-L-038, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 19.8 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 11,614 s.f. located at 5912 Dewey Dr., zoned R-4, Lee District, Tax Map 83-3((10))10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Srednicki replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicant was requesting approval to replace an existing carport with an attached garage 19.8 feet from the front lot line. He stated that in the R-4 District a minimum 30.0 foot front yard is required, thus the applicant was requesting a variance of 10.2 feet.

The applicant, Edward F. Srednicki, 5912 Dewey Drive, Alexandria, Virginia, came forward and explained that the existing carport is an eyesore and because of the way the house is sited on the property there is no other location to construct the garage. Mr. Srednicki stated that if he relocated the proposed garage to the other side of the lot he would still need a variance and would be closer to the front lot line. He added that the lot slopes towards Lot 11 and it would not be economically feasible to locate the garage in that portion of the lot.

In response to questions from the Board, Mr. Srednicki replied that the other houses set back the required distance. He explained that Lot 9 is the only other traffic that uses the street in front of his house since Dewey Drive deadends right in front of Lot 9.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request in part for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 4, 1991. Mr. Hammack explained to the applicant that he would have to submit new plats before the resolution could be approved.

(NOTE: The approval date was contingent on the submission of revised plats.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-038 by EDWARD AND LILLIAN SREDNICKI, under Section 18-401 of the Zoning Ordinance to allow addition 19.8 feet (THE BOARD GRANTED 25.8 FEET) from front lot line, on property located at 5912 Dewey Drive, Tax Map Reference 83-3((10))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,614 square feet.
4. The applicant would have difficulty placing a garage of this size on any other part of his property.
5. There is a 10 foot sanitary sewer easement down the south property line.
6. The house is placed to the rear of the property but the Board is not willing to allow the garage to be constructed as far into the front yard as the applicant would have liked because of the setbacks of other buildings on Otley Drive.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 garage 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.

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.

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

\*This decision will be officially filed in the Office of the Board of Zoning Appeals and become final when revised plats are received. That date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:15 a.m. and reconvened at 10:30 a.m.

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10:05 A.M. RONALD & KATHLEEN LAZOR, SP 91-S-012, appl. under Sect. 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow addition and deck 13.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 10,575 s.f. located at 15318 Blueridge View Dr., zoned R-C, WS, Springfield District, Tax Map 53-3((3))27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lazor replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report and stated that the request was for approval to allow a sunroom and deck 13.0 feet from the side lot line. He stated that the applicant was requesting a modification of 6.5 feet for the addition and 7.0 feet for the deck. Mr. Riegler stated that it was staff's judgment that the application met the applicable standards for approval; in particular, the lot had received final plat approval in 1971, which was well before the rezoning to the R-C. Secondly, the proposed construction would have met all the applicable requirements at the time the lot was platted, those were the requirements of the R-2 District developed under the cluster provisions of the Ordinance. Lastly, a site visit by staff did indicate that the proposed side yards are in harmony with

Page 349, June 11, 1991, (Tape 1), (RONALD & KATHLEEN LAZOR, SP 91-8-012, continued from Page 348)

the existing development pattern in the subdivision. In closing, Mr. Riegler stated that staff had no outstanding issues and recommended approval of the request subject to the development conditions.

The applicant, Ronald Lazor, 15318 Blueridge View Drive, Centreville, Virginia, came forward and stated that he was requesting to be permitted to build an addition and deck as a number of his neighbors have done.

In response to a question from Mrs. Harris, Mr. Lazor replied he chose the proposed location because there are two apple trees on the other side of the house as well as the only entrance into the back yard which contains his wood pile.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 4, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-8-012 by RONALD AND KATHLEEN LAZOR, under Section 8-913 of the zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow addition and deck 13.0 feet from side lot line, on property located at 15318 Blueridge View Drive, Tax Map Reference 53-3((3))27, 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 11, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 10,575 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.

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

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

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

1. This special permit is approved for the location of the specific addition and deck shown on the plat submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 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 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 350, June 11, 1991, (Tape 1), Scheduled case of:

10:15 A.M. ANNUAL REVIEW - VULCAN QUARRY, PURSUANT TO SECT. 8-104

Greg Riegler, Staff Coordinator, stated that staff had completed the annual review and there were no significant issues. He added that there were a couple of minor points concerning erosion around one sedimentation pond and the repair of a fence used to mark the Environmental Quality Corridor (EQC) and both had been corrected. Mr. Riegler stated that David Houston, attorney for the quarry, was present if the Board had any questions.

Mrs. Thonen made a motion to approve the Vulcan Quarry 1990 Annual Report. She stated that she did not understand why the applicants had to come back to the Board every year if there were no problems. Mr. Riegler stated that the Zoning Ordinance stipulates that the Zoning Administrator or her designated agent make an annual report to the Board.

It was the consensus of the Board that they did not believe that it was necessary for the applicants to be present unless there were outstanding issues which required that a public hearing be scheduled.

Mrs. Harris seconded the motion. Mr. Pammel disclosed that he had a business relationship with the law firm representing the quarry. The motion carried by a vote of 5-0-1 with Mr. Pammel abstaining. Mr. Ribble was absent from the meeting.

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Page 350, June 11, 1991, (Tape 1), Scheduled case of:

10:25 A.M. ANNUAL REVIEW - LUCKSTONE QUARRY, PURSUANT TO SECT. 8-104

Mrs. Thonen made a motion to approve the Luckstone Quarry 1990 Annual Report. Mr. Kelley seconded the motion.

Greg Riegler, Staff Coordinator, stated that there was a question of revegetation of one berm, which was being corrected. He added that in the report there was commentary about an elevated lead level, which is also being corrected, and the State Water Control Board has indicated that it is too soon to make a determination as to what that might mean. Mr. Riegler stated that staff would be doing a Five Year Review in the next several months and that issue would be addressed at that time if there continues to be a problem.

Mrs. Harris commented that she had an opportunity to discuss the vegetation that had been an issue with the Board during the last Annual Review and he had assured her that it had been planted and was growing well.

There was no further discussion and Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Betsy S. Surtt  
Betsy S. Surtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED:

July 9, 1991

APPROVED:

July 16, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 18, 1991. The following Board Members were present: Vice Chairman John Ribble, Martha Harris, Mary Thonen, Paul Hammack, Robert Kelley, and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:10 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the Action Items.

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Page 351, June 18, 1991, (Tape 1), Action Item:

Approval of Resolutions from June 11, 1991, Hearing

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris and Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 351, June 18, 1991, (Tape 1), Action Item:

Request for Reconsideration  
Edward and Lillian Srednicki, VC 91-L-038

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the applicant was present to answer questions.

Vice Chairman Ribble stated that the applicant believed that the variance granted by the Board was not sufficient for his needs.

Mr. Hammack stated that the applicant had been granted a waiver of the 12 month time limitation for the re-filing of an application.

In response to questions from the Board, Ms. Kelsey stated that Mr. Hammack had made the original motion, Mr. Kelley had seconded the motion which carried by a vote of 4-1 with Chairman DiGiulian voting nay. Ms. Kelsey said that the request had been granted-in-part for a variance 25.8 feet from the front lot line. She noted that a new plat had been required.

Mr. Hammack stated that he could not support a reconsideration. He expressed his belief that the applicants should modify the request before returning to the Board.

Mrs. Harris stated that she could not support the request. She noted that the proposed garage would extend 10.0 feet further into the front yard than the other structures on Nutley Drive.

Mr. Hammack made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 351, June 18, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing  
Toby Cedar, VC 91-V-070

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that although the Board's schedule was heavy, the requested variance was small and would not have to be staffed.

Mrs. Thonen made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining from the vote. Chairman DiGiulian was absent from the meeting.

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Page 351, June 18, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing  
Lot 90A, Springfield Glen, Tax Map 89((4))(24)90

Vice Chairman Ribble noted that an application had not been filed.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that although staff had reservations concerning the procedure, it had agreed to bring the request to the Board. She said that although Section 18-107 of the Zoning Ordinance states that the Board may change the scheduled hearing date of an application, no application had been filed. Ms. Kelsey said that in response to staff's concerns, the applicant had assured staff that an application could be filed within three (3) days.

Page 352, June 18, 1991, (Tape 1), (REQUEST FOR OUT-OF-TURN HEARING, LOT 90A, continued from Page 307)

In response to Mr. Hammack's question as to why the applicant had submitted a request for an Out-of-Turn Hearing but had not filed an application, Ms. Kelsey stated that she did not know.

The Chair ruled that the Board would not consider the request without an application.

(NOTE: This application was administratively withdrawn since it was determined that a variance was not needed.)

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Page 352, June 18, 1991, (Tape 1), Scheduled case of:

8:00 P.M. THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, SP 90-M-090, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 1.2264 acres located at 6901 Columbia Pike, zoned R-2, HC, Mason District, Tax Map 60-4((1))23. (DEFERRED FROM 3/5/91 AT APPLICANT'S REQUEST)

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that a request for deferral had been received from the Planning Commission. He noted that they wished to conduct a public hearing and to submit a recommendation to the Board of Zoning Appeals regarding the case. Mr. Jaskiewicz stated that the applicant's agent and staff concurred with the request. He noted that Supervisor Davis had also expressed his support for the deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Planning Commission would hear the case on July 18, 1991 and suggested a deferral date of June 23, 1991.

Vice Chairman Ribble called for speakers to the deferral and the following citizen came forward.

The President of the Winfield Civic Association, Brent Olson, 4200 Cornell Street, Annandale, addressed the Board and stated that he supported the deferral. He expressed his belief that the applicant and the Civic Association could resolve issues of concern before the next public hearing.

Mr. Hammack made a motion to defer SP 90-M-090 to July 23, 1991, at 10:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the special permit request would have to be reposted.

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Page 352, June 18, 1991, (Tape 1), Scheduled case of:

8:15 P.M. LOGAN ACRES, INC., VC 91-A-040, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 4 lots into 5 lots, proposed Lot 2A having width of 15.44 ft. (100 ft. min. lot width required by Sect. 3-206) on approx. 2.5967 acres located at 5034, 5036, 5038, 5040 Glen Park Rd., zoned R-2, Annandale District, Tax Map 70-3((16))1,2,3,4.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Logan replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that applicant is the owner of vacant Lots 1, 2, 3, and 4, which are zoned R-2, and total approximately 2.5967 acres. He stated that after purchasing the property in 1988, and unsuccessfully attempting to subdivide the property into 5 lots through the variance process later that year, the applicant recorded a by-right subdivision of the subject property to yield four (4) lots.

Mr. Jaskiewicz said that the applicant was presently requesting a variance to the minimum lot width requirement to allow a subdivision of the four (4) lots into five (5) lots. Lots 1, 3A, 4A, and 4B would meet the minimum lot width requirements, whereas proposed Lot 2A would have a lot width of 15.44 feet. Since the Zoning Ordinance requires a minimum lot width of 100.0 feet for interior lots in the R-2 Zoning District, the request was for a variance of 84.56 feet to the minimum lot width requirement for proposed Lot 2A.

Mr. Jaskiewicz noted that the property is surrounded on the west, north, and east by townhouse developments and to the south by the Fairfax County Park Authority's Howey Field Park, which includes baseball and softball facilities.

The applicant, Harold A. Logan, President of Logan Acres, Inc., 7407 Walton Lane, Annandale, Virginia, addressed the Board and stated that the pie shape of the total property and the dedication requirement had caused a hardship which justified the variance. He further stated that the County had arbitrarily required more land dedication from his property than from other property in the area. Mr. Logan explained that the subdivision would meet the density requirement, and the 15.44 feet width of proposed Lot 2A is the only zoning requirement that could not be met.

In response to Mrs. Harris' question regarding the reason for the reconfiguration, Mr. Logan stated that at the last hearing, the Board and staff had conveyed to him that a subdivision



of odd shaped lots was not acceptable. He explained that he had reconfigured the lots so that the lot shapes would be acceptable to the Board. Mr. Logan said that the pie shape of the total property, as well as the sewer consideration, limited the options of the subdivision. Mrs. Harris asked why a portion of the 187.0 feet of Lot 4, could not be used in the reconfiguration. Mr. Logan stated that the position of the houses on the lots, as well as sewer considerations, dictated the divisions.

In response to Mr. Hammack's question regarding subdividing with a cul-de-sac, Mr. Logan stated although it was possible, Lot 1 would not be a buildable lot because the slope would prohibit an on-site septic field.

In response to Vice Chairman Ribble's question regarding the letters the Board had received pertaining to the request, Mr. Logan said he had read the letters but believed that some of them contained errors.

Mr. Hammack asked why Lot 1 was represented on the plat as a buildable and sewerable lot, but would not be buildable if developed with a cul-de-sac. Mr. Logan stated that the house would have to be relocated to accommodate the cul-de-sac.

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

Mr. Hammack made a motion to deny VC 91-A-040 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-A-040 by LOGAN ACRES, INC., under Section 18-401 of the Zoning Ordinance to allow subdivision of 4 lots into 5 lots, proposed Lot 2A having width of 15.44 feet, on property located at 5034, 5036, 5038, 5040 Glen Park Road, Tax Map Reference 70-3((16))1, 2, 3, and 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 June 18, 1991; 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 2.5967 acres.
4. The request came before the Board four years ago and no real changes have been made to the application.
5. The applicant has not justified the need for the variance.
6. The granting of the application would be for a convenience.
7. Even though the applicant has explained that it is incidental to the subdivision, the nature of the application is more of a rezoning to allow a fifth lot.
8. The applicant has reasonable use of the property.
9. The lot could be subdivided with a cul-de-sac which would be a better development.
10. The Board could not support the application for the above reasons and for the reasons stated in the staff report.

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

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

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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.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 1991.

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Page 354, June 18, 1991, (Tape 1), Scheduled case of:

8:25 P.M. R. L. WILSON & ASSOCIATES, INC., SP 91-D-020, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 20.7 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-107) on approx. 1.88 acres located at 1101 Colvin Mill Ct., zoned R-1, Dranesville District, Tax Map 12-4((17))(2)4. (OTH GRANTED)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Donnelly replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant is the owner of the property which is approximately 82,046 square feet in area, is zoned R-1, and is developed with a two-story single family detached dwelling with a proposed multi-level rear deck and gazebo.

Mr. Jaskiewicz stated that the applicant was requesting approval of a special permit for a modification to the minimum rear yard requirement based on an error in building location to allow the existing dwelling to remain 20.7 feet from the rear lot line. Since the Zoning Ordinance requires a minimum rear yard of 25 feet, the request was for a modification of 4.3 feet to the minimum rear yard requirement.

He said that the existing vegetation along the western property line consisted primarily of large deciduous locust trees which staff believed would not provide adequate screening at the ground level. Mr. Jaskiewicz stated that staff believed a row of coniferous trees planted along the property line would provide adequate ground-level screening, given the likelihood of the adjacent parcel's future development with single family detached dwellings. He said that staff had included a proposed development condition addressing the screening.

The applicant's attorney, William E. Donnelly, III, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, addressed the Board and stated that the house was built in accordance with the approved building permit. He explained that when the house was constructed, the County had determined the yard in question was a side yard with a setback of 20.0 feet. Mr. Donnelly explained that after the house was built, an application for a building permit for a deck was filed. Upon reviewing the deck application, the County reversed its decision and determined that the yard in question was a backyard; therefore, the house did not meet the setback requirements.

In response to Mrs. Thonen's question as to how the County could reverse the determination, Mr. Donnelly stated that it was the County's position that an error had been made in determining that the yard in question was a side yard. He expressed his belief that the error had resulted from the odd shape of the lot. Mr. Donnelly stated that while the County had made the initial error, once the error had been discovered the County had extended all the necessary assistance needed to resolve the matter.

In response to Mr. Hammack's question regarding the development conditions, Mr. Donnelly stated that he had no objection to the conditions.

Page 305, June 18, 1991, (Tape 1), (R. L. WILSON & ASSOCIATES, INC., SP 91-D-020, continued from Page 354)

In response to Mrs. Harris' question regarding the development plans for the adjoining property, Mr. Jaskiewicz stated that he knew of no immediate development plans for the property.

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

Mr. Pammel made a motion to grant SP 91-D-020 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated June 11, 1991 with the following modification to Condition 2, "A row of six (6) foot high evergreen (5 trees, 20 feet on center) shall be planted inside the western property line."

Vice Chairman Ribble called for discussion.

Mrs. Thonen stated that she would prefer that the County Arborist' recommendation that evergreen tree height requirements be limited to three (3) feet be adopted. After a brief discussion the Board agreed to require four (4) foot high evergreen trees. Mr. Pammel amended Condition 2, to read "A row of four (4) foot high evergreen (5 trees, 20 feet on center) shall be planted inside the western property line."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-020 by R. L. WILSON AND ASSOCIATES, INC., under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 20.7 feet from rear lot line, on property located at 1101 Colvin Mill Court, Tax Map Reference 12-4((17))(2)4, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 18, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that all of the standards have been met, that this was not the fault of the individual, but it was an error made by the County, and:

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

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

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

Page 356, June 18, 1991, (Tape 1), (R. L. WILSON & ASSOCIATES, INC., SP 91-D-020, continued from Page 355)

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

1. This Special Permit is granted only for the purpose(s), structure(s) and/or uses indicated on the plat dated August 14, 1990, and approved with this application, as qualified by these development conditions.
2. A row of four (4) foot high evergreens (5 trees, 20 feet on center) shall be planted inside the western property line, from a point roughly coinciding with the 284 foot contour interval to a point roughly coinciding with the 272 foot contour interval, as shown on the Grading Plan, approved on February 14, 1990, to the satisfaction of the County Arborist. These trees shall serve to provide ground level screening of the dwelling from the adjacent property.

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

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 which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

Mr. Pammel made a motion to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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As there was no other business to come before the Board, the meeting was adjourned at 8:55 p.m.

Vice Chairman Ribble reopened the public hearing at 9:00 p.m.

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Page 356, June 18, 1991, (Tape 1), Action Item:

Approval of Minutes from May 7, 1991 Hearing

Mr. Pammel made a motion to approve the minutes of May 7, 1991, hearing as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman 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 9:03 p.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

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

SUBMITTED: July 30, 1991

APPROVED: August 6, 1991

The regular meeting of the Board of Zoning Appeals was held in Rooms A and B of the Centerpointe Building, 6th floor, on June 25, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:30 a.m. and Mrs. Thonen gave the invocation.

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Page 351, June 25, 1991, (Tape 1), Board Matter:

Mrs. Thonen said that, on the previous Saturday, she had heard Fred K. Kramer, Director, Office of General Services, talking on the radio to the Board of Supervisors (BOS) about the new Governmental Building and the meetings which were going to be held in the new Board Room. She said that the Supervisors had said that, since the Board Room at the Massey Building was so nice and was already wired for television, they could not understand why someone would not want to use it for a public hearing room, rather than just for regular meetings. Mrs. Thonen said that Mr. Kramer stated that the Board of Zoning Appeals (BZA) had decided that they would rather come out to the Governmental Building to hold their meetings, where the BOS will be holding their meetings. Mrs. Thonen pointed out that the BOS still had first choice and that the continued possibility of the BZA being bumped was not a good situation. She said that, if the BZA continued to meet at the Massey Building, it would not have to worry about being bumped because the BOS would be meeting at the Governmental Building.

Mrs. Thonen made a motion to send a letter to the BOS; James P. Zook, Director, Office of Comprehensive Planning; Anthony H. Griffin, Deputy County Executive for Planning and Development; and Fred K. Kramer. Mrs. Thonen said that, to her knowledge, she had never been asked where she would prefer that the BZA hold its meetings. A poll of the Board members revealed that no one had any knowledge of ever having been asked where they would like to meet.

Mrs. Thonen further made a motion that the BZA continue to meet at the Massey Building Board Room for all the reasons stated above, and so that everyone could depend on the BZA meetings being held at the same place at all times.

Mr. Ribble seconded the motion.

Mr. Kelley said that he agreed with the motion, but he believed that the BZA should request a staff report on the situation first to find out exactly what is planned for the future.

Mr. Pammel said that he also was concerned. He believed that one of the problems was that confusion exists within the community when meetings are changed. He said that two of the local newspapers had the wrong location listed for the BZA meeting for June 25, 1991. He believed it to be imperative that the BZA have a firm and fixed meeting location that will always be advertised correctly.

Mr. Kelley said that he did not oppose the motion, only that he believed the BZA was being too hasty and acting upon sketchy information.

The motion carried by a vote of 4-2; Mrs. Harris and Mr. Kelley voted nay. Mr. Hammack was not present for the vote.

Mrs. Thonen and Mr. Pammel reiterated that they would like the BZA to have a firm and fixed location for every meeting, without the risk of being bumped.

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Page 351, June 25, 1991, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN KELLER AND KATHY REGAN, VC 91-D-027, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 20.0 ft. from front lot line and allow addition 4.6 ft. from side lot line (40 ft. min. front yard and 20 ft. min. side yard required by Sect. 3-107) on approx. 28,218 s.f. located at 2000 Lorraine Avenue, zoned R-1, Dranesville District, Tax Map 41-1((7))52. (DEF. FROM 5/14/91 FOR ADDITIONAL INFORMATION)

Kathy Regan, 2000 Lorraine Avenue, McLean, Virginia, came to the podium and provided the additional information which had been requested by the Board at the May 14, 1991 hearing: a set of plans and a plat showing the location of the tree in the back yard; and a letter regarding the driveway configuration. Ms. Regan described the location of the tree and the contents of the letter which was distributed to the Board.

Mrs. Thonen asked Ms. Regan if she was aware that the Citizens Association had sent a letter to the BZA, unanimously opposing the variance. Ms. Regan replied that she had not been aware of it.

A discussion ensued about whether there was a County Park adjoining the subject property and Ms. Regan said that the Citizens Association had moved to abandon the undeveloped road and turn it into a County Park but, she said, it is a 50 foot right-of-way and she did not believe it could be a park. She said that people cut through the road when they walk their dogs.

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Ms. Regan said that they were considering a circular driveway if the Board would consider it. Mr. Ribble asked, if Johns Road was abandoned, would they end up with half of the road. Ms. Regan said that they would not because the Citizens Association was moving for it to be a 50 foot wide County Park. Mr. Ribble and Mr. Kelley advised Ms. Regan that, if the road is to be abandoned, she would technically have first option.

The Board asked if there was anyone present from the Citizens Association and no one came forward.

Chairman DiGiulian asked if the case was deferred for written comment only. Mr. Jaskiewicz said that it was deferred pending the information requested by the Board; specifically, the submission of a plat showing the location of the trees in the rear yard, approximate diameter of the trees, approximate drip line, and any type of problem the trees would pose for expansion.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, interjected that Mr. Kelley had asked for written information from some of the affected neighbors.

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

Mr. Pammel made a motion to grant-in-part VC 91-D-027 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1991, amending Condition 3 by adding the following: "there shall be only one access on Lorraine Avenue and new plats are required reflecting the Board's decision.

In the midst of making the motion and amending the Proposed Developing Conditions, a discussion ensued regarding the driveway and the carport, wherein Mrs. Thonen said she believed the carport was grandfathered.

**NOTE:** The approval was contingent on the submission of new plats.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-027 by STEPHEN KELLER AND KATHY REGAN, under Section 18-401 of the Zoning Ordinance to allow addition 20.0 ft. from front lot line (**THE BOARD GRANTED THIS**) and allow addition 4.6 ft. from side lot line (**THE BOARD DENIED THIS**), on property located at 2000 Lorraine Avenue, Tax Map Reference 41-1((7))52, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 28,218 square feet.
4. Specifically, with respect to the garage, the property is narrow and, because the definition of the Ordinance requires a corner lot to have two front yards, the applicants are burdened by that requirement. Furthermore, Johns Road is a platted road but, for all intents and purposes, does not serve any purpose and never will serve any purpose, which imposes an additional hardship upon the property because it is a non-existent street. Therefore, those specific conditions have been complied with.
5. Regarding the carport on the south side of the property, the conditions with respect to that particular part of the application have not been met and a strict interpretation and application of the Ordinance will not cause a hardship by denying permission for the enclosure of that carport.

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

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

Page 359, June 25, 1991, (Tape 1), (STEPHEN KELLER AND KATHY REGAN, VC 91-D-027, continued from Page 358 )

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.
3. The existing gravel driveway shall be removed, the curb cut eliminated, and the area revegetated with grasses as part of the approved variance. There shall be only one access on Lorraine Avenue and new plats are required.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 359, June 25, 1991, (Tape 1), Scheduled case of:

9:10 A.M. MICHAEL E. & ELLEN J. RUBIN, VC 91-C-045, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.9 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 9,176 s.f. located at 2902 Mother Well Ct., zoned R-3 (developed cluster), Centreville District, Tax Map 25-3((4))853.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Rubin replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is located generally south of Horsepen Run Stream Valley Park, east of Centreville Road, west of West Ox Road and north of Franklin Farm Road in the Chantilly Highlands subdivision; it contains 9,176 square feet; is zoned R-3; and is developed under the cluster provisions of the Zoning Ordinance with a two-story, single family detached dwelling with an integral two-car garage. He said that the applicants were requesting a variance to the minimum rear yard requirement to permit construction of a one-story addition and an enclosed porch 15.9 feet from the rear lot line. Mr. Jaskiewicz said that, since the Zoning Ordinance requires a minimum rear yard of 25 feet in the R-3 District, the request was for a variance of 9.1 feet. He noted that, adjacent to the rear lot line, there is a 40 foot wide gas pipe line and an AT&T easement.

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Mrs. Thonen asked Mr. Jaskiewicz if the applicants' proposed deck would be far enough away from all the gas lines and received an affirmative answer.

The applicant, Michael E. Rubin, 2902 Mother Well Court, Herndon, Virginia, presented the statement of justification, stating that the subject property backs up to Parcel R, which is owned by the Chantilly Highlands Homeowners Association and that there are two easements on that property: the easement closest to the rear lot line is owned by AT&T, is 16.5 feet wide, and a fiber optic cable runs beneath it; the other easement on Parcel R is owned by Colonial Gas, is 25 feet wide and gas pipe lines run beneath it. Mr. Rubin went on to describe the surrounding property and proposed addition in great detail. He presented photographs to the Board showing an existing screened-in porch located in his neighborhood, similar to the one he was proposing to build, which was built by the same contractor he planned to use. He said that his plans had been approved by the Chantilly Highlands Homeowners Association. Mr. Rubin cited letters from neighbors, as well as a petition signed by every family on his pipestem and families located in and around the cul-de-sac, all in favor of his plan.

Mr. Rubin went into great detail in describing each applicable standard and the reasons he believed he was in compliance.

Mrs. Harris addressed the hardship issue, stating to Mr. Rubin that he could apply for a lesser variance by putting the addition elsewhere. Mr. Rubin pointed out that they wished to put the addition on top of an existing deck.

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

Mrs. Thonen made a motion to grant VC 91-C-045, but stated that she would not read off all of the standards which Mr. Rubin had already recited and covered in his written statement of justification. She said that she agreed that the lot was narrow and shallow and longer on one end than the other. Mrs. Thonen made the approval subject to the Proposed Development Conditions contained in the staff report dated June 18, 1991, as amended: a third condition was added requiring the applicant to plant six (6) three-foot evergreens between the proposed addition and the deck next door on Lot 854.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-045 by MICHAEL E. & ELLEN J. RUBIN under Section 18-401 of the Zoning Ordinance to allow addition 15.9 ft. from rear lot line, on property located at 2902 Mother Well Ct., Tax Map Reference 25-3((4))853, 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 25, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,176 square feet.
4. The lot is narrow and shallow, and longer on one end than the other.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted 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 361, June 25, 1991, (Tape 1), (MICHAEL E. & ELLEN J. RUBIN, VC 91-C-045, continued from Page 360)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Bengtson, DeBell, Elkin & Titus, Ltd., dated March 18, 1991, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.
3. The applicants shall plant six (6) three-foot evergreens between the applicants' proposed addition and the existing deck on Lot 854.

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 Board of Zoning Appeals (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.

Mr. Pammel seconded the motion which carried by a vote of 5-1; Mrs. Harris voted nay. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 361, June 25, 1991, (Tape 1), Scheduled case of:

9:20 A.M. RUTH MARCUS, VC 91-L-047, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 17.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 10,519 s.f. located at 6005 John Roccato Ct., zoned R-3, Lee District, Tax Map 81-3((28))22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Yantis, the applicant's agent, replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is generally south of the Capital Beltway, east of the Richmond, Fredricksburg, and Potomac Railroad easement, west of South Van Dorn Street and north of Franconia Road; it contains 10,519 square feet; is zoned R-3; is developed with a split-level single family detached dwelling with an integral two-car garage; and surrounding lots in the Valley View Estates subdivision are also zoned R-3 and are developed with single family detached dwellings.

Mr. Jaskiewicz said that the applicant was requesting a variance to the minimum rear yard requirement to permit construction of a one-story addition: a family sunroom 17.3 feet from the rear lot line. He said that the applicant's agent had a graphic which illustrated the proposed addition. The Zoning Ordinance requires a minimum rear yard of 25 feet in the R-3 district; thus, the applicant was requesting a variance of 7.7 feet.

Susan K. Yantis, Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, the applicant's agent, distributed and presented a revised statement of justification. Ms. Yantis described the applicant's request along the lines of Mr. Jaskiewicz's presentation.

Page 362, June 25, 1991, (Tape 1), (RUTH MARCUS, VC 91-L-047, continued from Page 361 )

She further added that the application satisfied all of the required standards for variances. Ms. Yantis asserted that the applicant's lot is shallower and smaller than other single family lots in the R-3 district, and she expanded on her assertion. Ms. Yantis described the applicant's proposed addition as reasonable in size and provided the Board with a sketch of the proposed addition for its consideration.

Mrs. Harris asked if there was a family room in the house now and Ms. Yantis said there was not. In answer to a question from Mrs. Harris, Ms. Yantis said that the proposed addition would be off the combined dining/living room area. Mrs. Harris asked if the proposed addition could be moved around the corner, thereby requiring a lesser variance. Ms. Yantis said that is where the garage is located, which would cause an access problem. Mrs. Harris pursued this line of inquiry and was joined by other Board members in suggesting other locations for the proposed addition, but no alternative location was found to be more feasible.

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

Mr. Ribble made a motion to grant VC 91-L-047, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1991, for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-047 by RUTH MARCUS, under Section 18-401 of the Zoning Ordinance to allow addition 17.3 ft. from rear lot line, on property located at 6005 John Roccato Ct., Tax Map Reference 81-3((28))22, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,519 square feet.
4. The lot has exceptional shallowness and exceptional shape.

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

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

Page 363, June 25, 1991, (Tape 1), (RUTH MARCUS, VC 91-L-047, continued from Page 362),

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Dewberry & Davis dated March 20, 1991, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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 Board of Zoning Appeals (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.

Mr. Kelley seconded the motion which carried by a vote of 5-1; Mrs. Harris voted nay. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 363, June 25, 1991, (Tape 1), Scheduled case of:

9:30 A.M. DR. MOTOAKI SATA & NICHOLAS NICOSIA, VC 91-D-044, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard of corner lot (4 ft. max. height permitted by Sect. 10-104) on approx. 13,690 s.f. located at 1872 Kirby Rd., zoned R-3, Dranesville District, Tax Map 41-1((4))5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Nicosia replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator. Ms. Kelsey stated that the subject property is located at the northeast corner of Kirby and Birch Road; is zoned R-3; is developed with a single family dwelling; and is surrounded by other lots also developed with single family dwellings. Ms. Kelsey described the request as captioned above. Ms. Kelsey advised that, because the Zoning Ordinance allows a fence to be only 4 feet in height in a front yard, the applicants were requesting a variance of 2.0 feet.

The applicant, Nicholas Nicosia, 1872 Kirby Road, McLean, Virginia, presented the statement of justification, stating that the fence had been in place since the spring of 1986 and he believed that it did not obstruct the view from either of the two streets on which the lot is located. He stated that the fence was there when he bought the house and was a determining factor in his choice, providing a modicum of security and privacy. Mr. Nicosia said that his neighbors had voiced no opposition to him regarding the fence.

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

Mr. Pammel asked if a permit was ever obtained by either Mr. Nicosia or the prior owner for the existing fence. Mrs. Thonen remarked that a permit was not required for a fence. Jane C. Kelsey, Chief, Special permit and Variance Branch, confirmed that a building permit is not required for a fence. Mr. Pammel then capsulized his understanding that, if a person wished to build a fence, their only responsibility was to check the Code and, if they did not, the fence might be illegal. Mr. Ribble remarked that the Long Fence Company knew better and the Board agreed that this contractor had been before the Board many times.

Mr. Kelley made a motion to grant VC 91-D-044 because the fence was in place when the applicant purchased the property and it would be a hardship to remove it. The motion failed for lack of a second.

Mrs. Harris made a motion to deny VC 91-D-044 for the reasons set forth in the Resolution.

Mrs. Thonen seconded the motion which carried by a vote of 5-1; Mr. Kelley voted nay. Mr. Hammack was not present for the vote.

Mr. Pammel referred to one of the photographs submitted for consideration and said he detected an obstruction of the view.

Page 364, June 25, 1991, (Tape 1), (DR. MOTOAKI SATA & NICHOLAS NICOSIA, VC 91-D-044, continued from Page 363)

Mrs. Harris made a motion to waive the twelve-month waiting period for rehearing. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hamneck was not present for the vote.

Mr. Nicosia did not understand the twelve-month waiver process and Mrs. Harris explained it to him.

Mr. Nicosia inquired about the immediate effect of the motions and Chairman DiGiulian said he believed that the waiver of the twelve-month waiting period put a hold on the necessity of any action by Mr. Nicosia toward modifying the fence height. The Board discussed the fact that a new amendment was under consideration regarding fences, which might have some bearing on this situation. Mr. Pammel advised Mr. Nicosia that he would not be precluded from modifying his request in the interim.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-044 by DR. MOTOAKI SATA & NICHOLAS NICOSIA, under Section 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard of corner lot, on property located at 1872 Kirby Road, Tax Map Reference 41-1((4))5, 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 25, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,690 square feet.
4. The subject property does not have any of the characteristics required for a variance and is very similar to surrounding properties.
5. There is no topographic reason why the 6 foot fence would be warranted.
6. Strict application of the Zoning Ordinance would not effectively prohibit or unreasonably restrict all reasonable use of the property.
7. There is no topographic hardship claimed. The hardship claimed is safety of the children and a 4 foot high fence would provide the same degree of safety as a 6 foot high fence.
8. A 4 foot high fence on this corner lot would allow better visibility, and would be more feasible especially since there are three streets coming together very close to the site.

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 365, June 25, 1991, (Tape 1), (DR. MOTOAKI SATA & NICHOLAS NICOSIA, VC 91-D-044, continued from Page 364)

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 which carried by a vote of 5-1; Mr. Kelley voted nay. Mr. Hammack was not present for the vote.

Mr. Kelley made a motion to waive the twelve-month waiting period for rehearing. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991. This date shall be deemed to be the final decision date of this variance.

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Page 365, June 25, 1991, (Tape 1), Scheduled case of:

9:40 A.M. HARVEY G. AND JATON L. WEST, VC 91-S-019, appl. under Sect. 18-401 of the zoning Ordinance to allow accessory use to cover more than 30% of minimum required rear yard (no more than 30% coverage allowed by Sect. 10-103) on approx. 11,007 s.f. located at 11313 Nancy Ann Way, zoned R-3, WS, Springfield District, Tax Map 56-2(8)18.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. West replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator, stating that the subject property is located west of Shirley Gate Road; is zoned R-3; is abutted on the north, east, and west by other lots in the Deerfield Forest subdivision which are also developed with single family dwellings; the property to the south is zoned R-1 and developed with single family dwellings. Ms. Kelsey said that the applicants were requesting a variance to permit more than 30% coverage of the minimum required rear yard by an accessory use.

Ms. Kelsey stated that the accessory use is an existing multi-purpose court which is approximately 28 feet by 67 feet and covers approximately 73% of the existing rear yard. She said that Section 10-103 does not permit more than 30% of the required rear yard to be covered; thus, a variance of approximately 45% of the maximum coverage was being requested. Ms. Kelsey noted that, at the time of the writing of the staff report, there were other structures on the property which were in violation of the Zoning Ordinance. She said that, according to the applicants' statement, those structures are not part of the application and will be removed to remedy the violation. Ms. Kelsey deferred to the applicant for an explanation of this point.

The applicant, Harvey G. West, 11313 Nancy Ann Way, Fairfax, Virginia, presented the statement of justification, stating that his intention was to provide a place for his son and his friends to play in their neighborhood, because there are no recreational facilities in their small community. Mr. West said that they had made a good faith effort to follow the rules and had submitted an application to the Deerfield Forest Homeowners Association's Architectural Review Committee. He said that the Committee had not met to discuss his application so, according to the rules of the Association, it had been considered approved because there was no disapproval within thirty days. Mr. West said that his contractor had discussed the plan with the County and referred to a letter from Melinda Artman, Deputy Zoning Administrator for the Permit, Plan Review Branch, which had stated that a concrete slab does not need a permit because it is flush with the ground and is not considered to be a structure. Mr. West said that, after having poured the slab, the neighbor on the east side had complained about drainage and Mr. Setliff, zoning inspector, had come out to investigate the situation and cited Mr. West for three violations: (1) for exceeding 30% coverage of rear the lot, (2) the light, and (3) the fence. Mr. West said the matter had been reviewed by the Architectural Review Committee, and their neighbor who is the chairman of that committee, and the Wests had agreed to remove the light. They had put in a fence and had planted vines to block the light; but the neighbors had not liked it, so they had removed it. He said that they also had agreed to reduce the height of the backstop. Mr. West said that he had asked at that time if there were any more problems and had been told, "no."

Page ~~346~~ 345, June 25, 1991, (Tape 1), (HARVEY G. AND JATON L. WEST, VC 91-S-019, continued from Page ~~345~~ )

Mr. West agreed that he had 73% coverage of the lot and said that his main problem is that the removal of the court would cost an additional \$15,000 to \$20,000, so they were seeking relief on that basis. Mr. and Mrs. West said that there are 41 houses in Deerfield Forest and they had 35 signatures supporting their application.

Mrs. Thonen asked if the next door neighbors on each side and behind them had all signed and Mr. West said that two of the three signed the petition; the one neighbor who did not sign is the neighbor on Lot 19, who had prompted the investigation and who would be most adversely affected.

Mrs. West said that the only complaint which the neighbors had made to them had been about the ten-foot mesh fence they had put up to catch the balls. She said that they had taken that down; then, there had been a complaint about the light and they had agreed to take that down after the hearing and replace it with a light which is only three feet tall and shines downward.

Mrs. Harris remarked that any neighbors could easily see the court from the upstairs level of their homes, so the six-foot high fence would not offer any relief from house to house, only from yard to yard. Mr. West said that they could plant bamboo or something similar in the three foot area around the court.

Mr. West said that the original complaint had been about drainage. He said that they had installed PBC pipe beneath the court to carry water away to a dry well in the front part of the yard because they had water sitting in the back yard before they put in the court.

Mrs. West said that it would cost more to take the court out than it did to put the court in, which would cause them to lose their house. She said she had thought they were doing all that was necessary by checking with the Architectural review committee and the zoning Section.

There were no speakers in support of the application.

The following people spoke in opposition to the application: Edward Miller, 11309 Nancy Ann Way, Fairfax, Virginia; Catherine Miller, 11309 Nancy Ann Way, Fairfax, Virginia; and James E. Crockett, 11305 Nancy Ann Way, Fairfax, Virginia. Mr. Miller pointed out that three of the neighbors who had not signed the petition in favor of the application are owners of adjacent properties, which are impacted to a greater degree. Mr. Miller said that the neighbors who had signed are not severely impacted by the Wests' situation by reason of proximity or screening. Some of the concerns of those in opposition were the number of children who used the facilities in question; the intrusion of the light, noise, balls and game participants into the adjacent properties; the applicant's have violated the 30% restriction on use of land; the lack of appropriate buffers; the applicants do not meet any of the required standards; diminishment of neighboring property values; setting a precedent; and the presence of a condition which would have precluded them from purchasing the property if it had been there initially.

In their rebuttal, Mr. and Mrs. West stated that the court was not ordinarily used without supervision and that they had tried to comply with all the requests put to them by the neighbors.

Mrs. Thonen asked staff what made this an accessory structure and Ms. Kelsey explained that it was an accessory use and quoted paragraph 3 of Section 10-103, stating, "...all uses and structures accessory to single family detached dwellings, to include those extensions permitted by Section 2-412..." which is decks "...shall cover no more than 30% of the area of the minimum required rear yard..." is the Section under which the applicants were requesting a variance.

Mrs. Harris asked the applicants how the strict application of the Zoning Ordinance prohibited their use of their back yard. She stated that her children and many other children played in their back yards without benefit of a concrete court. Mrs. Harris wanted to know how compliance with the Zoning Ordinance would effectively prohibit all use of the applicants' back yard. Mr. West said that it would not and Mrs. West said that, if they had known about the existence of the Ordinance before, they would have done something completely different. Both of the applicants claimed ignorance of the Ordinance as the cause of their problem.

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

Mr. Pammel asked Ms. Kelsey, hypothetically, if he desired to locate a concrete patio on his property, assuming either a single family or townhouse dwelling, was he restricted to cover only 30%. Ms. Kelsey referred to Melinda Artman's letter addressed to Dale Hendrickson, Sport Court of Washington, D.C., indicating that, "... a basketball hoop, standard and cement slab does not need a building permit...." Ms. Artman went on to say, however, "...Please be advised that the Zoning Ordinance does have location requirements pertaining to basketball hoops...." and she enclosed a copy of Paragraph 11 of Section 10-104 of the Zoning Ordinance. Ms. Kelsey said she did not know why Ms. Artman did not address the particular paragraph and, since the case was handled by Ms. Bettard, she was not sure if Ms. Bettard had

discussed the subject with Ms. Artman; however, Ms. Kelsey could not guess why it was not addressed in the letter. It was Ms. Kelsey's understanding that even a concrete slab patio in the back yard had to meet the location requirements; however, she could not answer the question comfortably because she had not discussed it with the Zoning Administrator.

Mrs. Pammel said that he had just recently asked this particular question of staff and was told that, as long as the structure was grade level, it was not considered to be a structure, did not require a building permit, and could cover the entire area. He said he was speaking of the rear yard of a townhouse, but a deck and/or a patio can, in fact, cover the entire rear yard. Ms. Kelsey said that her office had, in the past, received applications for a patio, and there is no definition in the Ordinance of a concrete patio, but there is a definition of "deck," which had been brought to the Board, stating that a variance was required; and, in the case of it being already in place, a special permit was required to allow it to remain. Ms. Kelsey stressed that it was just a concrete patio on the side of a house to which she was referring, and it was the most recent example which she could remember. Ms. Kelsey suggested that, to have an exact answer, the Board should defer the case for a week so that she could go to the Zoning Administrator and ask for an opinion. Mr. Pammel said that he believed it was important to get an opinion from the Zoning Administrator because he knew of situations where much of the rear yard was developed into patios and other types of structures for the enjoyment of the property owners, and he was not sure that it was the intention of the Ordinance to provide that one could only cover 30% and the rest of the area had to remain open. Chairman DiGiulian said that Mr. Pammel's point was well-taken and asked what use the remaining 70% of the property was restricted to. The discussion continued along these lines, with various examples being given of covering large portions of a lot for tennis courts, Japanese gardens, etc.

Chairman DiGiulian remarked that, as far as use was concerned, the applicants' property could be used for the same purposes whether they had concrete or grass.

Mr. Pammel asked if the paved surface could be treated as a patio and, as such, would it cease to be under the restrictions of the 30% coverage. Chairman DiGiulian asked, if the patio were not there, could the applicants use that much area of the rear yard for the same purposes.

Mrs. Thonen made a motion to defer VC 91-S-019, to July 23, 1991 at 10:45 a.m., for decision only, in order for staff to obtain an written interpretation from the Zoning Administrator. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Mr. West asked the Board if he and his wife were required to come back before the Board on July 23, 1991 and Chairman DiGiulian said he thought that it would do no harm for them to be there.

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Page <sup>367</sup> 367, June 25, 1991, (Tape 2), Scheduled case of:

9:50 A.M. JOHN & BEVERLEY SHARRARD, VC 91-P-046, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-407) on approx. 7,300 s.f. located at 2209 Goldentree Way, zoned R-4 (developed cluster), Providence District, Tax Map 39-3((42))39.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Sharrard replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator, stating that the lot is north of Silentree Drive on the east side of Goldentree Way, is zoned R-4, and is developed under the cluster provisions of the Ordinance with single family dwellings. Ms. Kelsey pointed out that the cluster provision permits smaller lot sizes, provided there is open space within the subdivision, and other amenities. She said that the applicants were requesting a variance to allow the construction of an addition, 14 feet by 56 feet, to be located 21.5 feet from the rear lot line and, since the Zoning Ordinance requires a minimum rear yard of 25 feet, a variance of 3.5 feet was being requested.

Ms. Kelsey referred to the plat, and asked the Board to note that the proposed deck addition would extend the full length of the house and would be 8 feet from the side lot line.

The applicant, John Sharrard, 2209 Goldentree Way, Vienna, Virginia, presented the statement of justification, stating that staff had adequately provided the background, so he did not intend to read the entire statement. He said that the depth of the lot did not permit them to build the desired size structure within the 25 foot requirement. Mr. Sharrard said that they planned to build a specialized bedroom and bathing area to allow them to care for their multiple-handicapped child. He said that they could not build an adequate facility within the existing constraints of the Ordinance and, due to the lot size, they could not put the structure on either side of the house, so there was no other place where they could build the structure. Mr. Sharrard pointed out that there were no residences behind the house as that

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property had just been deeded to the Park Authority and he believed the Park Authority had no plans for it. Mrs. Thonen remarked that the plat said the property belonged to the Housing Authority and Mr. Sharrard said that, when he sent out the notices, he was able to confirm that the Fairfax County Park Authority did control that land and that they had no current plans for development of the land.

Mrs. Harris referred to the written statement of justification, wherein it was stated that the applicants proposed to use part of the addition for the bedroom and bathroom and part was designated for another use. She asked Mr. Sharrard to delineate the parts of the addition and their proposed uses. Mr. Sharrard said that the addition would be comprised of a little over 700 square feet of space, of which approximately 400 would be directly in response to the needs of caring for their daughter. He said that a portion of the addition, approximately 10 feet by 12 feet, would be a storage area for a number of things now in their garage, in order to make room for a wheel chair rail to provide for transporting their daughter between the car and the house. Mr. Sharrard went on to explain the plans for the different parts of the addition, tying them into interfacing with the dwelling.

Mrs. Harris asked Mr. Sharrard why he could not reduce the size of the addition by 4.5 feet and avoid the need for the variance. Mr. Sharrard said that the architect explored many different combinations in order to come up with a feasible plan and this was the best plan available; keeping within the 25 feet requirement would make the family room 9.5 feet wide, which would be exceedingly constraining. Mr. Sharrard said that having the variance denied would force them to move to another house, which would impact severely on their lives because of community ties involving the other children's activities, church, and schools.

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

Mr. Pammel made a motion to grant VC 91-P-046, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1991, because the applicants had met the nine criteria, particularly with respect to the shallowness, as this is an extremely shallow lot.

Mrs. Thonen seconded the motion because the neighbor adjoining the applicants' property had expressed no opposition, and the property backs up to the Park Authority, so it appeared to her that the applicants would not be intruding upon the neighbors; also, she did not believe that there was any another place where the addition could go.

The applicant requested a waiver of the eight-day limitation and the Board took action to grant it.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-046 by JOHN & BEVERLEY SHARRARD, under Section 18-401 of the Zoning Ordinance to allow addition 21.5 ft. from rear lot line, on property located at 2209 Goldentree Way, Tax Map Reference 39-3(42)39, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4 (developed cluster).
3. The area of the lot is 7,300 square feet.
4. The applicants have met the nine criteria, particularly with respect to the shallowness, as this is an extremely shallow 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.



Page <sup>369</sup> 369, June 25, 1991, (Tape 2), (JOHN & BEVERLEY SHARRARD, VC 91-P-046, continued from Page <sup>368</sup> 368)

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

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

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

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

1. This variance is approved for the location of the addition to the dwelling shown on the plat (dated March 4, 1991) prepared by Huntley, Nyce, and Associates, and submitted with this application.
2. A Building Permit shall be obtained prior to any construction.

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.

Mrs. Thonen seconded the motion which carried by a vote of 5-1. Mrs. Harris voted nay. Mr. Hammack was not present for the vote.

Mrs. Thonen made a motion to waive the eight-day limitation. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for he vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 11:17 a.m. and reconvened at 11:30 a.m.

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Page <sup>369</sup> 369, June 25, 1991, (Tape 2), Scheduled case of:

10:00 A.M. DEBORAH TESS CONN, SP 91-P-013, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 16,669 s.f. located at 7300 Timber Lane, zoned R-4, Providence District, Tax Map 50-1((7))48.

Chairman DiGiulien called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Conn replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator, stating that the property is located on the north side of Timber Lane, generally east of West Street; is zoned R-4 and developed with a single family detached dwelling; surrounding properties are also zoned R-4 and developed with single family detached dwellings; the lot is triangular in shape and is contiguous to six other lots.

Ms. Kelsey said that the applicant was requesting approval of two proposed additions to the dwelling: a second-story addition of 444 square feet to be added to the rear of the dwelling; a second addition to the north and east of the dwelling will include a basement of

Page 370, June 25, 1991, (Tape 2), (DEBORAH TESS CONN, SP 91-P-013, continued from Page 369)

642 square feet and an accessory dwelling unit of 1,114 square feet. She said that the proposed accessory dwelling unit would be located on the main floor of the addition; the existing twelve foot driveway is proposed to be widened an additional twelve feet to provide additional parking for the accessory dwelling unit; and Section 8-918 of the Zoning Ordinance stipulates the additional standards by which an application of this type must be reviewed. Ms. Kelsey said that, based upon the information which had been presented by the applicant's statement of justification and obtained through a site visit by staff, staff had concluded that the application met the Standards for the special permit, and recommended approval in accordance with the Development Conditions contained in the staff report. The justification of how staff believed the Standards had been met were contained on pages 3 and 4 of the staff report.

The applicant, Deborah Tess Conn, 7300 Timber Lane, Falls Church, Virginia, presented the statement of justification, stating that she wished to establish an accessory dwelling unit for her seventy-five-year-old, widowed mother in the home owned by her husband and herself. She said that the proposed addition would not violate any of the setbacks with respect to neighboring property lines and no variances are required; the application had been filed solely to obtain permission to include the components which cause the unit to be considered an accessory dwelling unit, essentially the stove.

Robert Nashed, 2645 South West Street, Falls Church, Virginia, owner of Lot 51 and part of Lot 50, spoke in support of the application because he believed that the triangular shape of the lot created a problem for the applicant. Mr. Powell, 7232 Timber Lane, Falls Church, Virginia, Lot 47, a next-door neighbor, spoke in support of the application and said that Ms. Conn had told him that she would erect a fence between their properties. Mr. Powell also expressed concern, since Ms. Conn's property is at a higher elevation than his, that his property might be adversely affected by runoff. Mrs. Powell of the same address also spoke in favor of the application, but expressed concern about the stove creating a permanent accessory dwelling unit, beyond the use of it by Ms. Conn's mother. Mrs. Powell was assured by Mrs. Harris that the stove would be removed, the dwelling restored to a single family dwelling; and that the situation is clearly defined in the zoning Ordinance.

Mr. Pammel asked Ms. Conn if he had interpreted the plans correctly in that it appeared to him that the proposed addition would provide for a basement. Ms. Conn said that he was correct and that the purpose was to provide access for her mother to her own living quarters, as well as to provide storage space.

Mr. Ribble inquired whether there was a requirement for this type of unit to be recorded in the land records and Jane C. Kelsey, Chief, Special Permit and Variance Branch, replied that the Clerk would, indeed, record this action in the land records.

Mr. Hammack asked Ms. Conn if she had read the Development Conditions and whether she had any problem with them, to which she replied that she had read them and had no problem with them.

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

Mr. Hammack made a motion to grant SP 90-D-013, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1991, with two modifications, because the applicant had presented testimony indicating compliance with the applicable standards. The two modifications were: Conditions 9 - second line, between "components" and "which," he added "including the stove"; condition 11 was added, stating that, "The Clerk shall record the Development Conditions among the land records of Fairfax County."

Mrs. Harris seconded the motion.

Mr. Pammel said he would like to add a Condition 12, stating: "The applicant shall provide a privacy fence along the common boundary of the applicant's property and Lot 47 to allow both property owners to have private use of their property."

Mrs. Thonen said she would have to vote against the motion because she could not vote for removing a stove without knowing more about it.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-013 by DEBORAH TESS CONN, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 7300 Timber Lane, Tax Map Reference 50-1((7))48, 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

Page 371, June 25, 1991, (Tape 2), (DEBORAH TESS CONN, SP 91-P-013, continued from Page 370)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1991; 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 16,669 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 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 by Charles A. Wilson dated March 14, 1991 and received in this office on June 4, 1991. 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. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.
4. The accessory dwelling unit shall occupy no more than 1,114 square feet.
5. The accessory dwelling unit shall contain no more than one bedroom.
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 final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.
9. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components, including the stove, which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.
10. Parking shall consist of three (3) spaces and shall be provided as depicted on the Special Permit Plat (dated March 14, 1991 and received in the office on June 4, 1991).
11. The Clerk shall record the Development Conditions among the land records of Fairfax County, Virginia.
12. The applicant shall provide a privacy fence along the common boundary of the applicant's property and Lot 47 to allow both property owners to have private use of their property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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.

Page 372, June 25, 1991, (Tape 2), (DEBORAH TESS CONN, SP 91-P-013, continued from page 371)

Mrs. Harris seconded the motion which carried by a vote of 6-1. Mrs. Thonen voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 372, June 25, 1991, (Tape 2), Scheduled case of:

10:10 A.M. FISCHER-MACLEOD, SPA 88-L-042-1, appl. under Sects. 8-912 and 4-703 of the Zoning Ordinance to amend SP 88-L-042 to allow additional sign area and redistribution of sign area for regional shopping center and deletion of land area from approx. 79.24 to approx. 79.01 acres located at Springfield Mall, zoned C-7, BC, SC, Lee District, Tax Map 90-2((13))1,2,3,4,4A,5,5A, 5B,6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cohen, the applicant's agent, replied that it was.

Mr. Pammel advised the Board that he would abstain from participation in this application because he has a financial relationship with the law firm handling the case.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the subject property is in Springfield Mall, consists of 79.0 acres of property, is zoned C-7 and is located in the Sign Control Overlay District. He said that the site is presently the subject of two approved special permits for additional sign area; since the most recent approval, the Mall has been expanded; a second parking deck has been added; a Macy's Department Store has been added; and Garfinkels department Store is no longer located in the Mall. Mr. Riegler said that, in conjunction with the changes in Springfield Mall, the applicant proposed to amend the previously approved special permit to allow the removal of approximately 2,400 square feet of existing signage and to permit the addition of approximately 3,425 square feet of new signage. He said the request was threefold: First, under Article 12 of the Zoning Ordinance, the allowable sign area is calculated based on the linear square footage of the Mall; with the expansion of the Mall, 6,210 square feet of sign area is permitted by right; however, Article 12 of the Zoning Ordinance also stipulates that the Board of Zoning Appeals may approve, by special permit, additional sign area up to 125% of the amount allowed by right. Mr. Riegler said that the application proposed 6,739.70 feet of sign area, which is 115% of the by-right amount. Second, Article 12 permits 200 square feet of sign area for a major tenant; the proposed signage for Macy's and the tenant which will replace Garfinkels does exceed the 200 square foot limitation and approval of a special permit amendment is required. Last, in the Sign Control Overlay District, two freestanding signs are permitted by right; this application proposes 11 small directional signs at the various entrances to the Mall which, based on the requirements of Article 12, does require special permit approval. Mr. Riegler said that the site is planned for use as a regional shopping center and it is staff's opinion that the proposed signs are consistent with the planned use of the site and will not generate an adverse visual impact. He said that staff also noted that the 115 percentage of the sign area proposed in the application is less than what was approved in the previous applications, which were 120% and 121%. Mr. Riegler said that staff's opinion was that, with implementation of the Proposed Development Conditions, the use does meet the applicable standards for approval; staff had no outstanding issues and was recommending approval of the use.

Larry A. Cohen, of the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, #900, McLean, Virginia, came forward to represent the applicant and stated that, in light of staff's recommendation and endorsement, he would keep his comments brief and just emphasize a couple of points. Mr. Cohen's comments were pretty much along the lines that Mr. Riegler had already covered. He stated that the addition of new signs and removal of the old signs would actually result in a decrease in the percentage of signing, as covered by Mr. Riegler. Mr. Cohen said that the applicant was aware that the Macy's sign is over the 200 square feet allowed, but the Macy's sign is the standard sign which had been approved for the other Macy's stores located in Fairfax County, such as Tysons II, and was in conformance with their standard signage. He raised one issue: There were a number of tenants at the Mall who would be impacted by the approval of the request, who were ready to open subject to approval of the application and, as such, he requested that, if the Board approved the application, the eight-day waiting period be waived so that they may proceed with their signage.

Mrs. Thonen referred to the ten-foot entrance signs and asked why they were so large. Mr. Cohen said that the curb cuts and entrances are located on a public road, where vehicles might be traveling at a high rate of speed. The signs are large to insure that motorists notice the entrances and, thereby, allow enough time to slow down. Mrs. Thonen said that she found the smaller directional signs to be adequate and that she found the ten-foot high signs for entrance and exit to be excessive in size. Mr. Cohen said that the actual size of the signs was only 40 square feet. Mrs. Harris asked Mr. Cohen what the size was of the signs presently marking the entrance. Mr. Cohen said he did not know the size but, as a result of the application, signs of over 500 square feet had been taken down; one was a "Springfield Mall" sign. Mr. Cohen said that, after studies had been made of the area, the presently proposed signs were recommended to provide adequate notice of the entrances. Mrs. Thonen said that she had received several calls, requesting information, from Springfield Forest Association members, who are most affected in the area. She said that one of the questions

Page 373, June 25, 1991, (Tape 2), (FISCHER-MACLEOD, SPA 88-L-042-1, continued from Page 372)

asked was why it was necessary to have ten-foot entrance and exit signs. Mr. Cohen reiterated that the size of the signs was based upon the ability to serve adequate notice of an entrance, so that motorists could slow down far enough in advance to make the turn into the Mall.

Mr. Hammack asked Mr. Cohen how many of the large signs were actually going to be installed. Mr. Cohen said the signs would be face-to-face and that one sign could be seen from both sides. He said they would be installed at each of the six entrances. He said there are four others which would actually hang over, which are known as "headache bars," at the entrance to the parking deck.

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

Mrs. Harris made a motion to grant SPA 88-L-042-1, subject to the Revised Proposed Development Conditions dated June 24, 1991, for the reasons set forth in the Resolution. Mrs. Harris added that, when she had been at the Mall previously, she had found the signage to be confusing; she believed that the new signage would be beneficial.

The Board waived the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 88-L-042-1 by FISCHER-MACLEOD under Section 8-912 of the Zoning Ordinance to amend SP 88-L-042 to allow additional sign area and redistribution of sign area for regional shopping center and deletion of land area, on property located at Springfield Mall, Tax Map Reference 90-2((13))1,2,3,4,4A,5,5A,5B,6, 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 25, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-7, BC, SC.
3. The area of the lot is 79.01 acres.
4. The change in signage is necessitated by the change in tenants at the Springfield Mall.
5. The present signage creates confusion concerning the location of particular stores.
6. The additional signage will be a favorable addition to the Mall.

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 3,425.16 square feet of new signage. The numbers below refer to those which appear on the plat prepared by LBA Associates approved in conjunction with this application.

A1	28.17 square feet
A2	28.17 square feet
A3	23.87 square feet
A4	23.87 square feet
A5	56.87 square feet
A6	56.87 square feet
A7	56.87 square feet
A8	56.87 square feet
A10	97.50 square feet
A14	90.00 square feet
A15	90.00 square feet
CC	54.00 square feet

GG 456.00 square feet  
 HH 456.00 square feet  
 II 54.00 square feet  
 JJ 6.50 square feet  
 KK 89.30 square feet  
 LL 94.25 square feet  
 MM 57.08 square feet  
 NN 67.25 square feet  
 OO 265.00 square feet  
 PP 265.00 square feet  
 QQ 265.00 square feet  
 RR 40.00 square feet  
 SS 40.00 square feet  
 TT 40.00 square feet  
 UU 40.00 square feet  
 VV 40.00 square feet  
 XX 40.00 square feet  
 B1 54.17 square feet  
 B2 54.17 square feet  
 B3 54.17 square feet  
 B4 21.70 square feet  
 B5 54.17 square feet  
 B5A 54.17 square feet  
 B7 54.17 square feet  
 B8 100 square feet

This special permit is granted for the replacement and new signage indicated by the location and size on the special permit plat submitted with this application, as qualified by these conditions. These conditions shall not preclude the maintenance of existing signs, nor the approval of additional sign permits in accordance with Article 12 for signs which would be allowed by-right at Springfield Mall.

3. The removal of the existing signage and the installation of the new signage shall be coordinated such that at no time during the installation of the approved signs shall the total amount of signage at Springfield Mall exceed 115% of the amount permitted by-right unless an increase is approved by the Board of Zoning Appeals.
4. Sign permits shall be obtained for all signs.
5. 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 legally established until this has been accomplished.

Under Sect. 6-015 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 the signs have been erected, 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 which carried by a vote of 6-0-1. Mr. Pammel abstained.

Mrs. Harris made a motion to waive the eight-day limitation. Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Pammel abstained.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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 Page 374, June 25, 1991, (Tape 2), Scheduled case of:

10:20 A.M. BELL ATLANTIC MOBILE SYSTEMS, INC., A 91-S-003, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the addition of a Bell Atlantic Mobile System (BAMS) facility to Lot 30B requires approval of a special exception amendment by the Board of Supervisors, on approx. 36,424 s.f. located at 6401 Ox Road, zoned C-5, Springfield District, Tax Map 77-3(1)30B.

Mrs. Harris advised the Board that she would abstain from participating in this case because her spouse was employed by Bell Atlantic.

Page <sup>316</sup> 316, June 25, 1991, (Tape 2), (BELL ATLANTIC MOBILE SYSTEMS, INC., A 91-S-003, continued from Page <sup>314</sup> 314)

William E. Shoup, Deputy Zoning Administrator, represented the Zoning Administrator's position in the appeal. He said that the property involved in the appeal is a 36,424 square foot lot located at 6401 Ox Road, on the east side of the intersection of Chapel Road, Wolf Run Shoals Road, and Ox Road; is zoned C-5; and is identified as Tax Map 77-3(1)308.

Mr. Shoup said that this was an appeal of the Zoning Administrator's determination that Condition 2 of Special Exception SE 82-S-042 limits the use of the property to the buildings and uses indicated on the special exception plat; and that the addition of a Bell Atlantic Mobile Systems facility, which is otherwise permitted by right, but not indicated on the special exception plat, requires approval of an amendment to SE 82-S-042.

Mr. Shoup summarized by stating that the subject property is encumbered by SE 82-S-042, which was approved by the Board of Supervisors (BOS) on July 26, 1982; it allowed the subject lot to be created, along with Lot 38 to the south, with each lot having less than the required lot area for the C-5 District and requiring a special exception to be granted by the BOS for a waiver of the minimum lot area requirement. Mr. Shoup said that the appellant wished to locate a telecommunication facility on the property. He said that such a use is permitted in the C-5 District; however, Condition 2 of the special exception application limited that approval for the buildings and uses indicated on the special exception plat; that the telecommunication facility was not represented on the special exception plat; and, based on the provisions of Section 9-004 of the Zoning Ordinance, the use must be in strict accordance with the special exception and no condition may be modified unless an amendment is approved. Mr. Shoup further stated that, given these provisions and the specificity of Condition 2, it was the Zoning Administrator's determination that the proposed telecommunication facility was not permitted on the subject property by right, and that SE 82-S-042 would have to be amended in order to allow the proposed use to be established.

The applicant's agent, Frank W. Stearns, Esquire, with the law firm of Wilkes, Artis, Hedrick & Lane, 11320 Random Hills Road, Suite 600, Fairfax, Virginia, came to the podium to represent the applicant. He said that the critical issue on which he would like to focus was that there were two special uses on the two parcels, but the applicant was not impacting either one of them. He said that there were really three lots involved, because the service station special exception created only 19,000 square feet to the north of the service station, and the applicant would be on a portion of the parcel that would not impact upon that area; thus, he believed the applicant could claim use by right. Mr. Stearns said that the special exception, with which the applicant supposedly came into conflict, was not a special use, but really a waiver of the minimum lot requirement and more in the nature of a variance than a special exception or special permit, which could be granted by the Board of Zoning Appeals (BZA).

Mr. Stearns' opinion was that the Conditions covered the applicant's proposed use. He showed slides to support his argument.

Mr. Stearns said that, when he applied for a site plan waiver, he was informed that an amendment to the special exception was required. It was his belief that the Conditions imposed on the special exception reflected that any other use by right would be permitted, provided that it met the Conditions. He recited the Conditions and detailed why he believed they did not restrict the applicant's proposed addition of a telecommunication facility. The main thrust of his argument was that, even though the telecommunication facility was not on the original site plan, he believed that a by right use did not require an amendment.

The Chair recognized Mr. Hammack, who stated that he could understand the arguments Mr. Stearns had made on behalf of the applicant, but he said he believed that this issue had been disputed several times in the past, and that the Ordinance is very clear about this type of situation. He said that the Zoning Administrator was not treating this situation any differently than any other change to special permit or special exception use. Mr. Hammack said that, under the Ordinance, the addition of a BAMS (Bell Atlantic Mobile Systems) station facility is an enlargement or expansion of the use and, while he agreed with much of what Mr. Stearns said with respect to coordinating the development and, with the special exception Conditions, the BOS may have committed itself to cooperation in the coordination.

Mr. Hammack said that he believed the determination of the Zoning Administrator was correct and, under the circumstances, he would uphold the Zoning Administrator's determination in appeal application A 91-S-003.

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1; Mrs. Harris abstained and Mr. Kelley was not present for the vote.

Chairman DiGiulian declared that the Zoning Administrator's determination had been upheld.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1991.

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Mr. Pammel left the meeting at 12:15 P.M.

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Page 376, June 25, 1991, (Tape 2), Scheduled case of:

10:30 A.M. RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend S-216-71 for a community swim facility to allow addition (deck) on approx. 3.529 acres located at 8633 Buckboard Dr., zoned R-3, Mount Vernon District, Tax Map 102-3(1)42A,43. (OTH GRANTED 5/14/91)

Mr. Ribble made a disclosure that he lived in the neighborhood of the subject recreation association and owned one share of stock in the corporation, but that he was not a member. He said that he intended to participate and vote.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Storck replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the subject property is located generally west of Fort Hunt Road. He said that the applicant was requesting a special permit amendment to permit the construction of a deck structure, adjacent to the two swimming pools; that the deck will be covering an existing concrete pad which already lies along the two pools; that the structure will be ground level, and that there is no proposed increase in membership in conjunction with the addition, nor any request to delete the previously imposed Development Conditions.

Mr. Riegler advised that the site is surrounded by quality vegetation, which staff had deemed to be appropriate to fill the transitional screening requirements. He said that staff had no outstanding issues and recommended approval of the use because the applicant met all of the applicable Zoning Ordinance provisions.

Daniel G. Storck, 8512 Stable Drive, Alexandria, Virginia, represented the applicant and thanked the Board for granting the applicant an out-of-turn hearing so that the addition could be completed in time for the members to use the accommodations this summer. Mr. Storck described the Recreation Association as a small, non-profit neighborhood association with 165 members; it is a non-stock corporation and members have an equity share.

Mr. Storck said that the association had begun major repair work on the pool last winter to replace defective pipes and refurbish the pool surfaces and this application was in conjunction with that project.

In answer to a question from Mrs. Harris, Mr. Storck said that the Association was aware of the Proposed Development Conditions and agreed with them.

In response to Chairman DiGiulian's call for any other speakers, the following people came forward to speak in favor of the application: Catherine Leary, 8629 Buckboard Drive, Alexandria, Virginia; Joanne E. Gaines, 2100 Wittington Boulevard, Alexandria, Virginia; and Patricia E. P. Bennett, 8427 Sulky Court, Alexandria, Virginia. The speakers indicated that the pool and environs were not visible from their lots because of the trees and fence; one person could see the pool area to some degree in the winter time when there was no foliage, but still had no objection to the view; the pool was said to be an asset to the community; the shade and sound absorbing factors associated with the addition to the pool were said to be even greater assets.

There were no other speakers in favor and no one spoke in opposition, so Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SPA 71-V-216-1, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1991.

At the request of the applicant's agent, the Board granted a waiver of the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 71-V-216-1 by RIVERSIDE GARDENS RECREATION ASSOCIATION, under Section 3-303 of the Zoning Ordinance to amend S-216-71 for a community swim facility to allow addition (deck), on property located at 8633 Buckboard Dr., Tax Map Reference 102-3(1)42A,43, 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 25, 1991; and



Page 377, June 25, 1991, (Tape 2), (RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-1, continued from Page 376)

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 3.529 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the zoning Ordinance.

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

1. This approval is granted to the applicant only 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 submitted and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available during the hours of operation of the permitted use.
4. If a building permit is required, this Special Permit will 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 hours of operation shall be limited to 9:00 A.M. to 9:00 P.M.
6. 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. Three (3) weeknight parties may be permitted per year provided written proof is submitted which shows that all contiguous property owners concur.
  - o Shall not extend beyond 12:00 midnight.
  - o The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
  - o Requests shall be approved for one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.
7. Existing vegetation along all lot lines and the existing fencing shall be deemed to satisfy the transitional screening and barrier requirements.
8. There shall be a maximum of 225 family memberships.
9. There shall be a minimum of 31 and a maximum of 75 parking spaces provided on site.
10. All lighting shall be directed on site and the tennis courts shall not be lighted.
11. All noise from loud speakers shall be confined to the site.
12. During discharge of swimming pool waters the following operational procedures shall be implemented:
  - o Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found Fairfax County range in pH from 6.0 to 9.0. In addition, the standards for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
  - o If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

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

Page 378, June 25, 1991, (Tape 2), (RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-1, continued from Page 377 )

Permit through established procedures, and this Special Permit shall not be legally established 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

Mr. Ribble made a motion to waive the eight-day limitation. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 378, June 25, 1991, (Tape 2), Action Item:

Approval of Resolutions for June 18, 1991 Meeting

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

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Page 378, June 25, 1991, (Tape 2), Action Item:

Request for Date and Time  
Foreman of Virginia Appeal  
Clerk Suggested September 10, 1991 at 11:00 a.m.

Mrs. Thonen made a motion to set the date and time as suggested by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

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Page 378, June 25, 1991, (Tape 2), Action Item:

Request for Additional Time  
Northern Virginia Primitive Baptist Church  
SP 88-P-088

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that she had found out that morning that the staff member who had prepared the item had not contacted the applicant to advise that staff was recommending denial. For that reason, Ms. Kelsey asked that the Board defer the item until the following meeting, in order that the applicant might be contacted, to either write a response to the recommendation for denial or be present at the hearing of this request if he so wished.

Chairman DiGiulian questioned why the original request was for a one-year extension and the Board granted only six months, making it necessary for the applicant to come back for the extra six months, for which staff was now recommending denial. Ms. Kelsey advised that the second request was handled by a different staff member who was not aware of what had transpired at the time of the original request. This situation caused the second staff member to believe that the applicant had not encountered the unforeseen circumstances which he had claimed.

Mrs. Thonen made a motion to grant the applicant six months additional time instead of the one year which had been requested. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

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Page 319, June 25, 1991, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
Kamla Patel  
SP 91-D-027

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained to the Board that this request had originally been made back in January of 1991. At that time the applicant had to go to Saudi, Arabia, and her son had not understood what was necessary to make the application acceptable. It was not until the applicant returned that she was able to take the steps necessary to make the application acceptable. The application had been finally accepted on June 23, 1991, and the out-of-turn hearing had been requested.

Mrs. Thonen pointed out that the application had already been scheduled for September 10, 1991, and the full case load appeared to preclude the possibility that the Board could hear it any sooner.

Mrs. Thonen made a motion to deny the request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

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Page 319, June 25, 1991, (Tape 2), Action Item:

Request for Intent to Defer  
Brenda Seidman  
VC 91-D-054

Mrs. Thonen made a motion to issue an Intent to Defer this case on July 9, 1991, when it scheduled to come before the Board. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were not present for the vote.

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Page 319, June 25, 1991, (Tape 2), Information Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to copies of the agendas for the remainder of the year which had been distributed to the Board. Ms. Kelsey noted that the Board had agreed to meet in the evening on the third Tuesday of each month; however, in September, the third Tuesday falls on September 17, 1991, which will actually be the second September meeting of the Board. Because of the August recess, Ms. Kelsey said, there would be six cases which would have to be scheduled for that night meeting if the Board wished to follow the pattern set for night meetings on the third Tuesday of each month. Ms. Kelsey suggested that the Board schedule the night meeting for September 24, rather than September 17, so that more cases might be scheduled on September 17, to fit within the 90-day time frame. Chairman DiGiulian advised that he could not be present if the September 17 meeting were to be changed to a day meeting. Ms. Kelsey then asked the Board for permission to move four new cases which would normally have to be scheduled on September 17 and schedule them for September 24, outside the 90-day time frame. Chairman DiGiulian said that he was agreeable to the change and so ordered. The other members concurred. Mr. Kelley and Mr. Pammel were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Geri B. Bepko  
Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: July 30, 1991

APPROVED: August 6, 1991

W/ark



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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 2, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. 381

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 381, July 2, 1991, (Tape 1), Scheduled case of:

9:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VCA 89-S-071-1, appl. under Sect. 18-401 of the Zoning Ordinance to amend VC 89-S-071 for subdivision of 1 lot into 4 lots to allow amendment of condition regarding right-of-way dedication on approx. 4.43 acres located at 10137 Burke Lake Rd., zoned R-1, Springfield District, Tax Map 87-2((1))14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. David O'Brien, attorney for the applicant, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report prepared by Bernadette Bettard in her absence. He stated that the subject property is approximately 4.43 acres, is zoned R-1, and is located on the north side of Pohick Road. The request was to amend a variance that the Board approved in 1989 subject to a development condition that required a 30 foot right-of-way dedication. The applicant had informed staff that at the final point of engineering it was determined that the right-of-way dedication would result in a lot width for Lot 4 that would not conform with what the BZA had granted. Therefore, the applicant filed a variance amendment requesting that the right-of-way dedication be reduced to 25 feet. Mr. Riegle stated that staff had contacted the Office of Transportation (OT) and a letter from OT to the applicant concurring with the request was contained in the appendix of the staff report.

David P. O'Brien, Esquire, attorney with Hazel & Thomas, P.C., 44084 Riverside Parkway #300, Leesburg, Virginia, began by thanking the BZA for granting the applicant an out of turn hearing. He stated that in 1989 the applicant had requested and received a 15 foot variance to the minimum lot width requirement with a condition that the applicant dedicate a 30 foot right-of-way. Mr. O'Brien explained that while going through the process of finalizing the subdivision, it was determined that the 30 foot right-of-way would actually reduce the width of proposed Lot 4 below the 15 feet. Mr. O'Brien stated that based on that determination the applicant decided to go to OT and ask them to re-evaluate the request for a 30 foot dedication. Following that re-evaluation, OT determined that 25 feet would be adequate and would retain the variance the BZA granted in 1989. Mr. O'Brien asked the BZA to grant the request.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 25, 1991.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Amendment Application VCA 89-S-071-1 by STANLEY MARTIN COMMUNITIES, INC., under Section 18-401 of the Zoning Ordinance to amend VC 89-S-071 for subdivision of 1 lot into 4 lots to allow amendment of condition regarding right-of-way dedication, on property located at 10137 Burke Lake Road, Tax Map Reference 87-2((1))14, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.43 acres.
4. The applicant has satisfied the nine required standards for a variance; specifically, the amendment the applicant is seeking is covered by the application and the previous granting.

Page 382, July 2, 1991, (Tape 1), STANLEY MARTIN COMMUNITIES, INC., VCA 89-S-071-1,  
continued from Page 381 )

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 four lots as shown on the plat submitted with this application.
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 this 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 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. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
4. A 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 plans and approved measures shall be incorporated into the subdivision plan as determined by DEM and implemented as required by DEM.
5. A tree preservation plan shall be submitted to the County Arborist for review and approval prior to clearing and grading of the site in order to preserve to the greatest extent possible existing, mature vegetation, especially between residential structures and the proposed Fairfax County Parkway, so as to provide visual amenity, air quality and noise protection.
6. Right-of-way in the amount of 25 feet from the centerline of Pohick Road and right-of-way for the Fairfax County Parkway shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements. Adequate sight distance shall be assured prior to subdivision approval.

Page 383, July 2, 1991, (Tape 1), STANLEY MARTIN COMMUNITIES, INC., VCA 89-S-071-1,  
continued from Page 382 )

7. All dwellings shall be constructed so as to achieve a maximum interior noise level of 45 dBA Ldn and a maximum exterior level of 65 dBA Ldn shall can be provided for at least a portion of the lot near the dwelling, such as the patio, and shall comply with the attached guidelines for acoustical treatment of residential structures impacted by noise levels of between 65 to 70 dBA Ldn and 70 to 75 dBA Ldn.

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

\*This decision was officially filed in the office of the Board of zoning Appeals and became final on July 10, 1991. This date shall be deemed to be the final approval date of this variance.

Attachment: Acoustical Treatment Guidelines

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**GUIDELINES FOR THE ACOUSTICAL TREATMENT  
OF RESIDENTIAL PROPERTIES AND OTHER  
NOISE SENSITIVE USES WITHIN  
HIGHWAY NOISE IMPACT ZONES OF 65-70 dBA Ldn**

In order to achieve a maximum interior noise level of 45 dBA Ldn, all units located between 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 those 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 the source of the noise.

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Page 383, July 2, 1991, (Tape 1), Action Item:

Approval of June 25, 1991 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 383, July 2, 1991, (Tape 1), Action Item:

Approval of May 23, 1991 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted by the Clerk. 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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Mr. Ribble arrived for the public hearing.

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Page 383, July 2, 1991, (Tape 1), Scheduled case of:

9:15 A.M. HERMAN J. & CHARLINE B. KOENIG, VC 91-D-061, appl. under Sect. 18-401 of the Zoning Ordinance to allow elevated walkway 12.0 ft. from front lot line (30 ft. min. front yard required by sect. 3-307) on approx. 16,193 s.f. located at 6600 Jerry Pl., zoned R-3, Dranesville District, Tax Map 40-2((21))44. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Keonig replied that it was.

Page <sup>384</sup> July 2, 1991, (Tape 1), (HERMAN J. & CHARLINE B. KOENIG, VC 91-D-061, continued from Page <sup>383</sup> )

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval to construct a deck in the form of an elevated walkway 12 feet from the front lot line in a zoning district where 30 feet is required by the Zoning Ordinance, thus the applicants were requesting a variance of 18 feet. She stated the dwelling on adjacent Lot 43, to the northwest, is located approximately 22 feet from the shared side lot line, and the dwelling on adjacent Lot 45, to the south, is located approximately 25 feet from the shared lot line.

The applicant, Herman J. Koenig, 6600 Jerry Place, McLean, Virginia, came forward and stated that on December 16, 1990, his wife had a brain hemorrhage and following three operations and a long recuperation she is in a wheel chair. He stated that he and his wife purchased the subject property in 1965 with financing by the Veterans Administration. Mr. Koenig stated that it had been his understanding that the sidewalk leading to the house would be straight with an outside entrance to the basement but the house was constructed with five steps up and five steps down. When he discussed the possibility of filling in the yard to allow for the straight sidewalk, the association financing the purchase expressed concern about caving in the basement. Mr. Koenig explained that he would like to build the walkway so that his wife could get out of the house in case of a fire if she were home by herself.

In response to a question from Mrs. Harris, Mr. Koenig replied that the walkway would have railings on both sides with the open space beneath the walkway.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 25, 1991.

Mrs. Thonen stated that she would support the motion because the subject property is located on a cul de sac and the adjacent properties are located 22 feet and 25 feet from the shared lot lines.

Mrs. Harris stated that she would also support the motion because of the topographic conditions on the property. She added that the driveway is considerably lower than the house and the only wheel chair access is across the swale in front of the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-061 by HERMAN J. AND CHARLINE B. KOENIG, under Section 18-401 of the Zoning Ordinance to allow deck 12.0 feet from front lot line, on property located at 6600 Jerry Place, Tax Map Reference 40-2((21)44, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,193 square feet.
4. The applicant has met the nine required standards; specifically, in that there is a very clear cut hardship if the individual is not allowed to have the elevated sidewalk structure to gain access into the structure itself.

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

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



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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 deck addition shown on the plat (prepared by Walter E. Phillips, Inc., dated April 30, 1991 and revised May 9, 1991) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page <sup>385</sup> 385, July 2, 1991, (Tape 1), Scheduled case of:

9:25 A.M. LARRY A. TOLSON, SP 91-S-014, appl. under Sect. 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow addition (deck) 12.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 10,500 s.f. located at 4333 Silas Hutchinson Dr., zoned R-C, WS, Springfield District, Tax Map 33-4((2))227A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tolson replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the property is located south of Lee Jackson Memorial Highway (Rt.50) and east of Pleasant Valley Road; is zoned R-C and WS, and is developed with a single family detached dwelling. The surrounding lots are also zoned R-C and WS and are developed with single family detached dwellings.

She stated that the applicant was requesting approval to permit a reduction in the minimum yard requirements in the R-C District to allow construction of a deck addition 12.0 ft. from the side lot line on the south. Section 3-C07 of the Zoning Ordinance requires a minimum 20.0 foot side yard in the R-C District; therefore, the applicant was requesting a modification of 8.0 feet to the minimum side yard requirement. Ms. Dickey stated it was staff's judgment that the request met the applicable standards for approval. She noted that the dwelling on adjacent Lot 228A is approximately 16.0 feet from the shared lot line.

Larry A. Tolson, 4333 Silas Hutchinson Drive, Chantilly, Virginia, stated that he would like to build a deck to the right of the property which would prevent him from having to cover the patio and would give him full advantage of the back yard.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Page 386, July 2, 1991, (Tape 1), (LARRY A. TOLSON, SP 91-S-014, continued from Page 385)

Mrs. Thonen made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 25, 1991.

Mrs. Harris stated that if the house had been placed perpendicular to the lot lines the applicant would probably not have needed a variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-014 by LARRY A. TOLSON, under Section 8-913 of the of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to allow addition (deck) 12.0 feet from side lot line, on property located at 4333 Silas Hutchinson Drive, Tax Map Reference 33-4(2)22A, 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 2, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 10,500 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.

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

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

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

1. This special permit is approved for the location of the specific deck addition shown on the plat submitted with this application (prepared by Dewberry and Davis, dated July 7, 1987) and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.
3. The deck addition shall be architecturally compatible with the existing structure.

Under Sect. 18-407 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 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1991. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 9:30 a.m. and reconvened at 9:45 a.m.

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Page 387, July 2, 1991, (Tape 1), Scheduled case of:

9:35 A.M. DAVID R. CLIFFORD, VC 91-P-048, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure 6.0 ft. from rear lot line and 3.0 ft. from side lot line (10 ft. min. side yard, 11.5 ft. min. rear yard required by Sects. 3-407 and 10-104) on approx. 6,250 s.f. located at 2820 Marshall St., zoned R-4, HC, Providence District, Tax Map 50-2((4))58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Clifford replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicant was requesting approval to construct a 11.5 foot high garage 6.0 feet from the rear lot line and 3.0 feet from the side lot line. The applicant was requesting a variance of 7.0 feet to the minimum side yard and 5.0 feet to the minimum rear yard. Mr. Riegle noted that the dwelling on Lot 57 is 12.8 feet from the shared lot line and dwellings on Lots 78 and 79 are 50 feet from the shared lot line.

The applicant, David R. Clifford, 2820 Marshall Street, Falls Church, Virginia, came forward and stated that because of the exceptional narrowness of the property strict application of the Zoning Ordinance would locate the garage in the center of the back yard requiring a sharp offset in the driveway from the side of the house into the garage making it very difficult to maneuver a car into the garage. He stated that a survey of other neighborhood properties with detached garages show that eight out of ten in a two block stretch do not comply with the Ordinance, most of them being located closer to the lot line than what he was requesting. Mr. Clifford stated that he did not believe his request would be detrimental to adjacent properties and asked the Board to grant the request.

In response to questions from the Board, Mr. Clifford replied that he did not know if the garages he had referenced needed variances or not. He agreed that most of the lots were the same size as his with most of the houses being built on one lot.

Mr. Riegle stated that the only variances noted by staff during their research were granted in the '40's. He added that the neighborhood is old and some of the accessory structures could have been constructed under different requirements but none have been granted under the current Ordinance.

Mr. Ribble asked if most of the houses in the area were built on one or two lots and Mr. Riegle stated that he did not know.

In response to a question from Chairman DiGiulian about a structure on Lot 59, Mr. Riegle stated that the applicant had indicated that the structure was a carport.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-048 by DAVID R. CLIFFORD, under Section 18-401 of the zoning Ordinance to allow detached structure 6.0 feet from rear lot line and 3.0 feet from side lot line, on property located at 2820 Marshall Street, Tax Map Reference 50-2((4))58, 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 ; 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, HC.
3. The area of the lot is 6,250 square feet.
4. The lot seems to be quite ordinary, very similar to those in the surrounding area, with no unusual topographic conditions.
5. The strict application of the Ordinance would not produce undue hardship.
6. The applicant testified that he would prefer to locate the structure in the requested area, but from the photographs the subject property appears to be a very flat lot and there was no testimony stating that there was a topographic condition that necessitated the placement of the garage in the requested location.

Page ~~387~~, July 2, 1991, (Tape 1), (DAVID R. CLIFFORD, VC 91-P-048, continued from page ~~387~~)

7. The authorization of the variance would not alleviate a demonstrable hardship and cannot be distinguished from a special privilege or convenience sought by the applicant.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 and Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1991.

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Page ~~388~~, July 2, 1991, (Tape 1), Scheduled case of:

9:45 A.M. THOMAS W. FORD, VC 91-S-049, appl. under Sect. 18-401 of the Zoning Ordinance to allow roofed deck 8.4 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,254 s.f. located at 6148 Ridgemont Dr., zoned R-C, WB, Springfield District, Tax Map 53-1((3))(6)12.

Chairman DiGiuliano called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Ford replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval to construct a gazebo 8.4 feet from the side lot line in a zoning district where 20.0 feet is required; therefore, the applicant was requesting a variance of 11.4 feet. Mr. Riegle noted that based on the structure's height and the fact that it will be roofed, no extension into the side yard is permitted.

In response to a question from Mrs. Harris about the building envelope of the house, Mr. Riegle replied that the subdivision is one that was affected by the rezoning to the R-C District. Mr. Riegle stated that it was his understanding that a settlement was reached which allowed the dwellings to be constructed under the previous R-2 Cluster zoning, but once they were constructed the current yard requirements of the R-C District became applicable. He added that based on when the lot was recorded it was not eligible for the special permit to allow a modification to the minimum side yard requirement.

The applicant, Thomas W. Ford, 6148 Ridgemont Drive, Centreville, Virginia, stated that when he picked out the lot he thought he could have a patio, but the way the house was constructed

Page 389, July 2, 1991, (Tape 1), (THOMAS W. FORD, VC 91-S-049, continued from Page 388)

the patio doors are 4 feet off the ground. Mr. Ford pointed out that lot is extremely narrow in the rear tapering from 92 feet in the front to 58 feet in the rear. He added that if the lot was rectangular a variance would not be needed. Mr. Ford explained that practically every house in the Virginia Run subdivision has a deck, many have multi level decks and he believed that the house would stand out like a "sore thumb" without one. Mr. Ford stated that there is a drainage area to the right of his property that is a 5 acre lot with a 25 to 30 foot wide storm drainage area with "riff raff" in it which generates mosquitoes and that was why he was requesting a screened gazebo.

Mrs. Harris asked if she had understood him to say that he planned to screen in the gazebo and Mr. Ford replied that was correct.

Mr. Ford continued his presentation by stating that he cannot locate the deck on the other side of the house because the basement stairwell is on that side house. He stated that the house on the adjacent lot is only 16 feet from the shared lot line.

In response to questions from Mrs. Harris, Mr. Ford replied that houses have not been constructed on the lots to the right of his property. He stated that he could locate the deck to the southwest but would prefer not to because the house on Lot 11 is so close to the shared lot line it would cut down on the privacy and because he preferred the view from the proposed location.

Mr. Riegler pointed out that the applicant's statement did not reference that the structure would be screened and the Zoning Ordinance does draw a distinguish between a roofed deck and an enclosed structure. He added that if the applicant did intend to screen the structure, it was staff's position that the request was not advertised correctly and subsequently would have to be readvertised.

Mr. Ford stated that he had not been aware that the screening would present a problem and that he would be willing to forgo screening the gazebo.

Mr. Kelley suggested that the Board defer the case for two weeks in order for the applicant to revise his request. A discussion took place between the Board and the applicant about deferring the case.

Mr. Riegler suggested July 23, 1991 at 10:45 a.m. Mr. Kelley so moved. Mr. Ribble seconded the motion.

Chairman DiGiulian polled the audience to determine if there was anyone present to speak to the application. Hearing no reply, he called for the vote and the motion carried by a vote of 7-0.

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Page 389, July 2, 1991, (Tape 1), Scheduled case of:

9:55 A.M. GAIL D. JONES, VC 91-P-052, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.5 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 10,142 s.f. located at 7215 Rice St., zoned R-4, Providence District, Tax Map 50-3((10))7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Jones replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance of 5.5 feet in order to enclose an existing carport 4.5 feet from the side lot line. Mr. Riegler stated that the applicant's property abuts Fairfax County park land.

The applicant, Gail D. Jones, 7215 Rice Street, Falls Church, Virginia, came forward and stated that she would like to enclose the existing carport for a family room. She stated that she cannot build the addition on the other side of the property without a variance and the property in back of the house has a severe slope. Ms. Jones stated that nine of the neighbors on Rice Street have already enclosed their carports.

Chairman DiGiulian asked Ms. Jones when she purchased the property and she said May 30.

There were no speakers, either in support or in opposition.

Mr. Hammack asked staff if the neighbors had needed variances to enclose their carports. Mr. Riegler explained that the variances go back to the '40's and '50's but none have been granted in the area under the current zoning Ordinance.

In response to questions from Mrs. Harris, Ms. Jones replied that she had one vehicle which she would park on the street of the cul-de-sac. She added that she had known that she would be requesting a variance when she purchased the property.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 25, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In variance Application VC 91-P-052 by GAIL D. JONES, under Section 18-401 of the Zoning Ordinance to allow addition 4.5 feet from side lot line, on property located at 7215 Rice Street, Tax Map Reference 50-3(10)7, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1991; 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 10,142 square feet.
4. The applicant has met the nine standards required for a variance.
5. The applicant has an unusual situation in that she has a carport and wants to enclose it for a living space.
6. The existing carport is next door to a park.
7. The subject property slopes in the rear yard.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

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

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.

Mr. Kelley seconded the motion which carried by a vote of 6-1. Mr. Pammel voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 391, July 2, 1991, (Tape 1), Scheduled case of:

10:05 A.M. JEFFREY M. LEPON & CORA YAMAMOTO, VC 91-D-050, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard on corner lot (4 ft. max. height allowed by Sect. 10-104) on approx. 17,115 s.f. located at 1618 Carlin La., zoned R-3, Dranesville District, Tax Map 31-3((40))2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lepon replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the subject property is located east of St. Johns Church, and north of Old Dominion Drive in McLean on the northwest corner of the intersection of Carlin Lane and Linway Terrace. Mr. Jaskiewicz stated that the subject property is developed with a two-story single family detached dwelling with an integral two-car garage. The applicants were requesting a variance to the maximum permitted height for an accessory structure to allow an existing 6.0 foot high fence to remain in one of the two front yards adjacent to Linway Terrace. Since the Zoning Ordinance states that on a corner lot, a fence or wall not exceeding 4.0 feet is permitted, the applicants were requesting a variance of 2.0 feet to the height requirement for the existing fence.

In closing, Mr. Jaskiewicz stated that the proposed Zoning Ordinance Amendment regarding fences addresses lots fronting on arterials and Linway Terrace is not an arterial.

Mrs. Thonen asked if 6 foot high fences were being considered in the pending Zoning Ordinance amendment. Mr. Jaskiewicz stated that the language was written to include fences up to 8 feet.

The applicant, Jeffrey M. Lepon, 1618 Carlin Lane, McLean, Virginia, came forward and stated that he and his wife purchased the property three years ago and shortly thereafter they undertook an extensive landscaping program. He stated that he obtained building permits to construct retaining walls and at that time the fencing was part of the program but the contractor had not understood that an additional permit was required for the fence. Mr. Lepon pointed out that the fence is integrated into a retaining wall and directly behind the fence is a play area for eleven neighborhood children and they would like to keep the fence for safety reasons. He stated that his property is on a heavily traveled street as it has a bus stop, traffic light, and the largest church in McLean. He stated that Linway Terrace is used by Fairfax County emergency vehicles as a direct route to Kirby Road. Mr. Lepon called the Board's attention to affidavits from the abutting property owners attesting to their concerns that the fence be retained and their belief that the fence enhances the neighborhood.

In response to a comment from Mrs. Thonen, Mr. Lepon replied that the reason he and his wife were before the Board was due to a complaint about a black chain link fence on one of the properties. At the time Mr. Jones, Fairfax County Zoning Inspector, was viewing the chain link fence he approached Mr. Lepon and told him there was also a problem with his fence.

Mr. Lepon continued by stating that his property is laid out differently from the neighbors because his house sets high on a slope with thirty steps leading up to the house and there are two retaining walls. He noted that there is not a sight distance problem because of the fence.

In response to questions from the Board, Mr. Lepon used the viewgraph to show that the neighbor's driveway comes out on to Linway Terrace and his comes out on to Carlin Lane. He stated that a lower fence would not block the view of the children playing in the play area.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to defer decision until after the Board of Supervisors has taken action on the pending Zoning Ordinance. Mr. Ribble seconded the motion.

Page 392, July 2, 1991, (Tape 1), (JEFFREY M. LEPON & CORA YAMAMOTO, VC 91-D-050, continued from Page 391)

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Chairman DiGiulian asked staff for a date and time certain. Lori Greenlief, Staff Coordinator, suggested September 17, 1991, at 8:00 p.m.

The motion to defer decision to September 17, 1991, at 8:00 p.m. passed by a vote of 7-0.

Mr. Lapon stated that he would be unable to attend due to a religious holiday.

Ms. Greenlief then suggested September 24, 1991, at 9:00 a.m. Mr. Kelley amended his motion to reflect the new date. The applicant agreed.

Mr. Lapon asked for a clarification as to why the Board wanted to defer decision. Chairman DiGiulian explained that the pending Zoning Ordinance might give the Board more latitude with respect to the height of his fence.

The motion to amend the date to September 24, 1991, at 9:00 a.m. passed by a vote of 7-0.

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Page 392, July 2, 1991, (Tapes 1 and 2), Scheduled case of:

10:15 A.M. JOHN J. MAGILL, A 91-M-006, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that a two story garage on appellant's property is not a permitted accessory use on approx. 9,123 s.f. located at 6934 Westlawn Dr., zoned R-4, Mason District, Tax Map 50-4((17))337.

The appellant, John J. Magill, 6934 Westlawn Drive, Falls Church, Virginia, came forward and distributed photographs and a copy of his presentation to the Board.

He stated that his parents moved into the Westlawn subdivision in 1950 and he still lives there 41 years later with his family. He clarified what he believed to be inaccuracies in the June 20, 1991 memorandum from the Zoning Administrator: 1) the height of the garage is 22.9 feet rather than 26 feet; 2) the family dwelling is 1,584 square feet rather than 910 square feet. Mr. Magill stated that upon learning that the contractor who built the garage had not obtained a building permit he applied for a permit on the advice of Arthur Singer, Zoning Inspector. He stated that he is left with a building that is half finished that he would like to complete and many of the neighbors have signed affidavits stating that they have no objections to the structure. Mr. Magill stated that in order to meet the 10 foot setback he would have to remove an existing tree and the garage would take up most of the back yard. (He called the Board's attention to the photographs.) He then outlined the uses for the structure and disagreed with the Zoning Administrator's determination that his case was similar to that of Gerald Plaucher, A 91-L-004. (A copy of Mr. Magill's prepared statement is contained in the appeal file.) Mr. Magill read a letter from his neighbor at 6934 Westlawn Drive and Supervisor Davis into the record supporting his request.

In response to a question from Mrs. Thonen about comments from the executor of the will stating that she did not want the garage to remain on the property, Mr. Magill replied that prior to the executor inheriting the property she approved of the structure and had signed the affidavit indicating such.

Mr. Pammel stated that it was understanding that Mr. Magill contracted for the structure to be built by a contractor who assured him that he would obtain all the necessary permits and he did not do so. Mr. Magill stated that was correct. Mr. Pammel asked if he had a written contract. Mr. Magill stated that the contractor was someone who walked through the neighborhood and offered to do the work for such a good price that he could not refuse.

The Deputy Zoning Administrator, William E. Shoup, called the Board's attention to the background of the case and the Zoning Administrator's position outlined in the staff report. He stated that there appeared to be a slight discrepancy in the size of the structure but based on the inspections of the property it was considered to be a one story single family detached dwelling and the Zoning Inspector did not see evidence of a second story during site visits; however, the Zoning Inspector did not go inside the dwelling. He called the Board's attention to the photographs which showed that the dwelling has the appearance and was originally constructed as a single story dwelling. Mr. Shoup outlined the background of the case by stating that in February 1991 the Zoning Administrator responded to a complaint about the construction of the garage. It is located approximately 2 feet from the side lot line; however, at this point the side yard is not an issue. The Zoning Administrator took the position that based on the size of the structure in relation to the dwelling it is not a permitted accessory use. To be a permitted accessory structure, the structure has to be in accordance with the definition of an accessory use, meaning it has to be clearly subordinate in purpose, area, and extent to that customarily found in association with the principle use, that being the dwelling. While there may be some discrepancy in size, Mr. Shoup stated that he believed that staff's measurements are pretty close and it was staff's position that the two story garage structure is clearly not subordinate to the dwelling and that it is not customary to find an accessory structure of this size in conjunction with a one story 910 square foot dwelling. Therefore, he stated that it was staff's determination that it does not meet the accessory use definition; therefore, it is not a permitted use in the R-4 District.



Page <sup>393</sup> 393, July 2, 1991, (Tapes 1 and 2), (JOHN J. MAGILL, A 91-M-006, continued from  
Page <sup>392</sup> 392)

Chairman DiGiulian asked if the structure were one story would it be considered an accessory use. Mr. Shoup replied that he believed that it would be because the square footage would be approximately 500 feet, but then there would be the problem with the side yard setback. Chairman DiGiulian stated that he believed that there were two uses involved and asked if two or more uses were allowed on one property. Mr. Shoup replied that there could be but when two uses are in one building it changes how the Zoning Administrator must view the use. He added that there are numerous types of accessory uses and structures that could be permitted in the zoning district. Chairman DiGiulian stated that he believed that the Zoning Administrator had focused on the size of the building rather than the uses and that he read the Ordinance a little bit differently.

A discussion took place among the Board members with respect to how the Ordinance can be interpreted.

Mr. Shoup explained that the applicant could be permitted to have a storage structure in the zoning district on a residential property limited to 200 square feet. But when the third use was added in addition to the 200 square feet to the structure, while separately it may be all right, putting it all together in one structure forced the Zoning Administrator to review the one structure under the definition of "accessory use" and that was why the Zoning Administrator had taken the position set forth in the staff report.

Chairman DiGiulian asked if there was anything in the Zoning Ordinance that limits the size of a garage or structure, specifically the type of the applicant's structure, other than the wording under "accessory uses." Mr. Shoup replied there was no specific language.

There was no further discussion and Chairman DiGiulian called for speakers.

Bruce Brinkman, 6825 Westlawn Drive, Falls Church, Virginia, a neighbor of the appellant, came forward and stated that most of the houses in the neighborhood were small and the homeowners had purchased the houses because that was all they had been able to afford. He stated that approximately 70% of the houses had been added on to and probably 50% of the houses were already two story structures. Mr. Brinkman stated that you could not tell the garage from the other houses because the other structures were two story so it does not really block anything. He stated that he did not know when the Ordinances were set up but most of the houses in the neighborhood have garages, which makes it easier to drive through the streets of the neighborhood, that are right on the property line.

Harry Foxwell, 6932 Westlawn Drive, Falls Church, Virginia, the appellant's next door neighbor, stated that his house was the two story structure that was shown in the photographs. He stated that he had no problem with the garage and believed that it fits into the neighborhood better than the one on Westmoreland Road, which the Westlawn Civic Association and Supervisor Davis have been trying to get something done with for quite awhile. Mr. Foxwell stated that the appellant had built the garage to get his vehicles off the street to alleviate the parking problem and now has a bigger problem because he was "duped" on his contract and the neighbors would like to see the building finished so it will be decent in the neighborhood.

In closing, Mr. Magill stated that the Board could see in the photographs that the upstairs of his house is finished off thus adding to the square footage of his house clearly making the garage subordinate to the principle dwelling.

In response to a question from Mr. Hammack, Mr. Magill stated that the square footage of his house is approximately 1,500 square feet.

Chairman DiGiulian asked if the structure was attached to the house in some way and met the side setback would there be a problem. Mr. Shoup replied that it would then be a part of the house.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that it was a tough case and a close case in many ways. He stated that after looking at the definitions he could see the Zoning Administrator's logic in the application and he had tried to balance it off against the appellant's arguments on the square footage area. He stated that it was a very close call especially knowing that if the structure was attached to the house it would be subject to other zoning requirements. Mr. Hammack stated that he would make a motion to uphold the Zoning Administrator because he believed that the Board had to give weight to the Zoning Administrator's opinion and interpretation and believed that the appellant had failed to show that the Zoning Administrator had erred. He stated that he believed that the Zoning Administrator's application was a reasonable application, in particular in paragraph 1 under accessory uses, the statute clearly states "subordinate to." Mr. Hammack stated that he did not believe that the two story structure was clearly subordinate to the house, and the size of it and the second story, concerned him.

Mr. Hammack then made a motion to uphold the Zoning Administrator's determination in A 91-M-006. Mr. Pammel seconded the motion which carried by a vote of 6-1 with Chairman DiGiulian voting nay.

Page <sup>394</sup> July 2, 1991, (Tapes 1 and 2), (JOHN J. MAGILL, A 91-M-006, continued from  
Page 393 )

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1991.

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Mr. Pammel stated that he would like to request staff to approach Public Affairs to prepare appropriate wording to be added to information brochures warning citizens about obtaining the proper building permits before construction and the fact that they should deal only with reputable contractors. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:57 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John P. DiGiuliano  
John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: July 25, 1991

APPROVED: July 30, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 9, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:17 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 395, July 9, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CARL E. & IOLA M. BURK, VC 91-D-051, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots and outlot, proposed Lot 2 having lot width of 20.0 ft. (200 ft. min. lot width required by Sect. 3-E06) on approx. 4.0613 acres located at 948 Towleston Rd., zoned R-E, Dranesville District, Tax Map 19-2((1))22, 22A.

Mr. Kelley made a motion to pass over the application so that Mr. Hammack could be present for the case. The Chair ruled that the Board would hear the second scheduled case.

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Page 395, July 9, 1991, (Tape 1), Scheduled case of:

9:10 A.M. JAN PASTOR, VC 91-L-053, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 11.2 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,327 s.f. located at 7402 Exmore St., zoned R-3, Lee District, Tax Map 80-3((2))(44)23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Pastor replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to the minimum side yard requirement to permit construction of a one-story addition (carport enclosure) 11.2 feet from the side lot line. Since the zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 zoning District, the request was for a variance of 0.8 feet to the minimum side yard requirement for the proposed addition.

The applicant, Jan Pastor, 7402 Exmore Street, Springfield, Virginia, addressed the Board and stated that he was requesting a minimum variance to enclose the carport. He said that the property was exceptionally narrow, the neighbors had expressed their support for the variance, and there would be no detrimental impact to the community.

In response to Chairman DiGiulian's question as to whether the addition would extend any further into the side yard than the existing carport, Mr. pastor stated that it would not.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-L-053 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated July 2, 1991.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-053 by JAN PASTOR, under Section 18-401 of the Zoning Ordinance to allow addition 11.2 feet from side lot line, on property located at 7402 Exmore Street, Tax Map Reference 80-3((2))(44)23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1991; and

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

1. The applicant is the co-owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,327 square feet.
4. The application has satisfied the nine requirements necessary for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat prepared by Kephart & Co. dated May 14, 1991 (revised), and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 396, July 9, 1991, (Tape 1), Scheduled case of:

9:00 A.M. CARL E. & IOLA M. BURK, VC 91-D-051, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots and outlot, proposed Lot 2 having lot width of 20.0 ft. (200 ft. min. lot width required by Sect. 3-ED6) on approx. 4.0613 acres located at 948 Towlston Rd., zoned R-E, Dranesville District, Tax Map 19-2(1)22, 22A.

(The following is a verbatim transcript of the public hearing.)

CHAIRMAN DIGIULIAN: Now go to the 9 o'clock case, Carl E. and Iola M. Burk, VC 91-D-051. Is the applicant ready in this?

PHIL YATES: Yes, Mr. Chairman (from the audience).

CHAIRMAN DIGIULIAN: Would you step to the microphone and state your name and address for the record?

MR. YATES: My name is Philip G. Yates. I'm with the firm of Dewberry and Davis. I'm here on behalf of the applicant, Carl and Iola Burk.

Page <sup>391</sup> 391, July 9, 1991, (Tape 1), (CARL E. & IOLA M. BURK, VC 91-D-051, continued from Page <sup>390</sup> 390)

**CHAIRMAN DIGIULIAN:** And do you reaffirm the affidavit submitted with the application?

**MR. YATES:** Yes, I do, Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Thank you, location and staff report, please.

**MICHAEL JASKIEWICZ:** Okay, thank you, Mr. Chairman. Staff has attached to the outside of the staff report a copy of a revised statement of justification we received from the applicant after the staff report was sent in for printing. The subject property, Lots 22 and 22A, are outlined in blue and are located in Great Falls in an area north of Leesburg Pike, south of Old Dominion Drive, east of the Difficult Run Stream Valley Park, in west of and fronting on Towlston Road. The surrounding area is characterized by large lots zoned R-E that are developed with single family detached dwellings. The applicants are the owners of Lots 22 and 22A, which are zoned R-E and are approximately 4.0254 acres and 0.0360 acres, respectively, in size. Lot 22 is currently developed with a single family detached dwelling with an integral two-car garage accessing Towlston Road. Lot 22A contains an ingress/egress access easement with an outlet road which currently provides Towlston Road access to three single family detached dwellings, each on an adjacent property. And those are here, here, and up in here. (He used the viewgraph to show location.) The County Tax Reference Map indicates here, that this easement also serves additional lots to the north. Up in this general area. The applicants are requesting a variance to the minimum lot width requirement to allow a subdivision of Lots 22 and 22A into two lots, proposed Lots 1 and 2, and an Outlot. The proposed Outlot will be conveyed to the adjacent property owner of Lot 14, here. Proposed Lot 1 will have a lot width of 282.0 feet and will meet the minimum lot width requirements, whereas proposed Lot 2, which is outlined with the blue dashes here, will have a lot width of 20.0 feet. Since the Zoning Ordinance requires a minimum lot width of 200 feet for interior lots in the R-E Zoning District, this is a request for a variance of 180.0 feet to the minimum lot width requirement for proposed Lot 2. Staff believes that this application does not meet Zoning Ordinance Variance Standards 3, 4, 6, 7, 8, and 9, and these are discussed on pages 4, 5, and 6 of the staff report. Staff believes that the subdivision of land and the creation of a pipestem lot through the variance process could serve as the precedent for future subdivision variances within the Peacock Station Road/Towlston Road community. Several surrounding lots currently exceed the minimum lot size standards of the R-E zoning District. Staff also believes that the applicants have reasonable use of their property since a dwelling already exists on the subject property, and that granting the variance request would allow the applicants the added benefit of selling proposed Lot 2 as a developable lot. This is not a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience. Staff also notes that several letters from surrounding property owners have been received opposing this application, and they are also contained in your package. Staff would be happy to answer any questions the Board might have.

**MRS. THOMEN:** It looks like there's a road here that would feed those properties to the north on the other side of the pipestem, but he's talking about the pipestem serving these people up here. And I don't see why it has to since there is a road up here.

**MS. KELSEY:** Lot 17 doesn't.

**MR. JASKIEWICZ:** I think Lot 17 does not. Lot 17 has the access -- easement, ingress/egress easement across the frontage and I think what you're seeing is these pipestems which feed some of these properties in here.

**MRS. THOMEN:** No, I'm talking about to the other end down there to double circle 5 and double circle 12, 6, and 1, Cheekatink, or whatever the name of it is, I can't read it too good. Well, anyway that's okay, thank you.

**MR. JASKIEWICZ:** Sure.

**CHAIRMAN DIGIULIAN:** Mr. Yates.

**MR. YATES:** Mr. Chairman, Members of the BZA, for the record my name is Philip G. Yates. I'm with the firm of Dewberry and Davis, whose office is located at 8401 Arlington Boulevard, here in Fairfax. I'm here before you this morning on behalf of Carl and Iola Burk who reside at 948 Towlston Road. They are the applicants in the subject case before you. For those who may remember me from days gone by, you will recall that I am a man of few words and I plan to keep my remarks short in this instance as well. We assisted the Burks with filing this application and we did so because in your judgment the application has merit. As you are aware, the application is for a variance to allow the creation of two buildable lots and an outlot from two existing lots of record. As you are aware, the application is for a variance on Towlston Road, which is the site of the residence of Mr. and Mrs. Burk. The property is zoned R-E and it contains 4.06 acres. The variance is to allow the creation of a second lot which will have a lot width of 20 feet, in lieu of the 200 foot requirement specified for interior lots in the R-E District. Access to the proposed lot will be via a 20 foot pipestem that will be located on an existing 16 foot outlet road that currently serves several adjacent lots. Consequently, there will be no additional curb cuts on Towlston Road. As part of the proposed subdivision plan, a 20 foot ingress/egress easement will be recorded to supersede the current 16 foot outlet road. As the proposed lot will be located directly behind the lot that contains the Burk residence, its development with the single family dwelling will be barely noticeable to the community except to the several homeowners that live on adjacent lots who will share the common driveway. In short, we have reviewed the application in the context of the required standards for variances that are set forth in Section 18-404 of the zoning Ordinance and in our humble judgment we feel that the standards are satisfied. We have presented a written statement to this effect which is set forth as Appendix 3 in the staff report and we stand by that statement. We don't think any further elaboration is needed. I would note that staff has expressed a different judgment in its staff report and suggested that several of the standards are not satisfied by this particular application. One of the underlying concerns of staff seems to be the precedential implication that the approval of this application may have on nearby properties suggesting

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that the owners of other lots in the vicinity that contain 4 acres or more may also want to subdivide their properties into two 2-acre lots. Without debating this concern, I would only like to point out that two of the 8 lots that the staff refers to as being within 250 yards of the subject property, two of the 8 could indeed be subdivided today by right with no requirement for a variance. So, we question the current concern over the precedential implications. Is the concern the fact that this might prompt further subdivision, or prompt the need for further variances? There is one other major consideration that serves to justify this particular application that I would like to recall to your attention. As presented in our written statement filed with the application, Mr. Burk was very close in 1989 to having gained approval of this subdivision by right under the family gift lot provision. Unfortunately, on July 1, 1989, the applicable provision in the Subdivision Ordinance was amended and administrative approval of the subdivision was no longer possible. The administrative approval would have been secured but for three issues that were identified on the preliminary plan. The maintenance of the outlet road. A 45 foot dedication along Towlston Road as requested by staff and, the staff also requested a trail along the applicant's side of Towlston Road. The maintenance of the outlet road could have been easily addressed. The 45 foot dedication along Towlston Road turned out to be overly ambitious, as the staff is now looking for only 35 feet from centerline. And the trail along Towlston Road has been formally relocated to the eastern side of the road, where logically it should have been located from day one. Consequently, the issues that prevented administrative approval in 1989 turned out to be non-issues in 1991. The next point that I would like to briefly comment on are two issues raised by Mr. and Mrs. Regan in their letter to you dated July 1, 1991. Number 1, they suggest that the total land area held by the Burks may be less than 4 acres. Based on those records that we reviewed, it is our judgment that the subject property does contain 4.06 acres. Mr. Henry Mackall, an attorney who has represented Mr. and Mrs. Burk for some time is here with us today, is imminently familiar with the background on this issue and he will offer additional comment on this point. He is here as a neighbor and an expert witness. Number 2, the Regans offer comment on the rights of adjacent properties to use the outlet road. This is a legitimate concern that has been the subject of a misunderstanding between the Burks and the Regans for several years. Again, Mr. Mackall can respond to this issue in a more enlightened fashion but the approval of this application should adequately address this concern with the approval of the proposed development conditions recommended by the staff. In reference to the proposed development conditions, we would like to request your consideration of one small addition to the second condition which currently reads as follows: "2. Right-of-way to thirty-five (35) feet from existing centerline of Towlston Road (Rt. 676) 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 subdivision plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements." We are totally convinced that a 35 foot dedication from centerline is not warranted at this location as a right-of-way of 40 feet from centerline currently exists on the southern side of Towlston Road. The existing 40 feet and a proposed 30 foot dedication, as is represented on our plat, will yield the 70 foot requirement that the staff is looking for. We would like to suggest the addition of a concluding sentence to condition number 2 which would read as follows, "A reservation of this right-of-way and ancillary construction easements may be considered by the Director at time of subdivision plan approval." Whereas the Burks do not mind the dedication of the 35 feet, if needed for the ultimate design of Towlston Road, we are convinced that it will never be needed at this location so it appears to be a rather wasteful and frivolous requirement. With that, Mr. Chairman, I will conclude my statement by asking for your favorable consideration of this application. Again, in our judgment it satisfies the required standards for variances and it deserves your vote of approval. I would now like to introduce to you Mr. Henry Mackall, who will offer brief comments on the two issues raised in the letter from Mr. and Mrs. Regan, and following Mr. Mackall's comments, Mr. Carl Burk, the applicant will present a brief statement. Thank you for this opportunity and following Mr. Burk's statement we will be happy to respond to any questions you may have.

MRS. HARRIS: I have a question.

CHAIRMAN DIGIULIAN: Ms. Harris.

MS. HARRIS: Mr. Yates, from your testimony you say you stood behind the nine standards for the variance, but in describing them you seem to not deal too much with the hardship issue or the unusual shape, or unusual condition of the property. Would you like to elaborate on those two issues?

MR. YATES: The hardship in our judgment is the fact that the lot does contain an excess of 4 acres which is double the size of the lot requirement in the R-E District. And other than for the lot width, it would otherwise qualify for two buildable lots zoned R-E.

MS. HARRIS: And the unusual shape?

MR. YATES: Four acres in size.

MS. HARRIS: Well, there are many others that are 4 acres in size.

MR. YATES: Right.

MS. HARRIS: So, it's not any more unusual than many of the other lots around there. I was just wondering which of the different standards that you thought that this lot fell under.

MR. YATES: The regular size, the 4 acres.

MS. HARRIS: Okay, thank you.

MR. YATES: Yes, ma'am.

CHAIRMAN DIGIULIAN: Thank you.

HENRY MACKALL: Mr. Chairman, members of the Board, my name is Henry Mackall. I live at 1032 Towlston Road, which is around the corner from the property. I'm an attorney and have practiced here in Fairfax since 1952. A fair amount of my practice has been involved in real estate including what I would consider a fairly extensive background in the record room

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examining titles. The fact is that the title to all of the property that the Burks have submitted for this proposed variance is in their name. I read the letter from Mr. Regan in which he claims that the title is not clear and he based it on a contract which he attached. That contract contained the words approximately so many acres and it described it -- the property which was to be conveyed as bounded on the east side by this road, the 16 foot strip that we've been talking about. The deed which was recorded also says that it's bounded on the east side by the road. There's no question in my mind that road did not convey. It was in fact retained title -- fee simple title to that road, was retained by the Bollings, who had owned the whole piece of ground. They -- if you wouldn't mind referring to the County tax map that is attached to the report, I think it would be easier to follow what I'm going to tell you about the title. The Bollings sold this parcel number 21 to -- and I don't how you pronounce it, Knudstrup. They sold parcel 17 to the Kundzins. And they sold off parcel 15 and parcel 14 and they retained this parcel 16, which is now where the Regans live. They also retained legal title to the 16 foot outlet road, that strip. And later on they sold the parcel 16, which is again the Regan parcel, to the Knudstrups. When they did that, the Knudstrups owned both 16 and 21 and they had frontage for their entire tract on Peacock Station Road and the Bollings did not convey to Knudstrup with this Regan parcel any right to use the 16 foot outlet road. And that's the way the thing stands today as a legal matter. Mr. Conlinan went in, he requested an easement, it wasn't done, he built a house. Because Mr. Brittin sold the back part off, and Mr. Brittin has written you a letter too, he sold that back part which I think is 1.644 acres to the Regans and now he's complaining -- and I've known Bert for a long time -- now he's complaining here you got one that's only 2 acres. And I don't understand that but you can ask him when he testifies. The fact is that Mr. and Mrs. Burk have not taken any action to stop the Regans from coming out this roadway. They have let them do it and I don't understand why they are coming in here complaining because they ought to be very happy that the Burks are going to give them a right-of-way over there when this thing is approved. And I'll be glad to answer any questions about the title that you might have.

MR. PANNELL: Mr. Mackall?

MR. MACKALL: Yes, sir.

MR. PANNELL: Just one question, just trying to follow this. All these changes of title now the Regans own 16 and 17, is that correct?

MR. MACKALL: No, sir.

MR. PANNELL: Okay, would you go back to that.

MR. MACKALL: They only own 16.

MR. PANNELL: Just 16.

MR. MACKALL: Yes, sir.

MR. PANNELL: Okay, 17, which is also -- or was part of that easement, who owns 17?

MR. MACKALL: The Kundzins. It is my understanding from the file that he is dead and his widow is still there. They use the back road coming out. There's an easement. Parcel 41C, parcel 42, parcel 17, all of them come out on Peacock Station Road to the north.

MR. PANNELL: Right.

MR. MACKALL: But the Kundzins did have an access, originally that parcel 17 had an access over this 16 foot road.

MR. PANNELL: Correct.

MR. MACKALL: They never used it. It had never been used until Mr. Conlinan, two years ago I think, built the Regan house and cut down the trees that were in it. But the Kundzins have, unless they have abandoned that right-of-way, still would have a right to come over there.

MR. PANNELL: Well, the property maps actually don't show access for Lot 17 to any other location other than this outlet road.

MR. MACKALL: That's the way they get in and out.

MR. PANNELL: So they're using an access that actually, just by the verbal okay of the people who own that property as they get out to Peacock Station Road.

MR. MACKALL: I haven't gone back and reviewed my notes with respect to that other access road. But I suspect that the tax map just doesn't reflect where they have a right to get through there.

MR. PANNELL: Well, it presents an interesting dilemma because in looking at the plats that we're looking at here, which are the official plats of the County, basically it shows only one method of access for Lot 17 and that's out through this 16 foot outlet road. And I'm curious, as to if they are using the other access how they are using it, what written documents exist that give them that access, because we certainly don't want to do something here that is further going to cloud this issue of their rights to access.

MR. MACKALL: Well, if they don't have a right to use the one they're using now, that will be sort of mooted by, as I understand, if this is approved the Burks plat is going to grant them the parcel 17 and 16 the right to come here so it won't be any problem. And it will clarify things. I think they probably have a written easement which just isn't reflected on the County tax map to come out that other road because that's what they have been doing for what 50 years. They lived there before I did.

MR. PANNELL: For some time.

MR. MACKALL: And I've been there since 1956.

CHAIRMAN DIGIULIAN: Thank you. Next speaker.

CARL BURK: Good morning, Ladies and Gentlemen, my name is Carl Burk and I'm the applicant requesting the variance. I will be brief in my comments because most of the major issues have been addressed by Phil Yates, who is well known and respected in Fairfax County for his knowledge and integrity. We purchased the land to build our home at 948 Towiston Road in 1977-78. The hyacinth grounds are a distinctive asset to the community because of the excellent condition in which the entire property has been maintained. We mind our own

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business and try to be helpful to our neighbors. With regard to the letters you have received, I have the following comments. Reference to Regan letter. So much of what they have said in that letter is without foundation or has been subjected to gross misinterpretation. Their comments in my view represent an outrageous attempt to obfuscate the real issues. Regarding zoning. The issue to me is whether or not I'm expected to live under 4 acre zoning while my neighbors can live under 2 acre zoning. The Regans have only 1.6 acres while I'm proposing a full 2 acre lot. Regarding the access road. The access is for those who have the right to use it. I bought the 16 foot outlet road legally and in good faith from a sole owner. Mrs. Bolling, the widow of James Bolling, the developer of the area, is not in a nursing home as my critic proclaims. She is a very alert person and we are in regular contact with her. The Regans may not like the fact that we own the land, and Ms. Nygren on Lot 15, may share their views but this does not alter the situation. Furthermore prior to buying the land, I already owned a major portion of its access way from Towlston Road to the Lot 14 driveway. I have tried to contact Mr. Regan to discuss his concerns but he did not return my call. Reference to the Ap letter. Safety on any Virginia road is a concern to all of its citizens. Without question, roads like Towlston must be driven carefully. I'm not aware of any after dark accidents at the curb referred to by the Aps since the County installed street lights and some new signs a few years ago. The few recent day time occurrences have been in cars driven mostly by test drivers from auto dealers at Tysons. They misjudge the turn, drift the shoulder and the car comes to rest in some brush. To my knowledge, no two vehicles have ever been involved, in the memory of those who know the lane, there has never been an accident involving those entering or leaving it. School buses are stopping at my driveway and at the Aps so children are not at risk. Mrs. Ap refers to the natural, wooded environment. There are no trees to be cut for a possible building site on the proposed lot. It is pasture that we keep cut. All of the trees in the vicinity have been removed by the developer and Regan without consultation with the County Arborist. I do not know the context of her historic major reference. Reference to Brittin letter. Mr. Brittin talks about zoning integrity as his paramount concern. He sold Lot 16, which is 1.6 acres, without concern for 2 acre zoning or the tranquility of the area. I support the present zoning because it represents the character of the area. At issue is a single lot, not a multi-unit development. Again, I do not see how one 2 acre lot could have a negative effect. Regarding our personal situation. The effort it takes to maintain and manage 4 acres consumes practically all of our available time and has become a true hardship. At our age and at the state of my health which requires care at Bethesda Naval and Georgetown hospitals this becomes more and more burdensome. My wife and I are interested in a peaceful neighborhood, hopefully one that is not steeped in negativism and one in which neighbors respect the property rights of others. The BZA is not the place to vent irrelevant emotions. I do not want to perpetuate a feud of monumental proportions. I get no satisfaction from such a waste of time and energy. I also harbor no (INAUDIBLE) toward any of my neighbors and I hope that you see fit to approve this request for a variance. Thank you for your time and attention. If you have any questions, I'll be pleased to answer them.

CHAIRMAN DIGIULIAN: Thank you.

MR. BURK: Thank you.

CHAIRMAN DIGIULIAN: Anyone else to speak in support of the application? Anyone to speak in opposition?

VIVIAN LYONS: Good morning, Chairman DiGiulian, my name is Vivian Lyons and I'm President of the Great Falls Citizens Association. The Citizens Association considered this issue in the Planning and Zoning Committee and it went forward to the Executive Committee of the Citizens Association last night. We wish to state that we oppose the granting of this variance for several reasons, most of which are laid out very, very clearly in the staff report and I won't bore with you with restating what the staff has already very well said. I would just like to re-emphasize the fact that we are concerned with the impact on the neighboring properties particularly with regard to possible setback limitations that might be imposed on them if this is granted as a pipestem variance. We're also concerned about landlocking parcel 17 and we are concerned with the precedential nature of the lot -- this variance. This lot not only is not unique to this particular isolated area, it is certainly not unique to the Great Falls community. Most of the Great Falls community is zoned R-E. There are lots like this that have minimal frontage on a public road all over Great Falls, possibly -- there are definitely hundreds, there may be thousands of them around town. You have heard requests like this from other landowners in Great Falls before. You have consistently turned down those requests when the sole purpose of the variance has been to maximize density. The Booth, Addis, and Krop variances come directly to mind because they have been turned by you probably within the past year for such the same reason that we're opposing this variance. The R-E zoning has a 2 acre minimum. The land is planned for .2 to .5 dwelling units per acre under the Comprehensive Plan, both the old Plan and the new one that was just adopted by the Board (of Supervisors). The staff has very ably pointed out the Zoning Ordinance does not guarantee maximum use of one's property. The use of a variance to achieve maximum density is really not what the variance provision was designed for and is not appropriate. This variance application presents absolutely no benefit to the Great Falls community. There are no unique nor overriding circumstances to be cited in support of this variance. Therefore, it should not be granted because of the range given in the Comprehensive Plan. This variance affords the community nothing that would justify achieving the high end of the density range in the Comprehensive Plan. We also agree that it does not meet the six standards in the Zoning Ordinance cited by the staff. We, therefore, ask that you turn down this request for a variance. If however you do decide to grant the variance, we do agree with Mr. Yates that a 35 foot right-of-way be the most that is granted in the variance. The 15 feet ancillary easement is excessive and unnecessary and we do agree with the engineers that that aspect of it should not be granted under any circumstances. Thank you.



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MR. PANNEL: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Pannel.

MR. PANNEL: Ms. Lyons, let me pose a question to you which apparently you have not considered because it just came out today in the testimony by Mr. Mackall, and that is to the effect that there is legally, at least platted, no access to Lot 16 or 17, and you mentioned this in your testimony, what would be your position and the position of your community if it were determined that by not doing anything here, simply denying the request, that the owners of Lots 16 and 17 would be deprived of their access. They would become effectively landlocked. What would your position be?

MS. LYONS: Well, I'm not an attorney and I want to make that very clear. But I have always understood that you can't landlock property in Virginia and thereby render it undevelopable. And I think we could be opening an enormous can of "legal worms" if this access is cut off. Above all there is the fairness issue, too. These folks have been using this access for, I don't know how long, I think their rights need to be taken into serious consideration. It seems to be that there have been a lot of people living and operating there under good faith and are suddenly finding their access and their good faith -- accessibility undermined.

MR. PANNEL: Well, maybe they never had the access and that was an oversight but the question is don't we put those people into a rather awkward position in trying to resolve an access problem?

MS. LYONS: I think it would be very dangerous to grant this variance based on possible loss of that access to the back lots. Again, there's a precedent to consider that goes well beyond this particular lot. Second, I think that it would be -- I would sleep better at night getting an independent, legal opinion on the matter. I'm not saying that Mr. Mackall is wrong but my husband is a lawyer and I know they always like to have backup. It's a complicated issue and I don't think we should rush into something that could cause further problems and establish a very serious precedent in the community at large.

MR. PANNEL: Well, I will agree with you. It is a complicated issue.

MRS. THOMEN: The only thing that I would like to say, Mr. Chairman, is the fact that was up to be a gift lot provision in '89.

MS. LYONS: That's what I understand.

MRS. THOMEN: And they got in that change in the Ordinance and now they are getting caught up in the Comprehensive Plan. I really think there has been enough time for everybody to look at this and decide what they think is legal and what they think is not legal. I don't think that we can keep deferring everything forever. I think there comes a time when you've got to make a decision and that decision has to hold. I mean this applicant went through all of this up to getting the administrative approval for the outlot and then on July 1 it was changed and then he had to start over. I mean he didn't have to but if he was going to divide the lots then he started over on the variance and I just really think there has been an awful lot, you know, of time. That's the only thing that I'm saying.

MS. LYONS: Mrs. Thomen, I understand your concerns. As far as the gift lot Ordinance is concerned, and I don't want to impugn anything negative on this specific gift lot request because I don't know the background of it, but the reason that the gift lot was changed was because it was being so badly abused.

MRS. THOMEN: I agree.

MS. LYONS: And the State Legislature in its wisdom therefore changed the Ordinance. It may have been granted. It may not have been granted. We don't know but to be granted in one situation though doesn't necessarily justify granting under a completely different set of rules.

MRS. THOMEN: I don't mean that. I'm just saying that we can't keep putting applications off in the County, whether it's here or rezonings, or whatever. I think we're going to have to do a much better job of looking at all the issues and coming up with a decision instead of just saying the issue is to defer it until we get more information.

MS. LYONS: Right, and I sincerely hope and believe that you will look at all the issues today.

CHAIRMAN DIGIULIAN: Thank you, Ms. Lyons.

MS. LYONS: Thank you.

CHAIRMAN DIGIULIAN: Next speaker.

JAMES REGAN: Mr. Chairman, my name is James Regan. I'm the owner of Lot 16 and I'm here to speak in opposition to this variance request. I have provided to the Board a written statement which I prepared after receiving a registered letter on Saturday, the 15th of July, which first informed me of this pending action. I don't want to stand here and reiterate those items that I mentioned in my letter. I would rather deal with an issue which has been impugned here in the hearing. I would like to explain to you why I took certain positions and I have not spent 30 years in the record room of the County library but I have spent a very intense two week period and I would like to show you some historical records that may help explain some of the issues here. But before I do that I would point out that it is probably true that we were not -- that my builder was not interfered with when he built the lot because at that time the outlet road was not owned by Mr. Burk. It was quick claimed to him but it was not owned by him until subsequent to our occupying the property for close to three years. I feel a little bit like a briar rabbit who has put his hand into a beehive. We very carefully investigated the area before we made our investment. We moved in. We've been, I think, good neighbors. We've respected the rights of our neighbors and we've attempted to add to the community. So, with your forbearance I'd like to quickly walk through some slides here and I have some copies in case you can't read them.

MR. PANNEL: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Pannel.

MR. PANNEL: On you last comment Mr. Regan made. In your contract or your deed of record --

MR. REGAN: Yes, sir.

MR. PAMMEL: Does that deed of record specifically state that you have a right of access easement?

MR. REGAN: Yes, sir, and I can give you a copy of the deed as well as a copy of the title insurance which specifically talks to my rights of way --.

MR. PAMMEL: I think it would be helpful.

MR. REGAN: over the 16 foot outlet road. I have it here and I can dig it out before I leave.

MR. PAMMEL: I think that should be made a part of the record.

MR. REGAN: (Mr. Regan made a slide presentation to the Board and discussed each slide.) At the time we purchased the property this is what the tax map looked like. The 16 foot outlet road lay outside of Lot 22, the applicant's lot, and is shown basically as an easement along 14, 15, 16, and 17. This is a current tax map and it reflects what you've seen earlier. Right here, that's Lot 22A and that change in the tax map was made in 1987 as a result of a quick claim deed made to the applicant by someone who to my knowledge and my search of the records had no interest or rights to the property.

MRS. THOMEN: Who was that?

MR. PAMMEL: Who was that man?

MR. REGAN: Someone Morgan, I cannot find him ever having any rights in the County records. Let's step back in time a bit. I can provide you a copy of that also. I have it here. This is the plat map that everyone refers to. It's attached to the deed in which the Bollings purchased the property from the Hodges in 1937. There was a total of 11.344 acres and that's what the plat looked like. The Bollings purchased that property in February of '37 and then immediately set out to subdivide it. I would like to point out and I didn't when I had it up there, but I can here. The outlet road is specifically laid out on that plat and meets and bounds of that plat include the outlet road. If you follow it around from the stumps and the pipes and the rest, it goes, includes the outlet road and it was specifically laid in there to support those lots. They broke it into four lots 14, 15, 16, and 17 going from BBI down to the north, 2 acres, 14 is 2.284, 15, my lot is 16, it's the odd shaped lot, and Lot 17 is the larger lot at the end. I would like to point out a piece of land here, right here, the frontage on Lot 15. The area of that land is exactly .129 acres. That's an important number and I'd ask you to remember it. This summarizes a research of the County records, land records, and I have copies of these deeds but I've summarized it for gravity. The Bollings bought the 11.344 acres on 1 February '37. They then proceeded to sell it. The first lot they sold, not as Mr. Mackall said the last lot, but the first lot they sold was my lot, 1.644 acres and it was sold to the Knudstrups on 6 April '37, that left them 9.7 acres to sell. On 30 April, they sold 2 acres to the Hughes, which left them 7.7, 29 June they sold to the Kundsiks 4.747 and that left them 2.953. On 8 July, they sold the final lot which was Lot 15 and 2.824 is what was titled and I don't argue that point. The purchase agreement, however, is for 2.953. If, in fact, they sold 2.95 they had zero land left. If they sold 2.824, they had .129 acres left which is the area of the outlet road along and to the east of Lot 15. That ended in '37. Fifty-one years later Mrs. Bolling, the surviving widow, sold without specifying the right to convey a special warranty deed, to my knowledge I don't believe the property was fully surveyed or if any title search was done I can't find that, but she sold .196 acres. If indeed she did have .196 acres, she sold more land altogether than she owned. Even if she didn't sell the .1294, she still did. A tenth of an acre is 4,365 feet. It's not a small amount of land. I know the numbers look small but the land is not small. That's why I'm questioning what is going on and I'm concerned that there hasn't been a proper survey or a proper search of document in support of this whole subdivision and this whole variance. That's the root of my concern.

CHAIRMAN DIGIULIAN: Mr. Regan, your red light is on, would you please sum up?

MR. REGAN: Yes, I will. I will point out that the application references a Runyon, Dudley, Anderson plat as the basis of application. It says on here as you note, no title report done. This is cited by Dewberry & Davis with a note that there's no responsibility taken for errors. I have no interest in upsetting the rights of my neighbors. I think my neighbors maintain a beautiful piece of property. We enjoy living there. I'm simply here to ask you to assist me in protecting my rights.

MR. HANNAK: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Hannack.

MR. HANNAK: Mr. Regan?

CHAIRMAN DIGIULIAN: Mr. Regan?

MR. HANNAK: Did you bring copies of those deeds that you can put into the record?

MR. REGAN: Yes, sir, I have copies of those deeds here with me right now.

MR. HANNAK: Could you please put them into the record?

MR. REGAN: Yes, sir.

CHAIRMAN DIGIULIAN: Thank you. Next speaker. Anyone else to speak in opposition? Good morning.

MICHAEL BRITTIN: Good morning, Ladies and Gentlemen, my name is Michael Brittin and I live at 910 Peacock Station Road. I also own property at 916 Peacock Station Road. When referring to the tax map, those properties are denoted as number 20 and number 42 and both then are touched by the disputed outlet road. Number 20, right there, is 916 Peacock Station Road and number 42, right here, is 910 Peacock Station Road. I grew up in Great Falls, Virginia, three miles away where my parents still live. I have lived there all my life. My wife also grew up in the area and we hope to remain there for the balance of our lives. The reason I'm here -- there are three points that I would like to make. First, concerns the outlet road. Our chief concern, my wife and mine, is that outlet road, or the disputed outlet road be available for use by all properties that touch upon it. It seems to us that was its intended use. Certainly that was important to us when we purchased Lot 20. The first piece of property I ever purchased many years ago. We were concerned at the time about

our right to use that outlet road. We thought that we had that right but to be absolutely certain we paid for and received legal advice stating that we did and to make absolutely sure that we had a right of access to the back of that property through the outlet road we paid for and obtained an easement through Lot 21. That is our only means of access to the back of Lot 20 and there is no reference in the application or the amended application to the rights of our land. You can see that the outlet road does reach down to Lot 42. We have other access there, but I did want to note that it touches on that as well. There was a question, I believe it was from Mr. Pammel, it may have been from Mrs. Harris, I'm not sure about Lot 17. But I would like to speak just for a moment about the owners of that property. The Kundziks are absolutely wonderful people. They are old. They do not speak English well. They are from Latvia. They are generous, thoughtful neighbors. They don't understand proceedings like this. They simply could not appear and stand up and speak. I can answer a question raised by Mr. Pammel concerning their access that Mr. Meckall sort of answered but claimed he didn't have, he wasn't certain. The fact is that he's wrong. He doesn't have the facts. They do have access now along side of Lot 19; however, when they sold Lot 18, unwittingly we believe, they gave up their right to access to Lot 17 at the time they convey that property, or future owners. So, any future owner of Lot 17 is going to have to find a way to get into that property. If they can't use this outlet road, they will have no ability whatsoever to get to that property.

MR. PAMMEL: You have really riled me up.

MR. BRITTIN: I haven't done so intentionally, Mr. Pammel, but there was a question raised and I simply wanted to answer it.

MRS. THOMEN: Can I ask you a question? When you bought your lot, 20, and that's the one you say you're worried about for the outlet, to use the outlet.

MR. BRITTIN: Yes, ma'am.

MRS. THOMEN: Do you have anything in writing giving you permission for the use of the outlet? Did that go with when you bought your land?

MR. BRITTIN: I'd have to check the deed. What we did, ma'am, to make absolutely sure is we went and hired a lawyer and we asked the lawyer to research the question and obtain an opinion. And he said that, I have a copy of his letter there, is that not only that property but all properties that touch that outlet road should have a right to use it. As he said in his letter, ma'am, based on what I have seen, and this goes back to long before the applicant was even in the area, based on what I have seen the outlet road was created to serve the original estates touching upon it and any estate claiming thereunder. I believe, therefore, that you have an unrestricted right of access to the outlet road. And to make absolutely sure we obtained an easement through Lot 20 just to get to that lot.

MRS. THOMEN: I'm looking over here at Peacock Station and it looks like a lot of pipestems in that whole development there. Do you live in a pipestem there?

MR. BRITTIN: I'm not sure what you mean, ma'am, when you say --

MRS. THOMEN: Well, the outlet road is really referred to by us as a pipestem. Do you have frontage on a main road?

MR. BRITTIN: Lot 20 does, yes, ma'am. Lot 42 does not.

MRS. THOMEN: Okay, thank you.

MR. BRITTIN: The second point I wanted to make, Ladies and Gentlemen, is simply this, in our view a subdivision here would create something of a windfall and this is what I mean --

CHAIRMAN DIGIULIAN: Sir, your red light is on, would you please sum up?

MR. BRITTIN: Yes. The owners here purchased this land it was 3.85 acres. They understood at the time that property could not be subdivided and it is important I think for you all to be aware that the sellers of that property, the O'Briens, and Mr. O'Brien is here, intentionally sold 3.85 acres because they wanted to maintain the integrity of the neighborhood. They thought at the time in selling 3.85 acres that the zoning laws then in effect would be upheld and they would not be faced with subdivided property.

MRS. THOMEN: Thank you.

CHAIRMAN DIGIULIAN: Thank you. Anyone else to speak in opposition?

VINCENT VIA: Mr. Chairman, committee, not necessarily in opposition. I own Lot 14, which hasn't been spoke of. I'm Vincent Via. I've lived there 27 years. I love my neighbors. I hate to see this feud. I hope that you all can give this close attention and work it out.

CHAIRMAN DIGIULIAN: Thank you. Anyone else to speak in opposition? Mr. Yates?

MR. HAMMACK: I've got a question for Mr. Via.

CHAIRMAN DIGIULIAN: Okay, Mr. Hammack. Mr. Via, Mr. Hammack has a question for you.

MR. HAMMACK: Mr. Via, do you know -- when you bought your property, did you -- does your property description include the area that is supposed to be conveyed to you as proposed Outlot A? Do you have any knowledge about that?

MR. VIA: No, I don't really.

MR. HAMMACK: Why are you buying proposed Outlot A? Does your property go to the right-of-way, or does it end?

MR. VIA: I don't know what you're referring to, A.

MR. HAMMACK: Have you seen this plat? And the applicant has said that you intend to buy proposed Outlot A.

MR. VIA: No.

CHAIRMAN DIGIULIAN: It says on the plat that it's to be conveyed to Via.

MR. HAMMACK: It says right here.

MR. VIA: Oh, yes, that piece of parcel you are referring to up at the front.

MR. HAMMACK: Un-hunh.

MR. VIA: Apparently large trees, bigger than this podium, there's five or six, the road apparently got pushed up the hill towards the other side. And in all this proposal, this is what's being proposed. But I'm not to familiar with it.

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MS. HARRIS: So, on that little triangle, sir, there are large trees.

MR. VIA: Yes, about five or six in a row, run along parallel with the road, that's why the road is where it is, or has been for 27 years.

MR. PAMMEL: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Pammel.

MR. HAMMACK: So, the road isn't in the right-of-way.

MR. VIA: No, sir, the road apparently from what that map shows the old road is not where it's suppose to be.

MR. PAMMEL: Mr. Chairman, I did go out to the site and visit the site personally and what Mr. Via has said is absolutely correct. There are, in fact, monarch trees there, very sizable trees.

MR. VIA: Very large trees.

CHAIRMAN DIGIULIAN: Thank you. I thought I saw somebody else who wanted to speak.

MRS. THOMEN: Is this the last speaker, Mr. Chairman?

CHAIRMAN DIGIULIAN: I don't know. I will find out as soon as she's finished.

VIOLA NYGREN: Good morning, or is it afternoon.

CHAIRMAN DIGIULIAN: It's still morning.

MS. NYGREN: My name is Ms. Nygren and I'm the owner of Lot 15, is it. I'm the owner right now of Lot 14 and 15 which everyone seems to say I received it because I'm the sole heir of my sister, Mrs. Bolling who with her husband bought it in 1937. In 1938, when her house -- this may seem extraneous, but it's not -- the house is built. I have been down from my home ever since from '38 to '51 I was down three weeks a year so I became knowledgeable of the area. I did know Mr. Knupatruck and his wife, Florence, very well. I did know Mr. Knudzik and their family. And in 1951, I came here to live permanently with my sister who had been a widow 2 years. And in knowing, Mr. Knupatruck he always considered the outlet road part of his use and he did use it several times even though it was only dirt and not paved. Mr. Knudzik, I was speaking with him in 1985 after my sister left, her demise in fact, in speaking about when in fact he died or maybe before he intended to sell or have his property sold and they would use the outlet road to go out to Route 7 and his children would walk that area all the time. And I remember my brother-in-law and the owners of the adjacent properties meeting at the point and speaking about the outlet road as being their meeting point. I don't know if I've clarified something that was said or not, I hope so. So, I know that those two persons really considered the outlet road as part of their property.

CHAIRMAN DIGIULIAN: Thank you. Anyone else to speak in opposition? Mr. Yates, two minutes rebuttal.

MR. YATES: Mr. Chairman, I don't think any rebuttal really is in order. Quite frankly, I have nothing to offer to either enlighten or further confuse you in reference to the outlet road issue. I will leave those to people who have spent time in the record room. I'm stepping beyond my area of expertise. We were satisfied when Mr. Burk approached us and checked the County records that he did indeed have title and own 4.06 acres, that is what is reflected in the County assessment records. And I would leave the issue at that. I would really offer no other comment at this time but I would be happy to answer any questions.

CHAIRMAN DIGIULIAN: Questions? Thank you. The public hearing is -- You got a question?

MR. HAMMACK: Yeah, I have a question for Mr. Mackall.

CHAIRMAN DIGIULIAN: Mr. Mackall?

MR. HAMMACK: Mr. Mackall, why did Mr. Burk need a quick claim deed to acquire title to that property? Why was that done, if he had clear title already?

MR. MACKALL: Okay, he didn't have clear title already. He did not have any title at all to that strip of land at the time that deed was executed. What we did was, and I did it, I prepared that quick claim deed to begin a chain of title so that some 15 years down the road, he would own that piece of land. Later on he found Mrs. Bolling and got a deed for it. And that's how that happened.

MR. HAMMACK: Was full title examinations done of the underlying title to that strip of land and surrounding properties?

MR. MACKALL: Yes, sir. One of the things that Mr. Regan mentioned he said that I was wrong because the Knudzik deed did not come out first. The fact is that he overlooked the fact that there was another 19.56 acre piece on the east side of this road that Mr. Bolling also owned. He owned on both sides. And the piece on Peacock Station Road did come out first. He didn't examine the title to that piece.

MRS. THOMEN: Thank you.

MR. HAMMACK: Thank you.

CHAIRMAN DIGIULIAN: Thank you. The public hearing is closed.

MR. HAMMACK: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Hammack

MR. HAMMACK: In Variance application number, VC 90-D-051, made by Carl E. --

MR. PAMMEL: '91.

MR. HAMMACK: I'm sorry. The staff report has '90 on the front cover page. VC 91-D-051 made by Carl E. and Iola M. Burk, on property located at 948 Towlston Road, under Section 3-E06 of the Fairfax County Zoning Ordinance to allow subdivision into two lots and an outlet, proposed Lot 2 having a lot width of 20 feet in a 200 foot minimum lot width required under Section 3-E06 on approximately 4.0613 acres. I move the Board of Zoning Appeals adopt the standard variance resolution form and reach the following findings of fact. That the applicant has not satisfied the nine required standards for variance applications. And in particular, I generally agree with the staff report on this. I don't think that there is any unusual shape of the property, notwithstanding Mr. Yates' argument that it's larger than the minimum lot size required. It's still 4 acres and it seems to be a common size throughout that part of the County. That the hardship is not shared generally by others. That the

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strict application of the Zoning Ordinance would not effectively prohibit or unreasonably restrict all reasonable use of the property and that I also have some concerns that the authorization of a variance would not be of substantial detriment to adjacent property. And whereas the Board of Zoning -- and let me add this. Frankly, when you look at this, I think that the application is for the convenience of the applicant. All of the other issues aside, it provides a subdivision of a property that would give him maximum use. I don't think that's permitted under the Zoning Ordinance. I don't believe he has shown that he has satisfied the hardship requirement. And whereas, the Board of Zoning Appeals has reached the following conclusions of law, that the applicant has not satisfied the Board that the physical conditions as listed above exists which under the strict interpretation of the Zoning Ordinance would result in practical difficulty, unnecessary hardship, that would deprive the user of all reasonable use of the land or (INAUDIBLE) involved. Now, therefore, be it resolved that the subject application is denied.

MS. HARRIS: Second.

CHAIRMAN DIGIULIAN: Discussion?

MR. PAMMEL: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Pammel.

MR. PAMMEL: Mr. Chairman, I'm going to support the motion based on the very complete motion that Mr. Hamsack has provided, but I do want to state my concern with respect to the issue of zoning. The property is zoned R-E and under the Ordinance they are permitted by right a minimum 2 acre development and to argue that the established character is 4 acres or whatever it may be misses the point. Legally they are entitled to have 2 acre development and if they met all other standards of the Ordinance that is their right. And I don't think that we are establishing a precedence. The only way to get around that is to change the zoning and create a new category for 4 acre lots and I don't think that's practical.

MRS. THONEN: Mr. Chairman.

MR. KELLEY: Mr. Chairman, I am opposed to this. I think we are doing the reverse. I think we may be establishing 4 acre lots or larger lots than the Ordinance calls for.

MRS. THONEN: Well, you know, they talk about that we're not supposed to just give a variance to just satisfy a higher density. But he's not asking for a higher density. He's asking only for what it's zoned now because it is 4.06 and divide it by two. He's not raising the density on this land; so, I have to look at that. And I have to look at the fact that outlet road has been there for years which evidently was to -- was for the people to share. In fact, the lady said that it was for the use of the properties there. And it's hard for me to come down one way or the other on this, but the other thing that I'm opposed to is the fact that someone will go along trading one Ordinance, which was the gift lot Ordinance, and then come up in just a few days time they can say everything has changed. We got a new Ordinance in now and you have got to go back to the Board. I don't know if it would have been approved administratively or not but the fact is that I think that when the zoning has been in under one category that long it should come to fruition and the decision be made. I don't think it be -- should start to be judged under another category. So, I don't know.

CHAIRMAN DIGIULIAN: Well, I agree with Mrs. Thonen's statement but also it looks like to me like 3 of the 4 lots that are immediately adjacent to this parcel are less than 2 acres. I look to the north at the pipestem development and those lots look like they are no larger than 2 acres. And you look to the west, you see some off -- I can't read the road, White Chimney Lane -- they appear to be less than 2 acres. I'm not sure that 4 acres establishes the character of the area. I'm going to oppose the motion.

MS. HARRIS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Ms. Harris.

MS. HARRIS: Going right by the standards, Mrs. Thonen, I can sympathize with some of the things that you're thinking about. I'm looking at whether I could even classify this property as having one of the following characteristics and looking at the other sizes and shapes and whatever of the property, I have a hard time in finding a characteristic that's unusual about the property. And then we come down to whether the granting of this variance would alleviate a hardship. Well, I don't think it has much to do with the 2 or 4 acre characteristic, but whether there's a hardship on that property that this variance will alleviate. They have adequate use of the property. And it's a convenience to get another lot to sell. That would be the only benefit derived from this as opposed to a clearly demonstrable hardship that this variance would alleviate. And I guess when I come down to it that's what it's -- because we have to meet all these standards and it's those two that I have a real hard time.

MRS. THONEN: Well, what about the one where this could be construed as confiscation of land. I mean if we--

MS. HARRIS: Well, he has full use of his property.

MRS. THONEN: Four acres.

MS. HARRIS: Four acres, as do many other people. And that by not giving him a variance we're not confiscating any of his property. He still has full enjoyment of all the property. By granting a variance, it would not alleviate that hardship, it would allow him to subdivide the property for monetary gain, which is not a hardship, that is land generated.

MR. KELLEY: I think he has a hardship as he is paying taxes and maintaining a property --

MS. HARRIS: He bought the property.

MR. KELLEY: that is twice the size of a lot that is required.

MS. HARRIS: But he bought the property, 4 acres.

MR. KELLEY: It was not 4 acres when he bought it.

MS. HARRIS: He bought this whole property.

MR. KELLEY: It was 3.8 acres the way I read it.

CHAIRMAN DIGIULIAN: Right.

MS. HARRIS: And then he bought more property so if the hardship is that --

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MR. KELLEY: I think that's his right to add to his property.  
 MS. HARRIS: But if you're saying that his hardship is 4 acres, he willfully bought those 4 acres. So, if his hardship is that he has a big lot. I have 7 acres. I bought 7 acres. I can't claim it later as my hardship.  
 MRS. THOMEN: But in the Ordinance they do recommend consolation --  
 CHAIRMAN DIGIULIAN: Consolidation.  
 MRS. THOMEN: Of these properties in order to get higher density or anything you have to consolidate.  
 MR. HANNACK: Well, let me --  
 MRS. THOMEN: I'm looking at this both ways.  
 MR. HANNACK: Well, let me respond. He bought it at 3.8 acres. He added to it. He knew he didn't have frontage when he added to it. To my way of thinking, it's what we used to call a self-inflicted hardship. He knew he didn't have the frontage. He knew he would have to come in here and get a variance. I agree with a lot of what everyone has said but we apply the Ordinance as it's written. I don't think he has met the hardship requirement.  
 MR. KELLEY: I don't think you can say that someone goes out and buys land so that they can in fact take advantage and subdivide it, is inherently wrong.  
 MR. HANNACK: No, but he knows --  
 MR. KELLEY: (INAUDIBLE BECAUSE THE BOARD MEMBERS WERE OVER TALKING EACH OTHER AND MR. KELLEY DID NOT HAVE HIS MIKE ON.)  
 MR. HANNACK: No, but if he buys 8 acres and he doesn't have frontage, he buys 8 acres without frontage, and he buys it with that knowledge subject to the existing zoning.  
 MRS. THOMEN: Isn't one of the standards for a pipestem is the lot must be larger than the other lots in the area? I think it is.  
 CHAIRMAN DIGIULIAN: Further discussion? All in favor of the motion?  
 MR. HANNACK: Aye.  
 MS. HARRIS: Aye.  
 MR. PAMEL: Aye.  
 CHAIRMAN DIGIULIAN: Opposed?  
 CHAIRMAN DIGIULIAN: Nay.  
 MRS. THOMEN: Nay.  
 MR. KELLEY: Nay.  
 MR. RIBBLE: Nay.  
 CHAIRMAN DIGIULIAN: The motion fails by a vote of 3-4.  
 MRS. THOMEN: I never like to do this. I always feel like it shouldn't be done but nevertheless I feel strongly (INAUDIBLE). Mr. Chairman, in Variance application, VC 91-D-051, by Carl E. and Iola Burk, under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots and an outlot, proposed Lot 2 having a lot width of 20 feet, 200 feet minimum required on approximately 4.0613 acres located at 948 Towleton Road. I'm going to move that we adopt the standard resolution form and whereas the Board of Zoning Appeals has reached the following conclusions of law that the applicant has satisfied the Board that physical conditions listed above exists which under strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the use of the land. Now, therefore, be it resolved that the subject application is granted. And, Mr. Chairman, I would like to go over some of the standards that I think he met. He met number 1, and I still believe that it is an exceptional size. An extraordinary situation exists, I think that the property located at the back of that outlet road is an unusual situation and I think that by granting this variance we are going to open the use of that lot for all those other lots that have been concerned about it. And I do not believe that this is going to cause any hardship on the neighbors. I think it's going to relieve one of their hardships. And I think that number 6A and 6B, I think they do. And number 7, I don't think it's going to be any problem to adjacent property owners. And the character of the zoning district, since it's suppose to be 2 acres and this has over 2 acres per lot, I don't think it will change the variance. And so I'm going to move approval of this with the conditions in the staff report dated July 2, 1991.  
 MS. HARRIS: Amend the conditions?  
 MRS. THOMEN: Which one do you want?  
 CHAIRMAN DIGIULIAN: You want to amend --  
 MS. HARRIS: Number 2, as Mr. Yates has suggested.  
 MRS. THOMEN: Okay. Oh, yes, they all agreed with that 35 feet, the ones testifying, should be amended to 30 feet from the existing centerline. Anything else?  
 MS. HARRIS: Wasn't there an issue about the 15 ancillary easement?  
 MRS. THOMEN: I don't know. I never got --  
 CHAIRMAN DIGIULIAN: Ms. Lyons testified that they didn't need the 15 feet.  
 MS. HARRIS: I'm just saying that's my recollection.  
 MRS. THOMEN: Okay, I will eliminate that 15 foot easement thing. I move approval of it.  
 CHAIRMAN DIGIULIAN: And you're making the right-of-way dedication 30 feet.  
 MRS. THOMEN: Yes. So move that it be approved with the development conditions as amended.  
 CHAIRMAN DIGIULIAN: Do I hear a second?  
 MR. RIBBLE: Second the motion.  
 CHAIRMAN DIGIULIAN: Discussion? All in favor.  
 CHAIRMAN DIGIULIAN: Aye.  
 MR. KELLEY: Aye.  
 MR. RIBBLE: Aye.  
 MRS. THOMEN: Aye.  
 CHAIRMAN DIGIULIAN: Opposed?  
 MR. HANNACK: Nay.  
 MS. HARRIS: Nay.

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other requests for inspections have been recorded since that time. With respect to the size of the garage, she stated that it would be more appropriate to call the structure a warehouse.

Vice Chairman DiGiulian asked the speaker to sum up as her time for speaking had expired quite awhile ago.

Ms. Whitten asked the Board to deny the request as she did not believe that the applicant had satisfied standards B, C, and D. She added that the structure is too close, it encroaches on the neighbor's property, it is too large, and the applicants did not do what they said they would do.

John D. Holman, 3001 Aspen Lane, Falls Church, Virginia, stated that he would be very brief. He stated that he had lived in the Sleepy Hollow Subdivision for 50 years and during those 50 years he had been before the Board for every reason in the world, but this was the first time for this type of request. Mr. Holman stated that the original covenants required half acre lots and many of the lots are much bigger. He commended staff on the staff report and read a portion it into the record which noted staff's concern that to allow an addition of such magnitude to encroach into the required yard may set an undesirable precedent in the area. Mr. Holman stated that he believed that such a precedent was the beginning of the end of the subdivision.

Harold Whitten, 3015 Aspen Lane, Falls Church, Virginia, stated within the last year, with the cooperation of Supervisor Davis, discussions have taken place with the developer of a townhouse development being constructed behind the houses on one side of Aspen Lane which includes the applicants' property. During one of those discussions, Mr. Whitten stated that he recalled the applicant specifically stating that he would make sure that anyone living in the townhouses who wished to construct a porch would obtain a variance. He added that this remark indicated to him that the applicant was well aware of his property line location. In closing, Mr. Whitten stated that he believed the garage was built without any regard for the zoning rules and regulations that all the neighbors must live under.

Hank Strickland, Planning Commissioner from Mason District, addressed the Board and stated that he had lived in the Sleepy Hollow Subdivision for over 21 years. He thanked the Board for granting a deferral in order for the citizens to review the particular aspects of the case. Commissioner Strickland stated that he did not believe that it was desirable for the Planning Commission to review the case as it is clearly the responsibility of the Board of Zoning Appeals. He stated that he supported the neighbors in their opposition and that he believed that the application should be denied based on the testimony presented.

In rebuttal, Mr. Hansbarger stated that it was very unlikely that the subject property would be rezoned commercial because of the addition. He continued by stating that the addition could have been constructed in the rear of the property, but it was determined that the present location is a good addition to the house. The addition does not detract from the aesthetics of the neighborhood and that he believed that the error was made in good faith. He added that perhaps if the applicant had the plat included in the staff report the applicant would have known that the structure was too close. With respect to the alternatives, Mr. Hansbarger stated that the applicant could construct a carport which could come 5 feet from the property line. If the applicant were to change the garage to a carport, Mr. Hansbarger stated he believed that would be far more unsightly than the garage, that the structure does meet the requirements of Sect. 8-914, and asked the Board to grant the request.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-039 by LARRY B. AND CLAUDIA ELIZABETH RALSTON, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow garage to remain 7.1 ft. from side lot line, on property located at 3023 Aspen Lane, Tax Map Reference 51-3((6))25, 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 November 8, 1990; and

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

1. That the applicants are the owners of the land.

Page ~~407~~, November 8, 1990, (Tape 1), (LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, continued from Page ~~407~~ )

2. The present zoning is R-3.
3. The area of the lot is 20,061 square feet.
4. The applicant has not presented testimony showing that he acted in good faith.
5. This could have been corrected because the garage the applicant removed set back 19 feet from the side lot line so a "red flag" should have gone up.
7. If the request were granted, it would be detrimental to the surrounding property owners.
8. The applicant could move the side of the garage back 6 feet without too much expense.
9. The applicant could have constructed the garage in the rear of the property without encroaching on the neighbor.

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 8-903 and 8-914 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1990.

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Page ~~408~~, November 8, 1990, (Tape 1), Scheduled case of:

9:15 A.M. MINDY & KENNETH SOSNE, VC 90-A-094, appl. under Sect. 18-401 of the zoning Ordinance to allow carport 2.0 ft. from side lot line (5 ft. min. side yard required by Sects. 3-407 and 2-412) on approx. 8,464 s.f. located at 4418 Medford Dr., zoned R-4, Annandale District, Tax Map 71-1((15))141.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sosne replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The co-applicant, Kenneth Sosne, 4418 Medford Drive, Annandale, Virginia, submitted a letter to the Board which explained that the gas line was lowered to ground level in August 1988 and the line is now 6 inches above ground because the ground continues to recede. He stated that because of the way the house is angled on the lot, the back edge of the carport will be 2 feet from the property line, but the front of the carport will meet the 5 foot setback. Mr. Sosne stated that the contractor has recommended that any construction come within 2 feet on the back edge to allow for proper grading in order to hold the soil in place. The neighbor on the side of the proposed construction has poured concrete and erected a lean to type carport and gravel to retain the soil. Mr. Sosne stated that there is a step down from the applicants' property to the neighbors because of the way the property was originally graded.

In response to a question from Mrs. Harris, Mr. Sosne explained that the problem is that he has lost approximately 2 feet of ground and had an exposed gas line. He stated that he would like to construct the carport and grade the property so the problem will not continue and the contractors have indicated that this is the best solution.

Mr. Kelley asked the applicant to address a notation in the statement of justification that the next door neighbor had done the same type of thing. Mr. Sosne explained that the neighbor has constructed a carport made of fiber glass panels with a aluminum top and poured two cement runners to park cars on and laid gravel along that side of his property.

Mr. Kelley asked staff if the applicants' neighbor had obtained a variance for the construction. Ms. Bettard stated that staff's research had not shown any variance being granted.

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

Mrs. Harris made a motion to deny the request. She stated that perhaps there is a drainage problem on the site, but an adequate carport could be built by right and other mitigating measures could be done to correct the drainage problems without obtaining a variance. Mrs. Harris added that the granting of the variance would be a special privilege and not approaching confiscation of the property.

Mr. Ribble seconded the motion.

Mrs. Thonen made a substitute motion because only one corner of the carport required a variance and she stated that there is an unusual situation on the property with respect to



Page 408, July 9, 1991, (Tape 2), (BRENDA SEIDMAN, VC 91-D-054, continued from Page 408)

Chairman DiGiulian stated that the Board had received a letter requesting deferral. He noted that the required notification letters had not been sent to the neighbors.

Mr. Pammel made a motion to defer the application to October 8, 1991, at 9:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammeck, and Mr. Ribble not present for the vote.

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Page 409, July 9, 1991, (Tape 2), Scheduled case of:

9:30 A.M. MOST REV. JOHN R. KEATING/ST. AMBROSE CATHOLIC CHURCH, SPA 76-M-086-2, appl. under Sects. 3-103 and 3-203 of the Zoning Ordinance to amend SPA 76-M-086-1 for church and related facilities to allow building additions and additional parking on approx. 14.19 acres located at 3901 Woodburn Rd., zoned R-1 and R-2, Mason District, Tax Map 59-3((1))11A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Enderle replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator, who was ill. She stated that the applicant was requesting approval of a special permit amendment to allow the construction of building additions totaling 1,681 square feet. The additions will expand the existing rectory by the construction of a three car garage on the southern side of the dwelling and a building addition on the northern end of the dwelling. She stated that the applicant was also requesting to relocate a bell tower which had originally been on the top of the church building. Ms. Kelsey stated that upon reviewing the application, staff recommended approval with the deletion of Condition 9. She explained that due to the illness of the Staff Coordinator, the condition was inadvertently put into the staff report even though staff had agreed that it was unnecessary. Ms. Kelsey stated that Condition 6 dealt with the 25 foot transitional screening that had been required in the original application. She noted that the screening requirement could not be met because a sidewalk had mistakenly been approved to run through the 25 foot transitional screening area.

In response to Mrs. Harris' question as to whether the plat or the wording of the conditions would have to be changed in order to rectify the mistake, Ms. Kelsey stated that the plat was correct. She explained that Condition 6 was written to allow the sidewalk.

Mr. Pammel referred to the staff report and asked whether the plants specified in the original application had been installed. Ms. Kelsey stated that although staff did not believe the existing screening would meet the zoning ordinance requirements, Condition 6 would alleviate the problem.

In response to Mrs. Harris' question as to whether the bell tower would present a noise problem, Ms. Kelsey stated that staff did not believe the bell would present a problem. She said that the applicant could better address the issue.

The applicant's agent, William F. Enderle, Director of Property and Construction, the Catholic Diocese of Arlington, 200 N. Glebe Road, Suite 904, Arlington, Virginia, addressed the Board and stated that he was in agreement with the staff report. He asked the Board to delete Condition 9, and said that the required transitional screening would be provided. Mr. Enderle stated that the architectural design of the existing bell tower had caused serious structural problems. He explained that because of the dangerous situation, the bell tower would be moved to ground level and placed between the existing church and school. In order to clarify the issue, Mr. Enderle explained that the noise of the existing bell had never been an annoyance to the community. He expressed his belief that the relocation of the bell would not present a noise level problem.

In response to Mrs. Harris' question as to whether the bell would be rung externally, Mr. Enderle said it would.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 76-M-086-2 subject to the development conditions contained in the staff report dated July 2, 1991, with the deletion of Condition 9 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-M-086-2 by MOST REV. JOHN R. KEATING/ST. AMBROSE CATHOLIC CHURCH, under Section 3-103 and 3-203 of the Zoning Ordinance to amend SPA 76-M-086-1 for church and related facilities to allow building additions and additional parking, on property located at 3901 Woodburn Road, Tax Map Reference 59-3((1))11A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 410, July 9, 1991, (Tape 2), (MOST REV. JOHN R. KEATING/ST. AMBROSE CATHOLIC CHURCH, SPA 76-M-086-2, continued from Page 409)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 1991, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and R-2.
3. The area of the lot is 14.19 acres.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Intec Group, Inc. which is dated as revised June 3, 1991 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 number of seats in the church shall be six hundred (600) with a corresponding minimum of one hundred fifty (150) parking spaces. There shall be a minimum of two (2) parking spaces provided for the rectory. The maximum number of parking spaces on site shall be one hundred ninety five (195) as shown on the special permit plat. All parking for the use shall be on site.
6. To preserve the existing vegetation on the site, the limits of clearing and grading shall be as shown on the special permit plat. The existing vegetation protected by the limits of clearing and grading shall be deemed to fulfill the requirements for transitional screening on all lot lines with the exception of the eastern boundary between the parking and Lot 18 and an area on the north between the parking spaces and Woodburn Road.

On the east, the requirement shall be modified to allow the existing vegetation to fulfill the requirement, provided it is supplemented with evergreen plantings that effectively screen any adverse impacts from the abutting parking lot. The plantings shall be a minimum of six (6) feet in height at planting. The nature, type, and location of such plantings shall be as determined by the County Arborist. On the north, Transitional Screening 1 (25') shall be provided between the parking area and the front lot line formed by dedication for Woodburn Road. If after dedication, sufficient width does not remain to satisfy Transitional Screening 1 (25'), plantings shall be provided to be equivalent to the plantings required for Transitional Screening 1. The sidewalk may remain within this yard.

7. The barrier requirement shall be waived.
8. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Fairfax County Ordinance. The number of parking spaces may be reduced to accommodate this landscaping provided the number of spaces remaining meet the minimum requirements for these uses.

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

Page 411, July 9, 1991, (Tape 2), (MOST REV. JOHN R. KEATING/ST. AMBROSE CATHOLIC CHURCH, SPA 76-M-086-2, continued from Page 410)

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 which carried by a vote of 5-0 with Mr. Hammeck 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 July 17, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 411, July 9, 1991, (Tape 2), Scheduled case of:

9:45 A.M. CRAIG A. CARINCI, SP 91-S-017, appl. under Sect. 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow open deck and addition 8.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 10,560 s.f. located at 15223 Sovereign Pl., zoned R-C, WS, AN, Springfield District, Tax Map 33-4((2))447.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Carinic replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Bernadette Bettard, Staff Coordinator, who was ill. She stated that the applicant was requesting a modification to the minimum yard requirements for the R-C District to allow an addition and a covered deck. She noted that the screened porch/deck would be on the rear and the covered deck/porch would be on the front of the existing structure. Ms. Kelsey stated that staff recommended approval subject to the proposed development conditions contained in the staff report dated July 2, 1991.

The applicant, Craig A. Carinci, 15223 Sovereign Place, Chantilly, Virginia, addressed the Board and stated that the majority of the houses in the neighborhood have front porches and decks. He noted that the proposed decks would add character and aesthetic value to his structure. He expressed his belief that with the additions, his structure would better conform to the neighborhood and asked the Board to approve the request. Mr. Carinci also requested that the Board waive the eight-day waiting period requirement.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 91-S-017 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 2, 1991.

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#### COUNTY OF FAIRFAX, VIRGINIA

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

In Special Permit Application SP 91-S-017 by CRAIG A. CARINCI, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for certain R-C lots to allow covered deck and addition 8.0 feet from side lot line, on property located at 15223 Sovereign Place, Tax Map Reference 33-4((2))447, 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 9, 1991; and

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

1. The applicant is the co-owner of the land.
2. The present zoning is R-C, WS, AN.
3. The area of the lot is 10,560 square feet.
4. The property was the subject of a final plat prior approval to July 26, 1982.
5. The property was Comprehensively rezoned to the RC District on July 26, or August 2, 1982.
6. Such modification of the yard shall result in a yard not less than the minimum eight (8) feet yard requirement of the zoning district that was applicable to the lot on July 26, 1982.

Page 412, July 9, 1991, (Tape 2), (CRAIG A. CARINCI, SP 91-S-017, continued from Page 411)

7. The application is only for a side lot line to remain eight (8) feet.
8. The resulting development will be in harmony with existing development in the neighborhood and will not adversely impact the health, safety, and welfare of the area.
9. The application has met the provision for the approval of modification to the minimum yard requirements for certain R-C lots as contained in Section 8-913 of the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 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 of the specific covered deck and addition shown on the plat (dated April 10, 1991) as proposed porch and proposed deck/screened porch, respectively, and prepared by Craig A. Carinci and submitted with this application.
2. A Building Permit shall be obtained prior to any construction.

Under Sect. 8-006 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 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.

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

Mrs. Harris made a motion to waive the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack 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 July 9, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 412, July 9, 1991, (Tape 2), scheduled case of:

10:00 A.M. KWANG KO, DBA HOBBY HANGAR, SP 91-S-015, appl. under Sect. 5-503 of the Zoning Ordinance to allow commercial recreational facility on approx. 20,798 s.f. of 4.53 acres located at 4433 Brookfield Corporate Dr., zoned I-5, WS, Springfield District, Tax Map 44-1(3)13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Kwang S. Ko, 295 Sunset Park Drive, Herndon, Virginia, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to allow an indoor commercial recreational use in an industrial center. She explained that the applicant would operate an indoor 12.0 foot long and 48.0 foot wide racing track for radio-controlled model cars; space to repair and test the cars; and retail space for the sale of model cars, airplanes, and associated items as an accessory use to the commercial recreational use. The area designated for the use would comprise 10,680 square feet of the 31,465 square feet within Building 3B with an overall FAR of 0.32. The hours of operation would be 10:00 a.m. to 10:00 p.m. Monday through Friday, 10:00 a.m. to 11:00 p.m. on Saturday, and 10:00 a.m. until 6:00 p.m. on Sunday. Ms. Dickey stated that the maximum number of daily employees would be four (4), the estimated number of patrons per day would be 30 per weekday and 78 per weekend day. She said that the thirty (30) parking spaces would be adequate, and the extended hours of operation on Saturday night would have no land use impacts. She noted that there would be no new construction or exterior alterations. In conclusion, Ms. Dickey stated that staff recommended approval subject to the development conditions dated July 3, 1991.

In response to Mrs. Harris' question as to whether the applicant had the space to accommodate 78 patrons, Ms. Dickey said that the applicant could better answer the question, but noted that he had received a building permit from the Department of Environmental Management.

The applicant's landlord, Robert Doubek, with Reynolds Metals Development Company, 8330 Boone Boulevard, Suite 420, Vienna, Virginia, addressed the Board and stated the maximum occupancy load permitted by the building permit was 99 persons. He stated under the BOCA Code the space, not devoted to the track or retail area, could support 155 patron.

Page <sup>413</sup> 413, July 9, 1991, (Tape 2), (KWANG KO, DBA HOBBY HANGAR, SP 91-S-015, continued from Page <sup>412</sup> 412)

In response to Mrs. Harris question as to whether the open space provided would be unavailable for the patrons use, Mr. Doubek stated he was only referring to the space that would be available for the patrons use.

There being no speakers to the request, Chairman DiGiulian close the public hearing.

Mr. Doubek requested that the eight-day waiting period be waived.

Mr. Pammel stated that he could not support the request and was concerned with the proposed use. He stated that he did not believe the primary commercial use should be considered an accessory or incidental use. Mr. Pammel expressed his belief that when the Zoning Ordinance refers to accessory uses, it intended the accessory uses, i.e. coffee shops, etc., to support the primary use.

Mrs. Harris made a motion to grant SP 91-S-015 for the reasons reflected in the Resolution and subject to the revised development conditions dated July 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-015 by KWANG KO, DBA HOBBY HANGAR, under Section 5-503 of the Zoning Ordinance to allow commercial recreational facility on property located at 4433 Brookfield Corporate Drive, Tax Map Reference 44-1((3))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 July 9, 1991; and

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

1. The applicant is the lessee of the land.
2. The present zoning is I-5, WS.
3. The area of the lot is 10,680 square feet of 4.53 acres.
4. It is an intense use of the property but it fits within the guidelines of the Zoning Ordinance and the special permit plat.
5. The general standards necessary for the Special Permit have been met.
6. The granting of the Special permit will not have an adverse impact on the character 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 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 as the special permit area of 10,680 sq. ft. of Building 3B and associated parking and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Huntley, Nyce and Associates, PC, dated February 11, 1991 and revised March 3, 1991) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special permit plat and these development conditions.
5. The maximum number of persons on-site at any one time shall not exceed 82, including employees.

Page 44, July 9, 1991, (Tape 2), (KWANG KO, DBA HOBBY HANGAR, SP 91-S-015, continued from Page 43)

6. The maximum number of employees associated with this use shall be limited to four (4) on-site at any one time.
7. Hours of operation shall be limited to 10:00 a.m. until 10:00 p.m., Monday through Friday, 10:00 a.m. until 11:00 p.m. on Saturday and 10:00 a.m. until 6:00 p.m. on Sunday.
8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 30 spaces as determined by DEM. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements. At the time of site plan review, a revised parking tabulation shall be submitted and approved by DEM which shows that the required parking can be provided for all uses in the industrial center, or the Special Permit shall be null and void.
9. There shall be no food preparation or serving of food 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 legally established 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 legally 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 which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Ribble was not present for the vote.

Mrs. Harris made a motion to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 44, July 9, 1991, (Tape 2), Scheduled case of:

10:15 A.M. DOUGLAS W. FAGUE, A 91-S-004, appl. under Sect. 8-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Par. 11 of Sect. 11-102 is enforced by the Director of the Department of Environmental Management and to appeal the Director of the Department of Environmental Management's determination that a mountable curb and gutter is allowed to be used as a driveway entrance to a parking space in a townhouse development located at 14096 Winding Ridge Lane, zoned R-1 and R-8, Springfield District, Tax Map 65-2((11))79.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that the application had to be readvertised. She stated that the applicant and staff had agreed to a new hearing date of July 30, 1991, at 10:55 a.m.

Mrs. Harris made a motion to defer A 91-S-004 to the suggested date and time. 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 44, July 9, 1991, (Tape 3 - not Lanier), Scheduled case of:

10:30 A.M. Meeting between BZA/Staff RE: Pending Zoning Ordinance Amendment (NOTE: Staff attending was Barbara A. Byron, Director, Zoning Evaluation Division, OCP; Jane W. Gwinn, Zoning Administrator, Zoning Administration Division, OCP; Marilyn Anderson, Senior Staff Coordinator, Zoning Evaluation Division, OCP; Jane C. Kelsey, Chief, Special Permit and Variance Branch, Zoning Evaluation Division, OCP; and Helen C. Darby, Associate Clerk, Board of Zoning Appeals)

Mrs. Thonen made a motion to adjourn to an executive session. Chairman DiGiulian stated that since legal matters would not be discussed at the meeting, it would not be an executive session. He announced that the meeting was opened to the public and the Board convened in the conference room.

Page 415, July 9, 1991, (Tape 3 - not Lanier), (MEETING BETWEEN BZA/STAFF, continued from Page 414)

The Board discussed the changes in a proposed Zoning Ordinance amendment that would allow administrative approval of minor modifications to approved special permits. Staff stated that it had suggested the changes in order to use the County's resources to the fullest, to simplify the process for the public, to reduce the time required to complete a case, and to improve the overall efficiency of the process.

The Board expressed concerns regarding the ramifications the changes might create. Staff agreed to submit suggestions for safeguards that would ensure the changes would not create an opportunity for misuse.

A memorandum from Barbara A. Byron, Director, Zoning Evaluation Division, dated July 9, 1991, regarding the Board Room in the new governmental center was submitted to the Board. Staff briefed the Board on the additional accommodations that will be available, notably the handicapped facilities. It was the consensus of the Board to weigh the advantages of using the existing Board Room against the added capabilities available at the new governmental center before deciding where to hold future public hearings, as well as the disadvantages involved in sharing the Board room with the Board of Supervisors. The Board expressed its continued concern for the impact and disruptions to citizens when a Board of Zoning Appeals hearing has to be relocated when the Board of Supervisors needs the Board Room. The Board of Zoning Appeals requested Ms. Byron inquire with the appropriate department to determine whether or not the Board Room would continue to have the same Lanier recording and sound equipment. Ms. Byron agreed to research this and advise the Board of Zoning Appeals by the next meeting.

Mr. Ribble was not present for the discussion.

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The Board returned to the Board Room at 12:20 p.m.

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Page 415, July 9, 1991, (Tape 2), Action Item:

Request for Reconsideration  
David R. Clifford, VC 91-P-048  
Heard on July 2, 1991

Mr. Hammack made a motion to deny the request for reconsideration. Mrs. Harris and Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble not present for the vote.

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Page 415, July 9, 1991, (Tape 2), Action Item:

Approval of Resolutions from July 2, 1991 Hearing

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble not present for the vote.

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Page 415, July 9, 1991, (Tape 2), Action Item:

Additional Time  
Stanley Martin Communities, VC 89-S-071  
10137 Burke Lake Road  
Tax Map Reference 87-2((1))14

Mr. Hammack made a motion grant the request. Mrs. Harris seconded the motion and noted that the delay had not been imposed by the applicant, but had been caused by the engineering of Pohick Road. The motion carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble not present for the vote. The new expiration date is July 18, 1992.

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Page 415, July 9, 1991, (Tape 2), Information Item:

Intent to Defer  
3-E Development Corporation Appeal, A 91-C-008  
Scheduled for August 6, 1991

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that staff had received a request to defer the appeal to the BZA's fall schedule. She said that although the case had not been advertised, the Board had set a date and time.

Page 446, July 9, 1991, (Tape 2), (3-E DEVELOPMENT CORPORATION APPEAL, A 91-C-008, continued from Page 445)

Mrs. Harris made a motion of intent to defer the appeal. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: July 30, 1991

APPROVED: August 6, 1991



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 16, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:10 p.m. and Mrs. Thonen gave the invocation.

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Page 417, July 16, 1991, (Tape 1), Board Matter:

Woodlawn Country Club  
SPA 74-V-107-2

Mr. Kelley called the Board's attention to the Woodlawn Country Club and asked that the file be pulled. He said that, when the application was processed, the Board had not imposed a requirement to dedicate property and to provide a trail. He said that it had been his understanding that the Department of Environmental Management (DEM) was now requiring that the property be dedicated. He asked that staff put this item on the next week's Action Item agenda and provide the Board with transcripts, copies of the application, and all other pertinent information, for the Board's review.

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

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Page 417, July 16, 1991, (Tape 1), Board Matter:

Board of Zoning Appeals Meeting Place

Mrs. Thonen referred to her previous motion on June 25, 1991, that the Board continue to meet at the Massey Building Board Room. She said that she believed that the resolution, as drafted, had not reflected her exact words and had not been sent to the Board of Supervisors and Anthony H. Griffin, Deputy County Executive for Planning and Development, as she had requested. Mrs. Thonen said that she would like to have the Resolution reworded to reflect her own words. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 417, July 16, 1991, (Tape 1), Scheduled case of:

8:00 P.M. WAYNE V. JORDAN APPEAL, A 91-C-005, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed Chesapeake Bagel Bakery in the Tysons Square Shopping Center is not a permitted use since a fast food restaurant, drive-in bank, or quick-service food store is only permitted by right when it is located under the same roof of a shopping center building, which contains at least 6 other retail uses, on approx. 662,351 s.f. located at 8351, 8353, 8355, 8357 Leesburg Pike, zoned C-7, SC and BC, Centreville District, Tax Map 29-3(1)32.

John W. Farrell, attorney with the law firm of Odin, Feldman & Pittleman, P.C., 9302 Lee Highway, Suite 1100, Fairfax, Virginia, came to the podium to represent the applicant. Mr. Farrell referred to a copy of a memo which he had received from the County Attorney within the previous hour and requested at least a half hour recess so that he might have an opportunity to review the memo and prepare a response.

Mrs. Thonen said she would like to know how the Zoning Administrator felt about Mr. Farrell's request.

Jane W. Gwinn, Zoning Administrator, replied that the time frame under which both sides had been operating was very short but, in fairness to Mr. Farrell and in view of the fact that he had not had an opportunity to review the most recent memo, she believed that, if he wished to respond that evening, it seemed appropriate to her that he be allowed time to review the memo.

The Board discussed the scheduling and decided to reschedule this appeal to 8:45 p.m., with the concurrence of Mr. Farrell.

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Page 417, July 16, 1991, (Tape 1), Action Item:

Request for Reconsideration  
Carl E. & Iola M. Burk, VC 91-D-051

Mrs. Thonen announced, for the record, that Tom Davis, III, Supervisor, Mason District, had called her that morning in the Board Room concerning this case and advised that he was in favor of reconsideration.

Page 418, July 16, 1991, (Tape 1), (REQUEST FOR RECONSIDERATION, CARL E. & IOLA M. BURK, VC 91-D-051, continued from Page 417)

Chairman DiGiulian advised that the Board had received a letter from Lilla Richards, Supervisor, Dranesville District, requesting reconsideration.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that other letters had been received requesting reconsideration from the following: Great Falls Citizens Association, Vivian Lyons, and James P. and Janet C. Regan.

Mr. Kelley made a motion to deny the request for reconsideration. Mr. Ribble seconded the motion, which passed by a vote of 4-3; Mrs. Harris, Mr. Hammack, and Mr. Pammel voted nay.

Mr. Ribble advised that he had spoken with Ms. Richards that day and had himself been considering this issue for the last twenty-four hours. He said that he had been swayed by the expert testimony of Mr. Mackall and he had just passed out a memo to the Board members in an effort to simplify that. He said that he believed this situation to be extraordinary, in that an outlet road which will become a pipestem is located on the property. He did not believe this to be a precedent-setting situation, which appeared to him to be of primary concern to many of the people in Great Falls, as Mrs. Lyons had so aptly pointed out. Mr. Ribble said that he had also looked into some of the other cases which Mrs. Lyons had mentioned and he did not believe them to be similar at all, but believed them to be entirely different and deserving of the denial action taken on them.

Mrs. Thonen said that she also was swayed by Mr. Mackall's testimony and that the Board had done as much research on this case as could possibly be done, and had tried to look into every complaint.

Mrs. Harris said that, in looking through the transcript and the letters, etc., even if everything that Mr. Mackall had said had been absolutely true, she still believed that the Board was required to consider the unusual size of the property and the hardship factor. She said that, even if the outlet lot required a 180 foot variance, if there was no discussion of hardship approaching confiscation of property, she questioned why this request should be granted. Mrs. Harris referred to the verbatim, remarking that the history of the outlet lot and the division of the property was interesting but, when considering the Standards, there was no reason to vote for a 180 foot variance.

Mrs. Thonen referred back to her motion when she had said that the applicant had met Standard 1, exceptional size; that an extraordinary situation existed; that approval would not cause any hardship to the neighbors; that the applicant met 6-A and 6-B; regarding number 7, she did not think approval would create any problems for adjacent property owners; and concerning the character of the zoning district which specifies two acres, the applicant has more than two acres. Mrs. Thonen said that she had not found anything in the letters which was different from what had been said previously at the hearing. Because nothing new or different had been submitted, Mrs. Thonen said she would have to vote in support of denial of the reconsideration.

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Page 418, July 16, 1991, (Tape 1), Action Item:

Approval of Resolutions from July 9, 1991 Hearing

Mr. Kelley made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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Page 418, July 16, 1991, (Tape 1), Action Item:

Approval of Minutes from May 14, and June 11, 1991 Hearings

Mr. Ribble made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 418, July 16, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing  
Patricia Leahy, SP 91-D-033

Mrs. Thonen asked why the applicant was requesting an out-of-turn hearing. Mrs. Harris said that the reason was to install an accessory dwelling unit to accommodate caretakers for a disabled son. Mrs. Harris said that construction had already begun.

At the Board's request, Jane C. Kelsey, Chief, Special Permit and Variance Branch, provided the particulars concerning staffing, noticing, posting, and advertising. She recommended hearing this request on September 10, 1991, in order to allow enough time for the necessary preliminaries.

Page 419, July 16, 1991, (Tape 1), (REQUEST FOR OUT-OF-TURN HEARING, PATRICIA LEACH, SP 91-D-033, continued from Page 418)

Mrs. Thonen made a motion to grant the out-of-turn hearing for September 10, 1991. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 419, July 16, 1991, (Tape 1), Action Item:

Request for Out-of-Turn Hearing  
Graham Road United Methodist Church

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the application had not yet been received by the Special Permit and Variance Branch; however, upon receipt of an out-of-turn hearing request from both the applicant and Katherine K. Hanley, Supervisor, Providence District, she checked to see why the application had not yet been received. She was advised that there was a question concerning the application, since there is an existing Special Permit for a Mothers Day Out program in the church already, that has at least up to 60 children and this new application would be for 70 additional children. Ms. Kelsey explained that there had been a determination by a previous Zoning Administrator that a Special Permit should not have been granted, but that permission should have been granted for a Mothers Day Out. Ms. Kelsey said there was some question about whether the application should be a special permit, special permit amendment, or a special exception, since the enrollment for both the child care center and the Mothers Day Out is in excess of 99. Ms. Kelsey said the answer was not yet available.

In response to a question from Chairman DiGiulian, Ms. Kelsey said she thought she might have an answer by the next meeting and referenced the information she had provided in the previous Action Item regarding the earliest possible hearing date to allow enough time for staffing, noticing, posting, and advertising.

Mrs. Thonen made a motion to schedule this application for September 10, 1991, in order to allow enough time for the necessary preliminaries.

Mr. Hammack and Mr. Pammel advised that they would not be present at the meeting on September 10, 1991.

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

Ms. Kelsey said that Thomas M. Davis, III, Supervisor, Mason District, had called that afternoon to say that he would be bringing this item up before the Board of Supervisors. She said that staff would be back in touch with the applicant the next day. If this turned out to be a special exception application, she said, the application would be sent to the Planning Commission and the Board of Supervisors.

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Page 419, July 16, 1991, (Tape 1), Action Item:

Request for Intent to Defer  
Harvey G. & Jaton L. West, VC 91-D-019

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that there had been some mis-communication in the attempt to get the necessary information for the Board and requested that the Board issue an Intent to Defer this case until July 30, 1991, to give the Zoning Administrator sufficient time to address this issue. Ms. Kelsey apologized for any inconvenience this may have caused the Zoning Administrator's Office.

Mr. Pammel made a motion to issue an Intent to Defer this issue to July 30, 1991. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 419, July 16, 1991, (Tape 1), Scheduled case of:

8:15 P.M. MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-2, appl. under Sect. 3-403 of the Zoning Ordinance to amend SPA 80-L-033-1 for child care center and private school of general education to allow increase in maximum daily enrollment, change in hours of operation, and change in previously approved conditions on approx. 3.6293 acres located at 6300 Florence La., zoned R-4, Lee District, Tax Map 82-4(1)17B, 17A; 82-4(36)A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thomas replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located on the west side of Florence Lane, approximately 1,500 feet south of its intersection with Telegraph Road, approximately 3.63 acres in size; zoned R-4; developed with an existing

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Page <sup>420</sup> 70, July 16, 1991, (Tape 1), (MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-2, continued from Page 419)

child care center and private school of general education; and housed in a former single family dwelling.

Ms. Dickey said that the applicant was requesting approval of a special permit amendment to SPA 80-L-033-1 for a child care center and private school of general education, to allow an increase in the maximum daily enrollment to 99 children from the current 75 children, an increase in the hours of operation of one-half hour, to "7:30 a.m. to 6:00 p.m." from the current "8:00 a.m. to 6:00 p.m.", Monday through Friday, and a change in the previously approved Conditions to eliminate the requirement to provide three vans to transport children to and from the property, and an amendment to increase the maximum student age from 11 to 12 years.

Ms. Dickey said that the maximum number of employees present daily would continue to be 12 and the total FAR on the site would be 0.05; no additions to the existing structure were proposed in the application. Ms. Dickey said that the applicant had also requested a modification of the transitional screening requirements along the northern and eastern lot lines, and a waiver of the barrier requirements along all four sides. She said that the applicant had requested that the stormwater detention requirements be waived and that BMP (Best Management Practices) requirements be waived, even though the site is not within the Water Supply Protection Overlay District and no BMP requirements apply.

Ms. Dickey said that staff could support the increase in the hours of operation to open one-half hour earlier, to modify the previously imposed requirement to provide three vans to require only the one existing van to transport children, and to modify the age of students to include 12-year-olds, since those amendments would have no significant impact upon the proposed uses. She said that staff, however, is concerned that several Conditions of approval previously imposed by the Board of Zoning Appeals, pursuant to approval of SPA 80-L-023-1, have not been satisfied; and that the applicant had been cited by Fairfax County for operating in violation of the previously approved special permit. She said that staff recommended that the applicant resolve all outstanding issues generated by the previous special permit within the shortest possible time.

Ms. Dickey said that the primary concerns with the current application were the expansion of the proposed non-residential uses within the interior of a single family residential neighborhood and the provision of screening to mitigate the negative effects of the uses on abutting property owners. She said that staff was also concerned that the proposed uses would negatively impact the single family residential character of the neighborhood and would further overload the capacity of the local street system. Ms. Dickey said that staff concluded that the proposed intensification of the use, specifically the increase in the number of children, was not in harmony with the recommendations of the Comprehensive Plan, nor did it satisfy all of the General Standards or the additional standards for child care or private school uses.

Ms. Dickey further stated that, for the foregoing reasons, staff recommended approval of SPA 80-L-033-2 in part, to allow a one-half hour increase in hours of operation, an increase in the maximum age of students to 12 years, and a reduction in the requirement to provide vans for student transport to one van, subject to the Proposed Development Conditions contained in the staff report. She said that staff recommended denial of the request to increase the maximum daily enrollment.

Ms. Dickey said that Charles Denney of the Office of Transportation was present to answer any questions.

Chairman DiGiulian asked Ms. Dickey to confirm that there was no proposed additional construction associated with the application and she did so. Ms. Dickey also confirmed that the construction approved in the previous special permit amendment application had been accomplished.

Mrs. Thonen asked staff why they were recommending the reduction to one van and whether the applicant had ever procured the two other vans. Mr. Denney replied that it was staff's belief that, at this point in time, the applicant could better meet the trip requirements outlined in the previous application by implementing car pools rather than by using vans. Mrs. Thonen said that it was her opinion that not many people were car pooling. She said that Telegraph Road and North Kings Highway were not very good roads on which to be transporting children, especially if an increase in enrollment were to be allowed. Mrs. Thonen stated that much thought had gone into the recommendation for the vans and she did not understand why the recommendation was now being made to reduce the number of vans. Ms. Dickey said, to expand Mr. Denney's comments, that staff also believed that the applicant would have several options to maintain a specified maximum number of trips per day, to and from the site, without being tied to three vans. Mrs. Thonen expressed concern about not specifying the method and leaving the decision up to the applicant. Ms. Dickey said that staff believed it should be the applicant's responsibility to select the appropriate option, and that the overall concern was the number of trips, not specifically how the children were transported to and from the site.

Mrs. Thonen expressed concern again about leaving the option up to the applicant, because the applicant had not yet met the Conditions imposed in the previous special permit amendment. Mrs. Harris agreed with Mrs. Thonen and confirmed through Ms. Dickey that the applicant had been cited for violations of the previous special permit amendment Conditions.

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Chairman DiGiulian pointed out that the transportation analysis said that twenty-four children would generate an additional 120 vehicles per day, based on a study of private schools throughout the United States. He asked staff how many schools in Fairfax County had been included in the study, if any. He also asked if there had been any study made of Fairfax County schools of this type. Mr. Denney said there were none that he was aware of. He said that there had been a study done in 1984 by the Virginia Department of Transportation (VDOT), which was used in the study done by the Institute of Transportation Engineers. Mr. Denney said that the same type of private schools generate approximately five vehicle trips per day, per student. Chairman DiGiulian said that the figure appeared to him to be very high. Mr. Denney explained that delivering a child to school counted as two trips because the driver had to make a second trip to return from the school. The same was true when picking up a child from the school, making a total of four trips.

The discussion continued about the method of counting the trips and Mr. Hammack interjected a question to staff. He referred back to 1986, when he said the applicant was supposed to do a trip generation survey and submit it within three months. He asked if that had ever been done. Ms. Dickey said that there was no evidence that it had been submitted. Mr. Hammack said that conducting the survey had been considered very important by Gerald W. Hyland, Supervisor, Mount Vernon District, and former member of the Board of Zoning Appeals, at the time of the previous hearing.

William C. Thomas, Jr., Esquire, of the law firm of Fagelson, Coates and Davenport, 401 Wythe Street, Alexandria, Virginia, represented the applicant and acknowledged the concern of staff and the Board over the lack of compliance by the applicant with the previously imposed Development Conditions. Mr. Thomas said that the Board was no more concerned than he was, because his firm had also represented the applicant at the previous hearing.

Mr. Thomas said that the school was designed to accommodate 99 students and that the school needed the 99 students. He expressed concern about the lack of follow-through in the matter of the Conditions previously imposed and said he was at a loss to describe what had occurred. He said that one of the issues which would arise involved the car and van pool. In 1986 and 1987, he said, there were a large number of children coming to the school from the City of Alexandria because a school there had closed down. He said that was one of the principal reasons for requesting an increase in enrollment by the applicant.

Mr. Thomas said that the issue of outstanding Conditions not being satisfied came as a surprise to the applicant as well as to him and the staff. He said that the applicant agreed with most of the previously imposed Conditions which had now been reworded.

Mr. Thomas said that there had been a communication problem with the Homeowners Association in the neighborhood, of which he had been unaware, and that the applicant had finally met with the Homeowners Association to discuss their viewpoints on the issues. He said that a representative of the Association was present. He said that they intended to establish a pro-active liaison committee with the homeowners, beginning immediately.

Mr. Thomas said that the applicant was concerned about one Condition which said there would be a sixty day requirement for the improvements to the driveway and parking facility to be made. He said they agreed to that condition, but were concerned that they also need DEM's (Department of Environment Management's) approval for the site plan requirement.

Mr. Thomas said that, regarding the transitional screening issue, the only problem was the requirement on the northeast side of the property which abuts property owned by an individual named Browne. He said that there is an existing stockade fence there and it was his belief that there was supposed to have been screening, on the school side, within the ten foot line. Mr. Thomas said there was a very good relationship between the school and this neighbor and he suggested that, rather than doing the 25 foot setback, which would considerably diminish the size of the playground area for the school, that they do what they were asked to do in the prior application, which was to provide the ten-foot transitional screening or screening within the ten-foot yard on the other side of the fence.

Mr. Thomas said that the third issue was the transportation issue which he said was, in some respects, one of those "the proof is in the pudding" type of situations. Mr. Thomas went on to discuss the transportation issue and the method of calculation. He said that the school was using an incorrect method to calculate the trips and came up with an incorrect figure of 100, which was far below the 140 maximum. He said that the problem with the count of 100 was that it was a half count: a round trip was counted as one trip instead of properly being counted as two trips. Mr. Thomas said this was only one of the reasons for non-compliance. He said another reason was that the applicant did not understand some of the requirements, and just neglected some others.

Mrs. Thonen expressed great concern over the entrance width which was supposed to be 30 feet, but is only 12 feet, with cars being stacked on the road, which presents a very dangerous situation. Mr. Thomas said that this problem would be addressed in thirty days, if possible.

Mr. Thomas continued to express regret over the fact that conditions such as this had not been complied with.

Page 422, July 16, 1991, (Tape 1), (MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-2, continued from Page 421)

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Mr. Ribble interjected an incident which had occurred some years ago in which Mr. Fagelson had been involved. Mr. Fagelson had represented an applicant before the Board of Zoning Appeals. The applicant then violated the conditions of the approval and Mr. Fagelson, upon finding out about it, brought the matter to the attention of the Board.

Mr. Thomas appealed to the Board on the basis of the integrity of his law firm and elaborated on this aspect.

Mr. Pammel expressed appreciation to Mr. Thomas for his candor and acknowledged the embarrassment suffered by Mr. Thomas in having to come forward and apologize for his client's violation of the Conditions.

Chairman DiGiulian asked if there was anyone else to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition to the application. The following people came forward: Robert Redmond, 6250 Gentle Lane, Alexandria, Virginia, President of the Huntington Forest Homeowners Association, representing 119 households in the community surrounding the school on two sides; Joe Cavallo, 3301 Gentle Court, Alexandria, Virginia; Melanie Reilly, 6272 Gentle Lane, Alexandria, Virginia; and Hendrik Browne, 6211 Florence Lane, Alexandria, Virginia.

Mr. Redmond stated that the school was a good neighbor but they were concerned about non-compliance with the Conditions previously imposed in 1986. He requested that the Board make a decision based on the July 9, 1991, staff report with some adjustments and clarifications. He also requested denial of an increase in enrollment because of a credibility issue and expressed concern over lack of communication with the applicant.

Mr. Hammack asked Mr. Redmond if the neighborhood experienced any traffic problems generated by the school and, if so, asked him to describe them. Mr. Redmond said that the general attitude of the community was that numbers were not the greatest concern. He said that the problem was a circulation problem; the cars were backing up because there is only one lane; there is no circulation at the top and there is no traffic circle.

Mrs. Thonen asked Mr. Redmond if the neighbors shared the entrance way with the applicant. Mr. Redmond said that Florence Lane is the only way into the development, which is only at the full width of 38 feet from curb to curb at the very top of the development. Upon leaving the development, it varies to as narrow as 20 feet, with a section just before the entrance having been widened from 14 feet to approximately 20 feet on an emergency basis at one time. He said there are no curbs or gutters, only ditches on the sides, and high crowns in some places.

Mr. Cavallo said that he represented all abutting property owners whose attitude was influenced by the lack of credibility on the part of the applicant, because the previously imposed Conditions had not been met. Mr. Cavallo asked the Board to insure the neighbors of the applicant's compliance with previously imposed Conditions before they granted this new request. Mr. Cavallo said he had the signatures of all abutting property owners on a petition to the Board, requesting adoption of the recommendations presented in the staff report. Chairman DiGiulian asked Mr. Cavallo if he had noticed any activity within the past two or two and one-half months, indicating that the applicant was making an attempt to meet the Standards, since the violation notice was issued May 2, 1991. Mr. Cavallo said he had not. Ms. Reilly advised the Board that she is a zoning lawyer and pointed out that the application was filed a year ago and had gone to the Lee District Land Use Committee; but the neighborhood had met with the applicant for the first time last week, which she considered inexcusable. She said that this was especially true because, in 1986, she and five or six other people had testified, indicating that they were an organized Homeowners Association. Ms. Reilly said that she believed the problem was exacerbated by the fact that the school was under the control of an absentee owner. She expressed admiration for the administrator of the school who, she believed, was doing a good job under the circumstances. Ms. Reilly believed that a commitment from the owner was necessary to insure that there actually was a financial ability to fulfill the Development Conditions. She said that, in the meeting the previous week, the neighbors were told that some of the Development Conditions were very expensive, that the applicant was caught off guard, and that their budget might not cover the fulfillment of the Conditions. Ms. Reilly did not encounter a backup in traffic because of her schedule and the location of her property.

Mrs. Harris asked Ms. Reilly, since she was involved in zoning, if it would be better to have a horseshoe-shaped driveway. Ms. Reilly said that knowledge of the topography would prompt her to say that a great deal of earth would need to be moved to change the driveway.

Mr. Browne said that he lived across the street from the school and, reflecting on a previous question from Chairman DiGiulian, said he noticed a lot of work being done at the school within the last three to four months: The driveway had been paved and some landscaping had been done, indicating that something was "obviously in the works." Mr. Browne said that traffic was a mixed issue; small children do not do well in a car pooling situation; most of the children have two working parents; it is important that the parents can deliver the children directly to the caretakers. He acknowledged that the relationship between the neighborhood and the school was not good; however, the relationship between the neighbors and the lady who runs the school on a day-to-day basis is excellent. Mr. Brown spoke of an elderly lady who lives at 6210 and is infirm, widowed, addressed in the letter and a signer

Page 423, July 16, 1991, (Tape 1), (MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-2, continued from Page 362)

of the petition. Mr. Browne said that he took great pains to point out to this lady the clause in the staff report referring to the fence. He said that her response was that the children were obviously having a lot of fun, they were nice children, but they were very noisy. Mr. Browne said that the lady's house almost abuts the fence line. He said that approximately 16% of the student body of the school comes from the surrounding neighborhood and, if the requirements are not implemented in an "evenhanded way," the neighbors would bear the cost. He said he believed that the neighborhood was very concerned with the school because it contributed an important service to the neighborhood.

Mrs. Harris asked, when someone is cited for a zoning violation, how long it took before someone checked back to see if the violation had been corrected. Ms. Kelsey said that she believed it depended upon the circumstances. Upon checking the letter to the applicant, Ms. Kelsey found that thirty days had been allowed for the applicant to comply. The question of whether or not someone returned to the location of the violation and when they returned was left unanswered. Mrs. Thonen noted her belief that, once an application was in the system, the applicant was not required to act upon any pending violations.

Mrs. Harris related an incident in her neighborhood of a property owner having been cited for a violation a year ago and instructed to reduce a fence by 2 feet. She said that the violation still had not been corrected.

Ms. Kelsey said that, since the issue was not within the purview of her staff, she would like to get the necessary information from the proper agency and report back to the Board the next week. The Board so ordered.

In his rebuttal, Mr. Thomas said that, since the applicant was returning to be heard by the Board, the intention was to address all issues at the same time. He said that the newly proposed driveway configuration was better than the previous one. He spoke at length about the work which still needed to be done and said that it was his belief that no one was aware of the fact that the applicant was in violation; neither the applicant, nor Mr. Thomas; and, as the neighbors had stated, they did not know. Mr. Thomas stated that the neighbors were at no risk because, while the applicant had previously been naive, the applicant now knew what was expected.

Mrs. Thonen made a motion to defer SPA 80-L-033-2 until the applicant has complied with the Conditions imposed in the previous special permit amendment.

Mrs. Harris noted that all the Conditions in the previous application and this application were the same, except for a waiver of the two buses.

Mrs. Thonen reiterated that she would like to have this case deferred until September and that she had no problem with the reconfiguration of the driveway; however, Chairman DiGiulian remarked that some of the neighbors objected to the new configuration and Mrs. Thonen said that issue would come under the requirements of the Virginia Department of Transportation, in any event.

Mr. Thomas said that he would like to come back in September, but did not know if the work could be accomplished that early. Mrs. Thonen said that, if the work had not been completed by the next hearing date, the Board could grant another deferral.

Ms. Kelsey advised the Board that all of the agendas for September were very full and suggested October 1, 1991.

Mrs. Thonen amended her motion to schedule the deferral for October 1, 1991. Mr. Pammel said he would like to have a complete report from staff with respect to all of the conditions enumerated and the progress that had been made, at least a week before this application comes back before the Board. Mrs. Thonen amended her motion to include this stipulation.

Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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The Board recessed at 9:30 a.m. and reconvened at 9:45 a.m.

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Page 423, July 16, 1991, (Tapes 1-2), Scheduled case of:

8:00 P.M. WAYNE V. JORDAN APPEAL, A 91-C-005, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed Chesapeake Bagel Bakery in the Tysons Square Shopping Center is not a permitted use since a fast food restaurant, drive-in bank, or quick-service food store is only permitted by right when it is located under the same roof of a shopping center building, which contains at least 6 other retail uses, on approx. 662,351 s.f. located at 8351, 8353, 8355, 8357 Leesburg Pike, zoned C-7, SC and HC, Centreville District, Tax Map 29-3((1))32.

Earlier in the meeting the County Attorney presented a memo on this appeal and the attorney

Page <sup>424</sup> July 16, 1991, (Tapes 1-2), (WAYNE V. JORDAN APPEAL, A 91-C-005, continued from  
Page <sup>423</sup>)

for the appellant was granted a deferral so that he might have an opportunity to review the memo and prepare a response.

Chairman DiGiulian asked Jane W. Gwinn, Zoning Administrator, to locate the property, which she did. She described her determination as captioned above.

John W. Farrell, attorney with the law firm of Odin, Feldman & Pittleman, P.C., 9302 Lee Highway, Suite 1100, Fairfax, Virginia, returned to the podium to represent the applicant.

Mr. Farrell said that he would address the issues in the context of the zoning Administrator's position in the 1991 decision, grounds for which were set out in a memo. He said that, "...Ms. Harwood now wants us to believe that there was a question as to whether or not there was ever a ruling that a by right use is permitted at Tysons Square Shopping Center." He asked the Board to review a March 25, 1991, letter to him from the Zoning Administrator. He also asked the Board to review the fifth page of the Zoning Administrator's letter to the Board, quoting: "In my December 17, 1990 letter to Mr. Farrell, I indicated that the retail uses which would eventually occupy the new building could be considered as satisfying the requirement for six (6) retail uses set forth in Par. 1 of Sect. 4-805. In my March 25, 1991 letter, I corrected my position to indicate that the six (6) retail uses and the proposed use must be located under the roof of the same building. It is this March 25, 1991 determination that is the subject of this appeal." He also referred the Board to page 7, quoting, "It is my position that my letter of December 27, 1990 was in error and therefore it was incumbent on me to correct the mistake by issuing a new opinion."

Mr. Farrell referred to his "original" letter of August 15, 1990, in which he said he asked if the applicant could get a by right permit to occupy the space in the second building.

Mr. Farrell referenced various correspondence and quoted portions of same.

He said there were two issues involved: Was the applicant entitled to a by right use, and when could he obtain it. He said he also questioned whether the applicant had to wait for an occupancy permit on the other two uses.

Mr. Farrell cited the Henry A. Long case, which he said was part of the C&I downzoning cases. He placed a copy of the case before the Board, asking them to review the second page, paragraph 3, wherein Judge Plummer said, "...The interpretation was not appealed within the time limitations established by ordinance and thus is final." Mr. Farrell interpreted Judge Plummer's ruling as saying that, "... the interpretation of the Zoning Administrator is final." He elaborated on this issue, contending that a decision by the Zoning Administrator, if not appealed within thirty days, is final.

Mr. Farrell said that, in the case of George Rucker Realty Corp. v. Board of Zoning Appeals, Judge Bach's opinion of the statute was that the legislature intended finality and certainty.

Mr. Farrell referred to Karen J. Harwood, Senior Assistant County Attorney, having stated that the Booher case contained the decision that the Zoning Administrator is not estopped. He said he was not arguing estoppel and that the Booher case never discussed Sect. 15.1-496.1.

Mr. Farrell referred to another citing by Ms. Harwood, Sect. 15.1-493.3, which discussed an appeal process for an innocent third party who did not know about the Building Permit being issued. He construed this provision to be a check so that when a Zoning Administrator makes a determination, and that determination is in error, innocent third parties can appeal to Court; stating that to still be possible in the case at hand. He said that some third party might come forward and challenge the decision of December 27, 1990.

Mr. Farrell referred to Ms. Harwood's reference to "reliance," and said they were not arguing reliance but the legislative intent; which is that, once the decision is issued and thirty days have passed, that decision must be final.

Mr. Farrell contended that the second grounds for appeal was that the rationale used in the December 27, 1990, opinion is the correct one and that the rationale used in the March 25, 1991, opinion is wrong, pointing to what he said was the "clear language" of the Ordinance. He asked the Board to turn to page 6 of his memo and asked them to review what he perceived to be necessary changes in the wording of the Ordinance to reflect the meaning on which the Zoning Administrator based her determination. Mr. Farrell then proceeded to discuss the semantics of the Ordinance and offered various changes in the wording, in an effort to prove that "under the roof" did not really mean "under the same roof." He offered interpretations of the meaning of "shopping center," and several other terms which were used in the Zoning Administrator's determination and interpretation of the Ordinance.

Mrs. Harris referred to Mr. Farrell's letter of August 15, 1990, which included the description of fast food restaurants and when they were permitted, stating that he included the same verbage as the Ordinance: "under the roof" of a shopping center. Mrs. Harris asked Mr. Farrell if he was a zoning attorney and he said he was an attorney with a license to practice in Virginia. Mrs. Harris said, then, that he knew or was aware that there was a



clause in the Ordinance about the roof of the shopping center and six (6) retail uses under a roof of a shopping center, "right"? Mr. Farrell said he was not sure he understood the question and Mrs. Harris said that was the verbage used in the Zoning Ordinance: the type of facility the applicant wanted to place in the shopping center had to be under the roof of a shopping center containing at least six (6) other retail uses. He said he did ask the question under paragraph 1 of the letter and asked Mrs. Harris to look at his first inquiry, and quoted: "...Given the foregoing facts, will your office give its assent to the necessary permits to allow my client to remodel and occupy the space in Suite B at 8353 Leesburg Pike as a 'by-right' fast food restaurant...."

Mrs. Harris asked what the Zoning Administrator answered and Mr. Farrell said that her answer was yes. Mrs. Harris asked if the Zoning Administrator said "by right" and he said yes, and quoted: "...Conceivably, once the site plan is approved and the additional building is constructed, consideration would be given to issuing a Building Permit and Non-Residential Use Permit for the Chesapeake Bagel Bakery as a by right use under Par. 1 of Sect. 4-705, prior to the occupancy of the other new retail uses. This is also assuming that, at such time, there is evidence that this new building will be occupied by at least two retail tenants...." Mr. Farrell contended that, if the other uses could not be counted, there was no need for the second paragraph.

Mrs. Harris questioned what Mr. Farrell considered to be a decision. She said she was used to reading, "...this is my decision, that you may do this if this happens or if that happens or if you file a site plan or whatever..." She questioned where Mr. Farrell read a decision into Ms. Gwinn's letter. Mr. Farrell said the reason he read a decision into the letter was that he had asked when they could get the by right permit; did she agree that the applicant could get a by right permit; when could the applicant get the permit; did the applicant have to wait until a Non-Residential Use Permit was issued for the other two uses in the new building; could they get it when the Building Permit was applied for. He referred to the foregoing as three questions and added another question of, when the permit was issued, would it be a conditional permit, assumed on the construction of or occupancy of two more retail uses. Mrs. Harris asked if Mr. Farrell had applied for and received a Building Permit. Mr. Farrell said that they had not applied and did not believe it was germane to the case.

Mrs. Thonen asked if "center" meant everything in the shopping center or if it meant a building. She asked if "decision" was the same as "determination," and if "decision" was the same as "interpretation." She asked if they were all the same or if they were different.

Mr. Farrell replied by saying that they appear to be lumped together in Sect. 15.1-496.1 because they are used interchangeably and he did not believe it made any difference what something was called: a decision, a determination, or interpretation. He said the thrust was clear in that one could obtain a by right permit.

Mrs. Thonen said she would like the Zoning Administrator to also address her question. Mr. Farrell interrupted to say that he would like to answer the other question Mrs. Thonen asked about the definition of "center." He said he had given the members of the Board a copy of Section 20-300, which is a definition of "shopping center," which he cited in his letter of August 15, 1990. He asked them to focus on paragraph C, which talked about, "...or if located in separate buildings...." He believed that it meant that a shopping center could have more than one building. Mrs. Thonen pointed out that it also said, "...connected by walls, partitions, canopies or other structural members...." Mr. Farrell said that he was not relying upon that section, but was relying upon the next verbage: "...or if located in separate buildings, are interconnected by common parking areas, travel lanes, walkways or access ways, designed to facilitate customer interchange between the uses on the site...." He believed that there was no dispute by the Zoning Administrator that the second building was part of the shopping center. Mr. Farrell further stated that he believed there could be no argument that the second building was a freestanding building which was built for the sole purpose of accommodating a fast food restaurant. It was his interpretation that was the reason why the word "roof" was used. Mr. Farrell referred to the staff report in the 1978 amendment and said that he believed that the concern which the Board of Supervisors had was that they had been receiving too many of this type of application and wanted to narrow them down to only those which required their attention. He believed that the staff report said that the only applications requiring their attention were those which were in freestanding buildings which have their own curb cut. He said that the location in question did not have its own curb cut and is not in a freestanding building.

Mrs. Thonen said section E appeared to flip-flop on Mr. Farrell's theory, where it said, "...otherwise presents appearance of one continuous commercial area...."

Mrs. Harris stated that the verbage in the Zoning Ordinance is restrictive to fast food restaurants within a shopping center which need to be under a roof with six (6) other retail establishments and the question of whether the building was part of the shopping center was not pertinent; what was pertinent was only whether a fast food restaurant would be allowed in that second building.

Mr. Farrell said that the language in the Ordinance said "...six (6) uses in a center..." and Mrs. Harris said it stated "...six (6) uses under one roof of a shopping center...." At one point, Mr. Farrell stated that the amendment would have to be rewritten to support Ms. Gwinn's interpretation.

The discussion of what comprised a shopping center and the semantics of the Zoning Ordinance continued at length between Mrs. Harris and Mr. Farrell.

Ms. Gwinn said that she obviously disagreed with Mr. Farrell's interpretation of the Ordinance and the staff report. She noted that in the same staff report on which Mr. Farrell was relying on for his references, he was not reiterating the comment that was in the staff report which noted that the proposed amendment would allow these uses, quick-service food store and fast food and drive-in banks, when the uses were located under the same roof of a shopping center, which center contains at least six (6) other retail establishments. She noted that she had been involved in the preparation of said amendment and that the intent had been to allow these uses by right when they were under the roof of a shopping center building that contained six (6) other uses. She said that had been done in recognition of the fact that the shopping center definition, which was basically the same in 1978 and, by definition, the shopping center could be just two or more uses; they also realized that a shopping center could consist of more than one building. Ms. Gwinn said there were past instances involving two buildings and two freestanding pads which were all considered to be part of the shopping center; the intent was not solely meant to apply to the freestanding buildings. She said that the Board's intent was to allow the uses when they were under the roof of a building with six (6) other uses, to insure coordinated access and to minimize the traffic impact. In answer to Mr. Farrell's comment that the amendment would need to be rewritten in order to fit Ms. Gwinn's interpretation, Ms. Gwinn said that the same argument would have to be made to interpret the amendment as Mr. Farrell had chosen to interpret it. Ms. Gwinn believed that Mr. Farrell's argument left no need to reference roof at all; the Ordinance provisions would simply have said, "...such uses are located in a shopping center, which center contains at least six (6) other retail uses; which then makes the words, "...under the roof of the shopping center..." meaningless and unnecessary. Ms. Gwinn submitted that there was a purpose in the wording and the Board's purpose was to insure that the fast food restaurant was in a row with at least six (6) other uses. Ms. Gwinn advised that the Ordinance had been interpreted in exactly this manner since it was adopted in 1977. In her staff report of 1983, she said, there was mention of a question posed to the previous Zoning Administrator, and the same argument being presented at this time was presented at that time by Mr. Waterval, in which the interpretation of the Zoning Administrator was that it had to be under the same roof of a shopping center building which contained at least six (6) other retail uses. Ms. Gwinn quoted the previous Zoning Administrator, in part, "...To interpret this provision as you suggest would completely negate the purpose and meaning of the phrase, 'such uses are located under the roof of a shopping center....'" Ms. Gwinn advised that this method of administration has been consistent since its adoption, until she inadvertently undid it in December of 1990; however, she believed that the words are clear at face value and are buttressed by the legislative history, as well as the administration.

Ms. Harwood cited the Henry Long opinion which Mr. Farrell had distributed, in which the Court Order said that the Zoning Administrator's interpretation was not appealed within the time limitations established by ordinance and thus in final, and said it did not address the situation at hand when the Zoning Administrator, if you assume that a decision had been made, determined that the decision was issued in error. In the Henry Long case, where the Court said that the interpretation was not appealed within the time limitations established by ordinance and thus is final, it is with respect to third parties that might want to challenge it, she submitted. She said that, in Virginia, it is not a "level playing field" in a manner of speaking. In other words, she said, if an administrative official issues a decision and someone is aggrieved by it, the State law says they have thirty days to come forward with an appeal. She said that, if the aggrieved party does not timely file with thirty days, they are bound by that decision; however, if the decision is contrary to the Ordinance, the Court can render that decision void, if the issue is raised after thirty days. Ms. Harwood said that, in her memo, she cited Sect. 15.1-496.3 that expressly recognizes in the State law that, if a citizen does not have any direct knowledge that a Building Permit has been issued and sees a building begin to go up, they have fifteen days to file a law suit and ask the Court to find that what is occurring violates the Zoning Ordinance. She said that the Court could invalidate the Building Permit and wipe everything out; and the statute expressly states: "... even though no appeal was taken from the decision of the administrative officer to the BZA...." Ms. Harwood said that this is one specific statutory time situation where the thirty days does not bind the Court from invalidating something. She believed there was a public policy reason for this, which is that the overall public good is served when the Ordinance is adhered to and, if someone makes a mistake, the administrative official can acknowledge mis-reading the Ordinance and not be bound by the thirty days. Mr. Kelley asked how much time Ms. Harwood thought could elapse. Ms. Harwood cited the Booher case in which she said three years went by after the Zoning Administrator in that County issued an opinion saying that what was happening was acceptable. Ms. Harwood said that the landowner spent approximately \$30,000 consistent with the Zoning Administrator's ruling. Three years later, the Board of Supervisors said that the Zoning Administrator was wrong in the interpretation of the Zoning Ordinance and the Supreme Court of Virginia said that the Board of Supervisors was not bound by an invalid opinion of the Zoning Administrator.

Mr. Kelley asked if a fast food restaurant of this nature could be open for business and still could be shut down. Ms. Harwood said that the answer was yes and cited the Segaloff case contained in her brief, where the Building Permit was issued and the use was built and it was later determined that someone had erred. She said that, in Town of Blacksburg v. Price, the car wash obtained site plan approval and Building Permits, completed 60%, and expended approximately \$100,000, when someone realized that the zoning Ordinance required

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full transitional screening across the back and the site plan did not show full transitional screening, but showed a cut required for the circulation pattern of the car wash. The car wash was told of the error and was instructed to remedy the violation. The applicant decided not to make the required adjustments and, instead, completed the project. Ms. Harwood said that, when the car wash owner went to file for the Non-Residential Use Permit, he was denied because of his non-compliance with the Zoning Ordinance.

Ms. Harwood said that, in this case, Mr. Farrell had not cited reliance; the applicant did not claim to have spent a single penny on the project, which under Virginia law would not have mattered anyway.

Mrs. Thonen interjected the fact that the Board did not get into damages anyway.

Ms. Harwood summed up by stating that, with respect to the argument that billions of dollars have been spent and there must be finality and certainty for lenders, she submitted that under the law now in Virginia, in light of Sect. 15.1-496.3, where a citizen can raise the flag, and in light of the Booher case where a Board of Supervisors reversed the Zoning Administrator's decision after three years, uncertainty does exist. Ms. Harwood stated that, in her opinion, the Ordinance adequately addressed the business of roof versus roofs; for it to have any meaning, it must mean under the same roof, otherwise the language is superfluous. In conclusion, Ms. Harwood suggested that, where the Ordinance says "singular means plural," and the Ordinance also says "unless the obvious construction of the wording indicates otherwise"; in this situation, the obvious construction must indicate otherwise: "the roof" means one roof, and is the only way it makes sense.

Mrs. Thonen said she was "hung up" on the reference to revised Sect. 4-605 (Use Limitation) which says: "...when: (a) such uses are located under the roof of a shopping center, which center contains at least six (6) other retail uses, and which center does not have direct access to a street indicated on the adopted comprehensive plan as a major or minor arterial,..." She said she believed the Board needed to determine if the subject location was a center. She pointed out that it did not access a major road.

Ms. Gwinn noted that the language was subsequently revised and that the current language is presented on the first page of the memo. She said that the language to which Mrs. Thonen referred was in the amendment and the provisions regarding direct access to a street indicated on the plan as a major/minor was subsequently deleted by a later amendment. Ms. Gwinn said that the current language, which is the subject of the appeal, was on the front sheet of Ms. Gwinn's memo to the Board and no longer contained the limitation regarding roads. Ms. Gwinn said that, obviously, what center means in this case is really getting to the heart of the appeal. She pointed out that Mr. Farrell contended that it means the entire center which may consist of one or more buildings. She said it was her position that, when it is read in context, when it's under the roof of, it means of a shopping center building, the same building, which center contains at least six (6) other units.

Mr. Pammel remarked to Ms. Gwinn that he believed it was "really stretching" an interpretation, when one goes beyond what the Ordinance says and concludes that it is under the same roof of a building within a shopping center because the definition of the term shopping center includes more than one building. He stated further that he believed there was nothing in the language of the Ordinance that restricted the subject business from any individual building.

Ms. Gwinn said that she appreciated Mr. Pammel's point but asked, then, what he believed "under the roof" meant and what relevance it had or why it was included in the wording. Mr. Pammel said that "under the roof" could be used in the same context as "under the umbrella." He said that he believed it meant that it was under the roof of a shopping center. He said the reference to roof was not in the traditional sense.

Mrs. Harris asked Mr. Pammel how he knew that and he said that it came across to him that way. Mrs. Harris said that she believed the verbage could be interpreted at least three different ways. She asked Mr. Pammel, from his perspective, how he read that into the verbage. She asked him why he thought the drafter of the Ordinance put under the same roof if they did not mean under the same roof. Mr. Pammel said he did not know but, outside of a regional shopping center, most of the shopping centers being built today had more than one building, some as many as six, all with different roofs, different heights, and different architecture. Mrs. Harris said that she did not believe this had any bearing on putting fast food into a shopping center. Ms. Harwood said that, in following Mr. Pammel's reading of the Ordinance to a logical conclusion, "the roof" could mean as many roofs as might be placed within a shopping center and, under his interpretation, there could be any number of freestanding fast food restaurants or quick-service food stores, as long as there were six or seven. Also, she said it would mean that the Wendy's in the shopping center in question would not have required the special exception which was granted; and the Wendy's in the Sully Station Shopping Center, which is freestanding, would not have required their special exception.

Mr. Pammel went back again to the definition of "shopping center." Ms. Harwood said it was two or more uses. Mr. Pammel said it mentioned that there can be several buildings. Ms. Harwood said that was correct and that it was because of that definition of "shopping center" that the use limitations set forth in Sect. 4-705, and the identical provisions specify six

Page <sup>428</sup> 428, July 16, 1991, (Tapes 1-2), (WAYNE V. JORDAN APPEAL, A 91-C-005, continued from Page <sup>427</sup> 427)

uses because, under the definition of "shopping center," as he correctly noted, two or more uses make up a shopping center. Because of that, she said, was precisely why the use limitation was inserted, to insure that the use would be located "under the roof" of a "shopping center" which contained at least six uses; it would not be allowed where just two other retail uses were located under the same roof.

Chairman DiGiulian asked if there were any further questions, and if there was anyone else in the room to address the appeal. Hearing no reply, he called for Mr. Farrell's rebuttal.

Mr. Farrell presented arguments on definitions and semantics along the lines of what had already been discussed, and asked the Board to give favorable consideration to the appeal.

There were no other questions and Chairman DiGiulian closed the public hearing.

Mr. Pammel said it was his opinion that the appeal presented some interesting problems associated with one interpretation, and the issue that the applicant had raised concerning the finality of the order or of the original opinion of the Zoning Administrator. As to the finality of the order, he said he believed it to be moot; stating that, even if an interpretation was final, the locality of the jurisdiction could not have a favorable finding on an improperly drafted ordinance or opinion. He said that, if the ordinance or opinion was in error, the locality had the right to have it changed and take whatever remedial measures were necessary.

Mr. Pammel stated that he believed the applicant's appeal should be granted on the basis that "shopping center" and "roof" are broad terms and refer to the shopping center as a multi-faceted facility which might have many roofs, as opposed to the definition of a singular roof over six (6) uses, which Ms. Gwinn said had been the guide since she had participated in the amendment's drafting and subsequent implementation.

Mr. Kelley seconded the motion and asked for clarification from Mr. Pammel about "the thirty-day period." Mr. Pammel replied that he believed it was moot. He expressed belief that, once thirty days had passed, the decision became final; however, he stated he believed that, if it was an incorrect opinion it could be reversed. Mr. Kelley said that he was not convinced on this issue and asked if it were possible to split the two issues which were being appealed. The Board discussed this aspect, resulting in no change.

Chairman DiGiulian asked for a vote, which carried 6-1; Mrs. Harris voted nay.

Mrs. Harris said that, because of the manner in which the amendment had always been interpreted in the past, there might be many applicants who had previously been required to obtain a special exception who would be confused by this vote. She said that she personally knew of at least two.

Mrs. Thonen suggested that, perhaps, the Ordinance should be "tightened up."

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 1991.

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

*Geri B. Bepko*

Geri B. Bepko, Deputy Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED:

*September 24, 1991*

APPROVED:

*October 1, 1991*

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 23, 1991. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, James Pammel. Chairman John DiGiuliano was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:03 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 429, July 23, 1991, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM BUNTING & VIRGINIA TARRIS, VC 91-D-059, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.0 ft. from side lot line and allow addition 11.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 25,630 s.f. located at 5339 N. 37th St., zoned R-2, Dranesville District, Tax Map 41-1((13))(8)32C.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bunting replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the subject property is located at the Fairfax County/Arlington County line and is developed with a single family detached dwelling. The applicants were requesting approval of a variance in order to construct two additions to the existing dwelling, one being an enclosed carport and one being an addition to the rear of the house. Mr. Riegler stated that portions of the additions would lie within Arlington County and therefore do not have to comply with the Fairfax County Zoning Ordinance. He stated however that the Fairfax County Zoning Ordinance requires a 15 foot minimum side yard in the R-2 zoning district. Mr. Riegler added that for the portions of the additions which would be constructed in Fairfax County the applicants were proposing a side yard of 10.0 feet in conjunction with the enclosed carport and 11.0 in conjunction with the addition, thus variances of 4.0 feet and 5.0 feet were requested. Mr. Riegler stated that the adjacent dwelling to the north is located approximately 20.0 feet from the shared lot line.

Vice Chairman Ribble commented it appeared that the dividing line of the two Counties goes right through the middle of the existing house and Mr. Riegler confirmed that was true.

In response to a question from Mr. Pammel about what would happen to the existing carport beneath the screened porch, Mr. McKean replied that the applicants only planned to enclose the existing porch on the upper level and still maintain the open space beneath to park another vehicle.

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Mr. Hammack arrived at 9:08 a.m.

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John McKean, architect for the applicants, 1862 Mint Wood Place, NW, Suite 202, Washington, D.C., presented the justification on behalf of the applicants. He stated there were several reasons for requesting the variance, the first being the geometry of the lot since it is made up of two or three very irregularly shaped lots on a corner between two streets. Mr. McKean stated that the geometry of the lot in conjunction with the front setback basically makes any development to the front of the lot, towards 37th Street, impractical. He stated that the most logical path for the development was to start at the face of the house to the north and go along the rear of the house to within 11.0 feet of the lot line. Mr. McKean explained that in order to adhere to the space program that the applicants wanted for the addition and in order to marry the addition to the existing house, the plan was developed horizontally across the back of the house. He stated that this plan was adopted as opposed to the addition jutting out further into the rear of the lot. Mr. McKean stated that the second reason was that the lot slopes fairly severely from the rear to 37th Street with the slope starting from the face of the house on the west side. He explained that to expand in that direction would have meant additional monetary expense and the addition would have had to be placed higher causing more of an impact on the surrounding lots. (Mr. McKean showed an architectural rendering to the Board depicting how the dwelling would look with the completed additions.)

Vice Chairman Ribble called for speakers in support of the request. Mr. McKean submitted a letter from a neighbor expressing support of the request.

In response to a question from Mr. Pammel, Mr. McKean replied that the existing living space is 1,200 square feet for a family of four plus a relative. He added that when the applicants purchased the house they were a couple and now that they are having children they need additional living space. Mr. McKean stated that at present the applicants also have a relative living with them while he is looking for a job.

There were no further questions for the applicant and Vice Chairman Ribble called speakers in opposition to the request.

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Edmund Delaney, 5345 North 37th Street, Arlington, Virginia, came forward and asked for a clarification as to exactly what the applicants were planning to do.

Mr. Hammack asked the speaker which lot he owned and Mr. Delaney pointed out the location of his property on the viewgraph.

Mr. Delaney stated that he planned to construct a fence around his property and wanted to make certain that what the applicants planned to construct would not impede him from doing so. The Board assured him that it would not. After viewing the architectural rendering, Mr. Delaney stated that he had no objections.

Vice Chairman Ribble closed the public hearing.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-059 by WILLIAM BUNTING AND VIRGINIA TARRIS, under Section 18-401 of the Zoning Ordinance to allow addition 10.0 feet from side lot line and allow addition 11.0 feet from side lot line, on property located at 5339 N. 37th Street, Tax Map Reference 41-1((13))(8)32C, 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 23, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 25,630 square feet.
4. The applicant has met the nine required standards for a variance, in particular the lot has a "V" in the middle of it.
5. The Board had no real problem with enclosing the carport since it is an existing structure on that side.
6. The addition on the back caused more concern since there is a very sharp "V" in the way the applicant's property is configured on the County line and that is a most unusual situation.
7. Only a small corner of the addition will be 11 feet from the side lot line, it falls off, and the rest of it is more than 15 feet, and some of it may be 20 feet or more from the side lot line.
8. There is an exceptional shape in 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.

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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 satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 additions 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.

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.

Mrs. Thonen seconded the motion which carried by a vote of 5-0-1 with Mrs. Harris abstaining as she was not present for the public hearing. Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1991. This date shall be deemed to be the final approval date of this variance.

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Mrs. Harris arrived at 9:17 a.m.

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Page 431, July 23, 1991, (Tape 1), Scheduled case of:

9:10 A.M. KIL HO CHO, SP 91-A-003, appl. under Sect. 5-503 of the Zoning Ordinance to allow indoor golf driving range on approx. 7,300 s.f. of approx. 6.47 acres located at 5589 Guinea Rd., zoned I-5, Annandale District, Tax Map 77-2(1)29C.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Kim, agent for the applicant, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report by stating that the property is located on the south side of Guinea Road between Ox Road and Braddock Road, is zoned I-5, and is developed with one industrial building that comprises the Guinea Road Industrial Center. The portion of the site in which the Special permit is proposed is located in the western 1/3 of the structure. She stated that the property is abutted on the west by property zoned I-5 and developed with industrial warehouse uses, to the east is undeveloped property zoned PRC and designated as open space, and north of Guinea Road are the Burke Centre townhouses zoned PRC. The property is abutted on the south by the Southern Railroad right-of-way and the Pohick Stream Valley Park.

Ms. Dickey explained that the applicant was requesting approval of a special permit to allow an indoor commercial recreational use in an industrial center. The applicant proposed operating an indoor golf driving range with a maximum of 8 individual golf tees. The hours of operation would be 7:00 a.m. to 10:00 p.m. Monday through Saturday and 12:30 p.m. to 10:00 p.m. on Sunday. The maximum number of employees present at any one time would be 2. The estimated number of patrons per day would be 125 with no more than 15 patrons at any one time and 7 parking spaces are proposed to serve this use. She stated that the applicant was not proposing any new construction or exterior alterations to the site. The area designated for the proposed use comprises 7,300 square feet of the 94,500 square feet of the building with the overall FAR of 0.34 for the total site.

She stated that the outstanding issue associated with the application concerns the provision of adequate parking spaces on-site to accommodate the proposed use as well as all other uses within the center and was outlined on page 7 of the staff report. Ms. Dickey added that the applicant's landlord had submitted a proposed revision of the approved parking tabulation to include the proposed use to the Department of Environmental Management (DEM) and the Board of Supervisors for review and approval.

On July 19, 1991, subsequent to the publication of the staff report, the applicant and the landlord submitted, by letter, amendments to the current application. She called the Board's attention to the letters distributed to them during the public hearing. The following were the amendments:

1. a decrease in the maximum number of golf driving tees to 7 from 8;
2. an increase in the number of parking spaces proposed to accommodate this use to a maximum of 16 from 7.

A review of these amendments indicated that the applicant appeared to provide adequate parking for the proposed use and staff could support the approval of the proposed use provided the applicant can demonstrate to DEM and the Board of Supervisors that adequate parking could be provided to all uses on-site. Ms. Dickey stated that Proposed Condition No. 9 addressed the issue. Staff had received verbal indication from DEM of support for the proposed parking tabulation.

Ms. Dickey noted that 12:30 a.m. should be changed to "12:30 p.m." in Proposed Development Condition No. 7.

Mr. Pammel asked if staff's recommendation had changed following the submittal of the landlord's letter dated July 18, 1991. Ms. Dickey replied that staff could support the proposed use with the additional parking spaces proposed by the applicant. She stated that staff's support would be with the proviso that the applicant can demonstrate to the Board of Supervisors and DEM that there would still be enough parking spaces to serve all the existing and proposed uses. Ms. Dickey added that if the applicant cannot satisfy the parking requirement, the special permit would be null and void.

Taesung (T.K.) Kim, 9108 Blarney Stone Drive, Springfield, Virginia, agent for the applicant, came forward to present the applicant's justification. He stated that the applicant was requesting approval of a special permit in order to operate an indoor golf driving range. Mr. Kim stated that there was a parking problem, as indicated in the staff report, but other than that the use would not adversely affect the neighborhood nor the industrial center. He requested that the Board grant the request.

Mr. Hammack questioned why the applicant was before the Board for a special permit if the Board of Supervisors had to act on the parking of the entire site. Ms. Dickey stated that staff had discussed the parking problem with both DEM and Supervisor Bulova and it was felt that the application had to stand on its own merits as well as meet the parking requirements. She added that it was felt that the BZA's action might give some direction to DEM as to what the BZA felt the parking requirement should be for this particular use. Mr. Hammack stated that he believed that would be giving an advisory opinion.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had tried not to get into the reasons as to why the application was going to the Board of Supervisors because it was complicated. She explained that it was not because this particular use could not satisfy the Zoning Ordinance requirements but there had been a previous approval by the Board of Supervisors for a reduction in parking spaces based on hours of operation for two churches which are on the site. She stated that it is because of a change in the use which necessitates more parking than that which would be required for a warehouse space that causes the applicant to have to go back to the Board of Supervisors for an amendment to the churches parking reduction approval. Mr. Hammack stated that staff was "saying he does and he doesn't" have sufficient parking and the BZA cannot approve the special permit unless the applicant can meet all the conditions.

Mr. Pammel asked if the original parking tabulation was for warehousing and these uses have a different parking requirement which in fact increase the parking requirement and therein lies the difficulty. Ms. Kelsey stated that was correct. She added that DEM has approved the parking tabulation and has determined that if the reduction for the churches stays constant and the Board of Supervisors approves the change there is sufficient parking spaces on site to accommodate all the uses. Mr. Pammel stated that he did not believe that an administrative action by DEM would make a special permit null and void even if the Board of Supervisors did not make an adjustment in the number of parking spaces.

Ms. Kelsey stated that the Zoning Ordinance is not precise when it comes to a parking requirement for this particular use. She stated that staff used the criteria in the Zoning Ordinance which references "recreational uses," which is most similar to this use, and that parking would be based on one parking space for every three people based on the occupancy load for this particular use and based on that staff arrived at 7 parking spaces being required. Ms. Kelsey stated that staff believed 7 parking spaces would not be sufficient for the use; therefore, staff recommended 16 parking spaces. She pointed out that the applicant has agreed to provide the 16 parking spaces. Mr. Pammel agreed with staff's recommendation on the number of parking spaces.

Mr. Hammack expressed concern with adding a provision that would allow DEM to null and void a special permit approved by the Board since the Board has been told in the past that they could not grant a special permit conditionally. Ms. Kelsey stated that in this case staff had to try and determine which is first "the chicken or the egg." She added that staff had no problem with the use only with the parking and they believed Condition Number 8 would resolve that problem.



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Vice Chairman Ribble asked if there was a similar situation on the same site later in the public hearing and Ms. Kelsey stated there was. Mrs. Thonen stated that she did not understand how the Board could grant a use when the Board of Supervisors might void the use by saying that the parking for the entire site is not sufficient for the applicant to have the use. Ms. Kelsey explained that the requirement that the applicant go back to the Board of Supervisors was because of a reduction for the parking on site for the two churches, not for the applicant's use. She added that some years ago the Board of Supervisors granted a reduction in the number of parking spaces for the two churches which are on site based on hours of operation; however, at that time the proposed use was not on the site and the parking tabulation showed it as a warehouse and since this is a different use, it required an amendment. Mrs. Thonen expressed concern with granting the use if the Board of Supervisors might not agree with the parking issue. Ms. Kelsey pointed out that staff believed Condition Number 8 was written to address that concern.

Mr. Hammack stated that he would like to hear the County Attorney's explanation for staff's proposal based on some of their previous rulings.

In response to a question from Mrs. Harris, Ms. Dickey replied that it was tentatively scheduled before the Board of Supervisors on August 5, 1991. She added that Supervisor Bulova had asked for some indication from the BZA what the parking requirement would be if the BZA approved the applicant's request.

The BZA did not agree that they should render an advisory opinion to the Board of Supervisors with respect to the appropriate number of parking spaces. Mr. Hammack stated that he would make a motion to defer the application until after the Board of Supervisors had acted on the parking amendment. It was the consensus of the BZA to proceed with any additional testimony.

Don Foster, with Foster Brothers, owners of Guinea Road Associates, stated that the application had been held up for seven months because of the parking controversy. He stated that the parking has always been adequate but staff had believed that the parking needed to go back to the Board of Supervisors but the applicant and the engineer did not. Mr. Foster stated that the engineer's study showed a lesser amount of parking being required than the staff recommended. He stated that there is an adequate number of spaces to meet the requirement with parking spaces left over; but to satisfy staff, the applicant had agreed to the higher number of parking spaces. He asked the Board to act on the use.

Mr. Hammack pointed out that the applicant had to show that he could meet the parking requirements for the use and noted that there were not separate issues. Mr. Foster stated that the applicant had paid an engineer to prepare and submit to staff studies showing that the parking is adequate to service the existing tenants, the new tenants, and the balance of the space, and still have space left over. Mr. Pammel explained that the problem that the BZA had was that it did not have a verification that the parking was adequate. He added that without that verification the BZA could either deny the application based on the fact that the applicant has not met the parking requirements or defer action until that verification could be obtained. Mr. Foster asked if the BZA could approve the use and then approve the parking and the final conditions.

Vice Chairman Ribble stated that until the number of parking spaces had been clarified he could not support the use.

Art Foster, with Foster Brothers, came forward and pointed out that the subject property is a new building that has never been fully occupied and has another 15,000 square feet that has never been leased. He stated that the parking studies are trying to anticipate what the uses of the building really are. Mr. Foster stated that they have been trying for two years to lease the building and are finding that the people who are interested in leasing are non-traditional tenants and that is why the applicants are having to come before the BZA. He stated that the County would like to see the building used for straight storage but there is no demand for that today. Mr. Foster stated that the parking meets the requirement for the existing uses and the question is what the uses will be in the remainder of the building. He stated that if an office tenant were to lease the space the parking requirement could not be met but a storage tenant could meet the requirement.

Mrs. Thonen pointed out that the BZA could defer action on the application until August 6, 1991, which would be after the Board of Supervisors has acted on the parking amendment. She stated that the parking is calculated on the entire building and the BZA cannot take liberties like the Board of Supervisors or the planning Commission can since the BZA has to go by the standards set forth in the Zoning Ordinance.

Mr. Pammel stated that he believed that the BZA had determined which came first "the chicken or the egg." The other members agreed.

Vice Chairman Ribble called for further speakers in support or in opposition and hearing no reply closed the public hearing.

Mr. Pammel made a motion to defer the application to August 6, 1991 at 11:30 a.m. in order to obtain a response from the Board of Supervisors and DEM with respect to the parking amendment.

Vice Chairman Ribble asked if he would like the record to remain open and Mr. Pammel replied that he would.

Page 434, July 23, 1991, (Tape 1), KIL HO CHO, SP 91-A-003, continued from Page 433,

Ms. Kelsey asked the BZA for a recommendation as to the number of parking spaces that it believed would be sufficient. Mr. Pammel stated that he would agree to amend his motion to reflect 16 parking spaces. Mr. Hammack stated that he believed that the number of parking spaces should be determined by the Board of Supervisors and that the BZA should not be giving advisory opinions.

Mrs. Harris stated that she could think of several cases that have come before the BZA that in actuality three people are not going to go in one car to church and the BZA has had to go by the Zoning Ordinance. She added that it bothered her that the BZA would be entering into an area of subjectivity and believed it to be dangerous ground to tread and that she would support the original motion and not the second. Mr. Pammel stated that he would remove the caveat and go back to the original motion.

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

Mr. Pammel stated that he would make an motion of intent to defer SP 91-A-018 scheduled for later in the public hearing for the same grounds since it is located on the same subject property.

Mr. Kelley suggested that the BZA call the case out of order to prevent any interested citizens from having to stay in the Board Room. The other members agreed.

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Page 434, July 23, 1991, (Tape 1), Scheduled case of:

9:55 A.M. SPORTS JUNCTION, JOHN J. AND SANDRA G. BAXTER, SP 91-A-018, appl. under Sect. 5-503 of the Zoning Ordinance to allow indoor recreational use (baseball/softball batting cages) on approx. 4,777 s.f. of 6.47 acres located at 5609 E Sandy Lewis Drive, zoned I-5, Annandale District, Tax Map 77-2(1)29C.

Vice Chairman Ribble called the above referenced case out of order and polled the audience to determine if there was anyone present to speak to the deferral.

The applicant, John J. Baxter, 11225 Henderson Road, Fairfax Station, Virginia, came forward and agreed with the deferral.

Mr. Kelley made a motion to defer SP 91-A-018 to August 6, 1991, at 11:35 a.m. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 434, July 23, 1991, (Tape 1), Scheduled case of:

9:25 A.M. CHARLES R. HOOFF, III, TRUSTEE, VC 91-V-055, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 17.5 ft. from front lot line (50 ft. min. front yard required by Sect. 3-E07) on approx. 1.008 acres located at 10620 Belmont Blvd., zoned R-E, Mt. Vernon District, Tax Map 113-4(1)26.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wilmeth, the applicant's agent, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the property is located in a non-subdivided area between I-95 and Gunston Road, the surrounding lots are zoned R-E, and are developed with single family detached dwellings or are undeveloped. Ms. Dickey explained that the applicant was requesting approval to construct a room addition 17.5 feet from the front lot line. She stated that the Zoning Ordinance requires a minimum front yard of 50.0 feet, thus the applicant was requesting a variance of 32.5 feet. She stated that the dwelling on adjacent Lot 25, to the south, is located in excess of 300 feet from the shared side lot line.

Peter Wilmeth, 10620 Belmont Boulevard, Lorton, Virginia, came forward and stated that he was the lessee of the property which is a narrow, shallow lot. He stated that he has lived on the property since the applicant purchased it and since that time he has married and had a son. Mr. Wilmeth stated that the addition would allow him to construct a family room which would provide the family with additional living space. He stated that he had been unaware that the property had two front yards until he went to obtain a building permit and was informed of the two front yards by Melinda Artman, Deputy Zoning Administrator.

In response to a question from Mr. Hammack, Mr. Wilmeth replied that there is a porch on the front of the house and two large oak trees in the front yard, which he would not like to remove, and in the rear yard there is a septic field.

Mrs. Harris asked how far the septic pits were from the house. Mr. Wilmeth stated that the septic field is over 50 feet but the line going out from the house to the pits is located in

Page <sup>435</sup> July 23, 1991, (Tape 1), CHARLES R. HOOPF, III, TRUSTEE, VC 91-V-055, continued from page <sup>434</sup>

the middle of the yard. Mrs. Harris then asked if the addition could be moved to the south on the same side of the house and Mr. Wilmeth said "no" because of the way the house is laid out.

In response to a question from Mr. Pammel, Mr. Wilmeth replied that the owner purchased the subject property in 1983 and he also owns all the adjacent land which is zoned agricultural.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 16, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-055 by CHARLES R. HOOPF, III, TRUSTEE, under Section 18-401 of the Zoning Ordinance to allow addition 17.5 feet from front lot line, on property located at 10620 Belmont Boulevard, Tax Map Reference 113-4(1)26, 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 23, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 1.008 acres.
4. The applicant has met the nine required standards for a variance.
5. The subject property seems to be in good faith.
6. The lot is exceptionally narrow and shallow and has exceptional shape.
7. The shape of the property creates a problem where there is no other place to put the building.
8. The property has two front yards, one being a gravel yard.
9. The adjacent dwelling is located 300 feet from the shared lot line and will not impact anyone.
10. The granting of the request will not change the character of the zoning district and will not be a deterrent to any adjacent property.
11. The request will be in harmony with the purpose and intent of the Zoning Ordinance.
12. The house was built in 1919 and the unusual nearness to the roads was probably based on the fact that the house was there before the roads were.

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

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

Page 436, July 23, 1991, (Tape 1), CHARLES R. HOFF, III, TRUSTEE, VC 91-V-055, continued from page 435 )

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 room addition shown on the plat (prepared by Charles R. Pruett, dated November 6, 1990 and revised March 20, 1991) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 436, July 23, 1991, (Tape 1), Scheduled case of:

9:35 A.M. SCOTT N. CURTIS, VC 91-S-058, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 7.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 10,510 s.f. located at 15319 Blueridge View Drive, zoned R-C, WS, Springfield District, Tax Map 53-3((3))8.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Curtis replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant is a co-owner with Jennifer Curtis of Lot 8, totals 10,510 square feet, is zoned Residential Conservation (R-C) and Water Supply Protection Overlay District (WSPOD), and is developed with a one story single family detached dwelling with a concrete driveway and parking pad and a storage shed to the rear of the dwelling. The applicant was requesting a variance to the minimum side yard requirement to permit construction of a one-story addition 7.0 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-C Zoning District, the applicant was requesting a variance of 13.0 feet to the minimum side yard requirement for the proposed addition.

The applicant, Scott Curtis, 15319 Blueridge View Drive, Centreville, Virginia, stated that he and his wife purchased the property on December 16, 1990. He added that there are other houses in the neighborhood that have garages and that his subdivision is surrounded by the Virginia Run subdivision. He added that he works for the federal government and travels a lot and would like to have the garage for the safety of his wife and son entering the garage. Mr. Curtis stated that he would also like to have a work bench along the side of the garage. He stated that he knew there were areas in the rear of the property that he could construct the garage but it would require the removal of the existing shed and the construction of a concrete slab running the length of his property. Mr. Curtis pointed out that he had discussed the request with the neighbor who would be the most impacted and she had no objections.

In response to questions from the Board, Mr. Curtis replied that his house is a split level design and he did have a block basement. He stated that he would like an 18 foot garage to allow room to open the doors on his mini-van and to have a work bench down the side of the wall of the proposed garage.

Page 437, July 23, 1991, (Tape 1), SCOTT N. CURTIS, VC 91-S-058, continued from Page 436

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Vice Chairman Ribble asked if any of the other houses in the neighborhood with garages had required variances. Mr. Curtis stated that the other garages were built when the houses were constructed. He added that perhaps the neighbor two doors down from his property had applied for a variance because he had a 24 foot wide garage.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant the request in part for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 16, 1991.

Mr. Pammel commented that the specific justification in the staff report primarily dealt with safety aspects and believed that to be a reasonable argument and is a concern to a great number of people.

Mrs. Thonen pointed out to the applicant that he could extend the length of the garage without intruding into the side yard.

(NOTE: THE APPROVAL OF THE RESOLUTION WAS CONTINGENT ON THE APPLICANT SUBMITTING REVISED PLATS REFLECTING THE BOARD'S ACTION.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-058 by SCOTT N. CURTIS, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 7.0 feet (THE BOARD GRANTED A 12.0 FOOT WIDE GARAGE TO BE LOCATED NO CLOSER THAN 13.0 FEET) from side lot line, on property located at 15319 Bluemont View Drive, Tax Map Reference 53-3(3)8, 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 31, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 10,510 square feet.
4. The subject property has one diverging lot line and the house is placed in such a way that this is the only location the applicant could construct a garage.
5. Strict application of the Zoning Ordinance would not be altered if a garage is constructed.
6. The Board believed that the applicant's request for an 18 foot garage was an excessive amount of intrusion in the side yard; therefore, the Board granted a 12 foot garage 13 feet off the side lot line.

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

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

Page 438, July 23, 1991, (Tape 1), SCOTT N. CURTIS, VC 91-S-058, continued from Page 437;

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Kenneth W. White, Alexandria Surveys, Inc., dated April 24, 1991, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.

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.

Mr. Pammel seconded the motion which carried by a vote of 5-1 with Mr. Hammack voting nay. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and will become final on the date that new plats are submitted. The date shall be deemed to be the final approval date of this variance.

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Page 438, July 23, 1991, (Tape 1), Scheduled case of:

9:45 A.M. JUDE S. & MARGARET N. BOYNE, VC 91-M-062, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport/deck) 10.7 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 1.09 acres located at 3017 Sylvan Dr., zoned R-1, HC, Mason District, Tax Map 50-4((21))55.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Boyne replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the subject property is slightly more than an acre in size and is located south of Route 50. He stated that the applicant proposed to reconstruct an existing carport which has a patio on top and the structure will remain in its present location 10.7 feet from the side lot line. Mr. Riegle stated that since the R-1 zoning district requires a minimum side yard of 20 feet the applicant was requesting a variance of 9.3 feet. He noted that the dwelling on adjacent Lot 56 is located 17.4 feet from the shared lot line.

The applicant, Jude Sidney (Sid) Boyne, 3017 Sylvan Drive, Falls Church, Virginia, came forward to present his justification and called the Board's attention to the photographs submitted with the application showing the deterioration of the deck. Mr. Boyne stated that the structure, supports, and concrete slab will be left exactly as they are but the concrete deck will be replaced with a wooden deck. He submitted a letter from neighbor on Lot 56 supporting the request to the Board.

There were no speakers, either in support or in opposition, to the request and Vice Chairman Ribble closed the public hearing.

Mr. Pammel asked when the house was constructed and Mr. Boyne stated in 1940 but he had no idea when the carport was built.

Mr. Kelley made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 16, 1991.

Mrs. Thonen stated that she would support the motion because the applicants have a retaining wall in the back and on the side and there are topographic problems on the lot and the structure was built prior to the present zoning Ordinance.

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Page <sup>438</sup>

Mr. Pammel commended the applicants for filing the application prior to construction as it was similar to cases that have been before the Board where the property owners have completed the construction and then come to the Board.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-062 by JUDE S. AND MARGARET N. BOYNE, under Section 18-401 of the Zoning Ordinance to allow addition (carport/deck) 10.7 feet from side lot line, on property located at 3017 Sylvan Drive, Tax Map Reference 50-4((21))55, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 1991; and

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

1. The applicants are the owner of the land.
2. The present zoning is R-1, HC.
3. The area of the lot is 1.09 acres.
4. The applicant has met the nine required standards for a variance.
5. The Board commended the applicant for filing an application and for totally replacing something that looked like an very unsafe situation.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 carport/deck 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.

Page <sup>440</sup> July 23, 1991, (Tape 1), JUDE S. & MARGARET N. BOYNE, VC 91-N-062, continued from Page <sup>439</sup>

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1991. This date shall be deemed to be the final approval date of this variance.

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Page <sup>440</sup> July 23, 1991, (Tape 2), Scheduled case of:

10:05 A.M. SAMUEL AND SUSAN LYNN AYLESTOCK, VC 91-S-056, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.2 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-507) on approx. 7,056 s.f. located at 7266 Linden Tree Lane, zoned R-5 (developed cluster), Springfield District, Tax Map 89-3((24))9A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Aylestock replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject property is a pipestem lot that is zoned R-5 and is located off Linden Tree Lane and the surrounding lots are zoned R-4. Lot 10B is developed with a single family detached dwelling, the land to the east, west and south of the subject property is developed as homeowners open space. She explained that the applicants are requesting approval of a variance in order to construct an addition 15.2 feet from the rear yard. Ms. Bettard stated that the zoning Ordinance requires a minimum rear yard of 25 feet, thus the applicants were requesting a variance of 9.8 feet. She added that staff's research indicted the following special permits for building in error were approved by the Board of Zoning Appeals in the area of the subject property: 1) December 10, 1985, an error in building location on Lot 10B to allow a dwelling to remain 6.8 feet from the side lot line; 2) December 10, 1985, an error in building location to allow a dwelling to remain 6.8 feet from the side lot line on Lot 13B; and 3) March 3, 1987 a deck was approved to remain 6.25 feet from the rear lot line on Lot 8.

Vice Chairman Ribble asked Ms. Bettard if the cases referenced in her presentation were all cases where the structures were built in error and she replied they were.

The applicant, Samuel Aylestock, 7266 Linden Tree Lane, Springfield, Virginia, came forward and stated that when he and his wife purchased the property it was with the intent that they would eventually construct an addition on the back of the house but they had been unaware of the setback restrictions. He stated that he would like to construct the sunroom directly in line with the existing sliding glass doors which presently have boards nailed across the frame to keep people from exiting the house and dropping 3 feet to the ground. Mr. Aylestock explained that their living room is very small and the type of work that he is involved in makes it necessary for him to entertain people in his home and the sunroom would give him the extra space. He stated that he believed that the back yard is shallow as it is only 30 feet deep and without the variance he could construct a room only 5 feet wide, which would be impractical. Mr. Aylestock stated that his property is bordered on three sides by homeowner open space and he and his wife have maintained much of it for seven years. He explained that because of the way the houses are laid out there are only two neighbors who would be able to see the addition, and possibly a third. Mr. Aylestock said that he had taken a petition along with a plat to each neighbor and discussed the request and there had been no objections.

In response to questions from Mr. Hammack, Mr. Aylestock replied that he had not discussed the request with the owners of Lot 24 and 25 because these lots had not been cited for notification in the paper work that he had received from the County. He explained there is a thick buffer between his house and the houses off of Adrienne Glen which prevents the neighbors from seeing his house. Mr. Aylestock stated that he did not know how far the houses were from their rear property lot line but it looked like the houses set in the middle of the lots.

Mr. Pammel asked the applicant the size of his family and Mr. Aylestock replied three.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 16, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-056 by SAMUEL AND SUSAN LYNN AYLESTOCK, under Section 18-401 of the Zoning Ordinance to allow addition 15.2 feet from rear lot line, on property located at 7266 Linden Tree Lane, Tax Map Reference 89-3((24))9A, 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 23, 1991; and

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

- 1. The applicants are the owners of the land.
2. The present zoning is R-5 (developed cluster).
3. The area of the lot is 7,056 square feet.
4. The applicant has met the nine required standards for a variance.
5. Even though the property was developed under the cluster subdivision, the property is a site of unusual depth.
6. The house has been pushed to the center rear of the property probably because of the truncated lot line on the front and there is no other place the applicant could put the addition other than the proposed location.
7. The addition will not be excessive in size and the applicant is requesting only a minimum variance.
8. The granting of the request will not change the character of the zoning district.

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

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

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

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

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

- 1. This variance is approved for the location and the specific addition (15 x 18 square feet) shown on the plat included with this application and is not transferable to other land.

Page 442, July 23, 1991, (Tape 2), SAMUEL AND SUSAN LYNN AYLESTOCK, VC 91-8-056, continued from Page 441)

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

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 442, July 23, 1991, (Tape 2), Scheduled case of:

10:30 A.M. THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, SP 90-M-090, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 1.2264 acres located at 6901 Columbia Pike, zoned R-2, HC, Mason District, Tax Map 60-4((1))23. (DEFERRED FROM 3/5/91 AT APPLICANT'S REQUEST - DEFERRED FROM 6/14/91 AT PLANNING COMMISSION'S REQUEST)

Vice Chairman Ribble informed the Board that the applicant was requesting a deferral.

Michael Jaskiewicz, Staff Coordinator, stated that the property is located just north of Columbia Pike and Gallows Road in Annandale and the staff report dated February 26, 1991, had recommended denial of the case. He stated that the Board had granted two previous deferral requests, one being March 5, 1991, at the applicant's request and one on June 14, 1991, at the Planning Commission's request. Mr. Jaskiewicz explained that the applicant was now requesting an indefinite deferral of both the Board of zoning Appeals public hearing and the Planning Commission public hearing. He noted that the applicant's agent was present to respond to any questions the Board might have.

Mr. Pammel objected to an indefinite deferral and suggested that the applicant withdraw the application without prejudice and refile at a later date. Vice Chairman Ribble asked the applicant's agent to come forward.

Mark D. Mittereder, AIA, 4300 Evergreen Lane #306, Annandale, Virginia, stated that he believed the applicant would be agreeable to a time period of six to nine months if that would be acceptable to the Board. He explained that the church needed time to re-evaluate its decision to go forward on the subject property. Mr. Mittereder stated that he believed that the church could evaluate its future needs as well as its present needs within that time and come back to the Board either with a decision to withdraw the application or proceed.

Mr. Hammack commented that the applicant had already had ninety days in which to make a decision. Mr. Mittereder stated that it was a difficult decision for the church since it would impact both the citizens and the church congregation.

Vice Chairman Ribble suggested that the Board entertain a motion to defer but make it the last deferral. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested January 14, 1992. Mr. Mittereder agreed.

Mr. Hammack made a motion to defer the application to January 14, 1992 at 9:00 a.m. Mrs. Harris seconded the motion. She asked that the motion be amended to reflect that the applicant submit any new information to the Board at least two weeks prior to the scheduled public hearing. Mr. Hammack agreed. Mr. Mittereder stated that he did not anticipate any changes. The motion carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 442, July 23, 1991, (Tape 2), Scheduled case of:

10:45 A.M. HARVEY G. AND JATON L. WEST, VC 91-8-019, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory use to cover more than 30% of minimum required rear yard (no more than 30% coverage allowed by Sect. 10-103) on approx. 11,007 s.f. located at 11313 Nancy Ann Way, zoned R-3, WS, Springfield District, Tax Map 56-2((8))18. (DEFERRED FROM 6/25/91 FOR INTERPRETATION AND DECISION - INTENT TO DEFER TO 7/30/91 AT 11:10 A.M. ISSUED 7/16/91)

Vice Chairman Ribble asked if the applicants were ready to be heard in this case. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the Board, at its July 23,

Page 442, July 23, 1991, (Tape 2), HARVEY G. AND JATON L. WEST, VC 91-S-019, continued from Page 441

1991 meeting, had issued an intent to defer VC 91-S-019 to July 30, 1991. She stated that staff had contacted the applicants and citizens and informed them of the Board's action.

Mr. Pammel made a motion to defer VC 91-S-019 to July 30, 1991 at 10:30 a.m. as suggested by Ms. Kelsey. Mr. Hammack seconded the motion. The Clerk informed Ms. Kelsey that when she had telephoned the applicant and the citizens she had told them that the case would be heard at 11:10 a.m. Ms. Kelsey conveyed this information to the Board and Mr. Pammel amended his motion to reflect 11:10 a.m. The motion carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 443, July 23, 1991, (Tape 2), Action Item:

Approval of July 16, 1991 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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The Board recessed at 10:45 a.m. and reconvened at 11:03 a.m.

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Page 443, July 23, 1991, (Tape 2), Scheduled case of:

11:00 A.M. THOMAS W. FORD, VC 91-S-049, appl. under Sect. 18-401 of the Zoning Ordinance to allow roofed deck 8.4 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,254 s.f. located at 6148 Ridgemont Dr., zoned R-C, WS, Springfield District, Tax Map 53-1((3))(6)12. (DEFERRED FROM 7/2/91 FOR APPLICANT TO REVISE REQUEST)

Vice Chairman Ribble stated that the application had been deferred in order for the applicant to revise the request and plat, which was before the Board.

Greg Riegler, Staff Coordinator, stated that the property was zoned R-C and the Zoning Ordinance requires a 20 foot minimum side yard. He stated that the applicant proposed to construct a deck 14.3 feet from the side lot line, thus a variance of 6.7 feet was requested. Mr. Riegler called the Board's attention to the original request and explained that the gazebo had been swung around into the building restriction line. (He pointed out that the Board had been provided a copy of the Minutes from the July 2, 1991 public hearing.)

The applicant, Thomas W. Ford, 6148 Ridgemont Drive, Centreville, Virginia, stated that on July 2, 1991 he had requested approval to construct a deck with a gazebo attached 8.4 feet from the side lot line. He stated that he had cited four reasons for that request: 1) the narrowness of the lot since the lot is 59 feet in the back and 93 feet in the front; 2) the irregular shape of the lot because the lot line to the left of the house is perpendicular to the street but the lot line on the right of the house runs diagonal which cuts into the back yard; 3) the doors off the family room are 4 feet off the ground making it necessary to build some type of deck or stairwell structure; and, 4) the existing drainage area located 15 feet from the side lot line which is 25 feet wide and is full of "riff-raff". Mr. Ford stated that the Board had informed him at the previous public hearing that he was requesting a rather significant variance and advised him to go back and redesign the request to reduce the variance. He explained that he believed that he had done that in three ways: 1) the gazebo had been moved inside the 20 foot building line; 2) the structure will no longer protrude into the 20 foot side yard; and, 3) the edge of the deck will now be 14.3 feet from the lot line, which is only 2 feet closer than the edge of the house.

Vice Chairman Ribble stated that he believed that the applicant had complied with what the Board had requested. Since there was no discussion, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 25, 1991, and subject to the revised plat.

Mrs. Harris asked if the gazebo would or would not be screened as had been discussed at the previous public hearing. Mr. Riegler explained that since the gazebo would now be located within the building restriction line the applicant could screen the structure if he chose to do so.

Mr. Ford stated that he appreciated the input he had received from the Board at the July 2, 1991 public.

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Page ~~444~~, July 23, 1991, (Tape 2), THOMAS W. FORD, VC 91-S-049, continued from Page ~~443~~.)

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-049 by THOMAS W. FORD, under Section 18-401 of the Zoning Ordinance to allow roofed deck 14.3 feet from side lot line, on property located at 6148 Ridgemont Drive, Tax Map Reference 53-1((3))(6)12, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 13,254 square feet.
4. The applicant has met the nine required standards for a variance, specifically, the irregular lot size and the topographic conditions.

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

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

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

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

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

1. This variance is approved for the location 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.

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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1991. This date shall be deemed to be the final approval date of this variance.

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Woodlawn Country Club

Vice Chairman Ribble called the Board's attention to information received by the Board regarding the Woodlawn Country Club. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that Ron Derrickson, Planning Technician, had distributed a letter to the Board from the Department of Environmental Management (DEM), which had not been included in the Board's packet. She stated that Mr. Kelley had already received a copy.

Mrs. Harris asked if the Board could defer the item to July 30, 1991, to allow the Board to read all the documents.

Mr. Kelley explained that on July 26, 1990, the Board unanimously approved an application by Woodlawn Country Club to basically construct a new club house and other facilities that are normal to a country club. He stated that at that public hearing Mrs. Thonen made a motion to delete Development Condition No. 10 which required dedication of land for the widening of a road for right-of-way, in particular for a trail. Mr. Kelley explained that the trail issue was a Proposed Development Condition No. 20 at one time but staff removed it prior to the Board's consideration. He stated that during the public hearing Mrs. Thonen stated that she believed the requirement of the trail would be dangerous and noted a safety issue with regard to citizens and that she believed that the applicant was justified in not having to provide the road dedication since the applicant's request did not intensify the use. Mr. Kelley explained that the applicant submitted a request for a site plan waiver and on March 21, 1991, DEM informed the Club the waiver would be provided on condition, "The owner executes and records an agreement guaranteeing the submission of a plan and profile for approval and construction of a road widening, curb and gutter, trail, and necessary storm water dedication right-of-way of easements at such time as similar improvements are constructed on either adjoining property at the request of the Director." He stated that upon hearing from the Supervisor for that District, some local citizens, and the Club, that letter was superseded on June 14, 1991, by the following: "The owner executes and records an agreement guaranteeing dedication of 30 foot right-of-way from centerline of Old Mill Road frontage at such time as similar dedication is made on either adjoining property at the request of the Director" which did soften the request somewhat. Mr. Kelley stated that he had been informed that all DEM receives with a special permit application acted upon by the Board of Zoning Appeals are the development conditions, without any background of the case. He stated that he would make a motion that staff be directed, on behalf of the Board to request the Director, DEM, to review the application, the Minutes, the transcript of the public hearing, particularly the tapes regarding the Club's application, and to furnish the Board, in writing, the reasons for requiring the dedication after having the documents, bearing in mind the comments of the citizens associations, the neighbors, and the Club. Mr. Kelley stated that he would just like to know why DEM had acted as they did.

Mrs. Thonen seconded the motion and stated that the Board had heard more than one application by the Club and there had been professional testimony at the first public hearing regarding the suitability of the trail through the golf course. She stated that they had objected to the construction of the trail for safety reasons and did not believe that trails in conjunction with a golf course were compatible and the Board had agreed. Mrs. Thonen stated that the Board of Supervisors, at its July 22, 1991 public hearing, had discussed the incidents of people hitting golf balls onto cars when the cars were traveling on West Ox Road.

Mrs. Harris stated that in her recollection the applicant's request had not intensified the use; therefore, she did not understand the road dedication requirement.

Vice Chairman Ribble stated that was correct and the road has been there for at least 200 years, has never been widened, and probably never would be.

Mr. Kelley stated that he believed that DEM would get "the flavor of that" if they listened to the tape. Mrs. Harris agreed. Mr. Kelley quoted a comment by Mr. Hammack from the Club's public hearing: "Children are incapable of assuming a risk or appreciating a risk and if a small child were injured, they are incapable of being contributory negligent."

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

Mr. Kelley stated that he would like the Board to receive the response by August 6, 1991, so they could review the information prior to the summer recess.

Mr. Pammel commented on Barbara Byron, Director's, Zoning Evaluation Division, interpretation dated March 7, 1991, regarding the transitional screening and adjustment of the parking area

Page 446, July 23, 1991, (Tape 2), WOODLAWN COUNTRY CLUB, continued from Page 445 )

of the golf course. Mr. Kelley asked if that was the screening imposed by the Board. Ms. Kelsey stated that the plan referenced by Mr. Pammel was already final and was included in the packet distributed to the Board. The Board expressed concern that the changes had been made without being discussed with the Board.

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Mr. Hammack called the Board's attention to a memorandum from Barbara Byron, Director, Zoning Evaluation Division, to Chairman DiGiulian dated July 15, 1991, regarding "Procedures For Receiving Suggestions from BZA on Requests for Special Permit Interpretations". He expressed concern that Ms. Byron would proceed to implement procedures prior to the adoption of the Zoning Ordinance and it was his understanding it had to be adopted before being implemented. Mr. Kelley stated that he had discussed this with Ms. Byron and she had acknowledged that had been the practice for some time but had not been formally adopted. Mr. Hammack stated that he found Ms. Byron's memorandum to be disconcerting. The other members agreed.

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Page 446, July 23, 1991, (Tape 2), Information Item:

Bethany Lutheran Church Interpretation

Mrs. Thonen stated that she would like the church's request to come to the Board as an amendment since it involved moving a playground. Mr. Pammel noted that the church was also requesting permission to replace a 6 foot fence with a 3 foot chain link fence on the side of the property that abuts residential property. He stated that he believed that to be a substantial change.

Mr. Kelley asked if Barbara Byron, Director, Zoning Evaluation Division, reviewed the Minutes and tapes of the public hearing prior to making her interpretations. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that she or the person to whom she assigned to the case did.

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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

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: September 17, 1991

APPROVED: September 24, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 30, 1991. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:08 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 447, July 30, 1991, (Tape 1), Scheduled case of:

9:00 A.M. MOON-KYUNG CHOY & PHILLIP S. CHO, SP 91-S-007, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 5.742 acres located at 15461 Lee Highway, zoned R-C, WS, Springfield District, Tax Map 64-1(1)9. (CONCURRENT WITH SE 89-S-024)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cho replied that it was.

Mrs. Thonen noted that the concurrent special exception would be heard by the Board of Supervisors on August 5, 1991. She expressed her belief that the Board of Zoning Appeals should hear the case but defer decision until after the special exception had been heard. It was the consensus of the Board to adopt Mrs. Thonen's recommendation.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Ms. Feibelman who was welcomed by the Board.

Lisa Feibelman, Staff Coordinator, Rezoning and Special Exception Branch, presented the staff report. She stated that the applicants were requesting a special permit to modify the dustless surface requirement to allow a gravel parking lot and entrance, travelway, loading area, and 22 parking spaces. Ms. Feibelman noted that the applicants were also seeking a special exception to operate a wholesale plant nursery. She explained that on June 19, 1991, the Planning Commission had recommended approval of the special exception and that the special exception application was scheduled to be heard by the Board of Supervisors on August 5, 1991. Ms. Feibelman stated that staff was recommending approval of the special permit in accordance with the proposed development conditions contained in the staff report dated July 17, 1991.

In response to Mrs. Harris' question as to whether the plans presented to the Board reflected the proposed transitional screening modifications, Ms. Feibelman stated that it did.

Mr. Pammel asked if the use would be restricted to wholesale only and Ms. Feibelman confirmed that it would be. She further explained that the applicants planned to use the facility to supply their own retail facilities.

The applicant, Phillip S. Cho, 6206 Fernwood Terrace, Apartment 101, Riverdale, Maryland, addressed the Board and stated that he concurred with staff's recommendations. He assured the Board that the use would be an asset to the area and expressed his belief that a gravel surface would preserve the environmental character of the area.

In response to Mr. Hammack's question as to whether the facility would be allowed to operate on the weekend, Ms. Feibelman stated that the hours would be from 9:00 a.m. to 6:00 p.m., seven days a week.

There being no speakers to the request, the Chair moved to keep the public hearing open for decision only.

Mrs. Harris made a motion to defer the case to August 6, 1991 at 11:45 a.m. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present at the meeting.

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Page 447, July 30, 1991, (Tape 1), Scheduled case of:

9:15 A.M. FAIRFAX COUNTY WATER AUTHORITY (FCWA), SP 90-L-076, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 8.06 acres located at 6903 Hill Park Dr., zoned I-5, Lee District, Tax Map 99-2(4)16. (CONCURRENT WITH SE 90-L-049)

Vice Chairman Ribble called the applicant to the podium and asked if the revised affidavit dated July 1, 1991, before the Board was complete and accurate. Mr. Triolo replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Mr. Robinson who was welcomed by the Board.

Robby Robinson, Staff Coordinator, Rezoning and Special Exception Branch, presented the staff report. He stated that the applicant was requesting a special permit to allow a waiver of

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the dustless surface requirement at the proposed public utility supply yard. A concurrent application, SE 90-L-049, requests approval of a special exception to establish the utility supply yard and a special exception to allow such a use within a floodplain. He noted that the Planning Commission hearing, for decision only, was scheduled for August 1, 1991, and the Board of Supervisors' public hearing was scheduled for August 5, 1991.

Mr. Robinson stated that the Fairfax County Water Authority (FCWA) employees based at the site would be responsible for the maintenance and repair work of the water system in the southeastern section of Fairfax County. He noted that a secondary function on the site would be for the retail sale to private contractors working on FCWA projects.

Mr. Robinson said that the proposed gravel surfaces would be in the equipment/material storage area and a portion of the parking area located at the rear of the proposed building. The area that was proposed to be maintained as a gravel surface would be used primarily for overnight and long-term parking of maintenance vehicles, and for the storage of materials used in maintaining the water system. The vehicular traffic on the graveled area would consist mainly of maintenance vehicles which would be used for loading or unloading bulky materials, and for loading equipment such as forklifts and front-end loaders. The majority of the on-site vehicular traffic consisting of employee, maintenance crew, and delivery vehicles would remain on the paved travel and parking areas which are located adjacent to the proposed building. Mr. Robinson stated that staff recommended approval subject to the proposed development conditions contained in the staff report dated July 16, 1991.

Mrs. Thonen asked staff to address the concerns expressed in the letter to the Board from an adjacent commercial enterprise, Capital Concept. She noted that they believed that the use would have a detrimental impact on their business. Mr. Robinson stated that the development conditions would require that the dustless surface be kept wet during periods of dry conditions. He explained that although transitional screening was not required between I-5 uses, the applicant had indicated that a 25.0 foot wide transitional screening area would be provided to the rear of the property. He further stated that the applicant could better address the concerns regarding the bamboo on the property.

The applicant's representative, Christopher M. Triolo, an engineer with the FCWA, 3020 Hamaker Court, Merrifield, Virginia, addressed the Board. He stated that the bamboo growing in the Virginia Power easement would be trimmed to their specifications. He noted that permission had been granted Virginia Power to install gravel on a portion of that easement. Mr. Triolo expressed his belief that the existing landscaping, along with the proposed additional plantings, would adequately preserve and protect the environment.

In response to Mrs. Thonen's question regarding removal of the bamboo, Mr. Triolo said that bamboo grows along the entire Virginia Power easement.

Mr. Triolo responded to Mr. Hammack's question as to the estimated volume of travel by large vehicles on the gravel area, Mr. Triolo said that the gravel area would be a low speed, low traffic area and would be used primarily as a storage site for water pipe. He explained that the higher traffic area would be paved. He noted that the gravel surface would be easier to maintain and would not cause excessive dust to the surrounding area. Mr. Triolo stated that other similar sites maintained by the FCWA have not experienced any problems regarding dust. He assured the Board that the site would be well maintained and the competent personnel assigned to the site would adequately deal with any problems that may arise.

There being no speakers to the request, the Chair moved to keep the public hearing open for decision only.

Mrs. Thonen made a motion to defer the case to August 6, 1991 at 11:55 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present at the meeting.

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Page <sup>449</sup>449, July 30, 1991, (Tape 1), Action Item:

Request for Reconsideration  
Scott N. Curtis, VC 91-S-058  
Heard on July 23, 1991

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and presented photographs and plats to the Board for their review. Mr. Kelley stated that the additional information was not pertinent enough to cause him to change his decision.

Mr. Kelley made a motion to deny the reconsideration. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

Mr. Pammel made a motion to waive the twelve-month waiting period requirement for refileing. Mr. Kelley seconded the motion.



Page 449, July 30, 1991, (Tape 1), (REQUEST FOR RECONSIDERATION, SCOTT N. CURTIS, VC 91-8-058, continued from Page 448)

Mrs. Thonen stated that she could not support the motion. She expressed her belief that to grant the waiver would send a false message to the applicant. She said that she did not want to encourage Mr. Curtis to return with the same application.

The motion failed by a vote of 3-3 with Mr. Hammack, Mr. Kelley, and Mr. Pammel voting aye; Vice Chairman Ribble, Mrs. Harris, and Mrs. Thonen voting nay. Chairman DiGiulian was absent from the meeting.

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Page 449, July 30, 1991, (Tape 1), Scheduled case of:

9:30 A.M. AHARON AND AVKIN POLAT, VC 91-L-057, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure (garage) 4.0 ft. from side lot line (12 ft. min. side yard required by Sect. 10-104 and 3-307) on approx. 10,762 s.f. located at 6705 Braddock Road, zoned R-3, Lee District, Tax Map 71-4(5)(25)48.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smith replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Ms. Shevlin who was welcomed by the Board.

Meaghan Shevlin, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to allow construction of a detached garage 4.0 from the side lot line. She noted that Sect. 10-104 of the Zoning Ordinance requires a 12.0 foot minimum side lot line; therefore a variance of 8.0 feet was requested. Ms. Shevlin stated that the dwelling on adjacent Lot 49 is 15.7 feet from the shared lot line.

The applicants' agent, Donald D. Smith, 5618 Wharton Lane, Centreville, Virginia, addressed the Board. He stated that the proposed location was the only practical site for the garage. He noted that the garage would be inaccessible if placed 12.0 feet from the side lot line. He further noted that if the garage were placed 4.0 feet from the side lot line, the applicant would not only have access to the garage, but would also have the ability to turn his car around before he pulled into the traffic on Braddock Road.

Mr. Smith stated that the traffic count on Braddock Road during a 24 hour period was 1,716 cars. He stated that the safety considerations, the other garages in the neighborhood, the exceptional narrowness and shallowness of the lot, and the undue hardship justified the variance. He said that the material used for the construction of the garage would be similar to the existing structure.

In response to Mr. Kelley's question as to whether the other garages in the neighborhood had required variances, Mr. Smith stated that he did not know. He explained that prior to 1978 the Zoning Ordinance allowed a fireproofed garage to be built 4.0 feet from the side lot line.

Mrs. Harris expressed her belief that the applicants' lot was similar to the other lots in the neighborhood. Mr. Smith agreed that the lots in the area were exceptionally shallow and narrow, but stressed the danger to the applicants when they had to back their cars into the traffic on Braddock Road.

In response to Mr. Pammel's question regarding the rear section of the property, Mr. Smith explained that the structure had a wooden deck on the second floor with the walk-out basement concrete pad below.

In response to questions from the Board, Mr. Smith stated that due to environmental and topographic considerations, the two car garage should be located at the proposed site. He confirmed that Braddock Road had already been widened when the applicant purchased the house. Mr. Smith again stressed the difficulty involved in backing a car out of the applicants driveway.

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

Mr. Hammack made a motion to deny VC 91-L-057 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-057 by AHARON AND AVKIN POLAT, under Section 18-401 of the Zoning Ordinance to allow detached structure (garage) 4.0 feet from side lot line, on property located at 6705 Braddock Road, Tax Map Reference 71-4(5)(25)48, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

Page <sup>450</sup> 449, July 30, 1991, (Tape 1), (AHARON AND AVKIN POLAT, VC 91-L-057, continued from Page 449)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1991; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,762 square feet.
4. The garage could have been better sited.
5. The Zoning Ordinance had been in effect when the applicant bought the property.
6. There are no topographic constraints that would prevent the garage from being constructed without a variance.
7. The application does not meet the requirements necessary for the granting of a variance.

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

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

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

Mr. Kelley made a motion to grant a waiver of the twelve-month waiting requirement for refiling. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991.

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Page 451, July 30, 1991, (Tape 1), Scheduled case of:

9:40 A.M. JAMES A. MORELAND, VCA 72-L-131-1, appl. under Sect. 18-401 of the Zoning Ordinance to amend VC 72-L-131 to allow addition (garage) 8.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,937 s.f. located at 4300 Fielding Street, zoned R-3, Lee District, Tax Map 101-1((3))294.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Moreland replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting an amendment to the 1972 variance to allow a garage 8.1 feet from the side lot line. Mr. Riegle said that the applicant would like to increase the length of the garage by 24 feet; thus he was requesting a variance of 3.9 feet to the minimum side yard requirement. He noted that the dwelling on adjacent Lot 295 is approximately 16.0 feet from the shared lot line.

The applicant, James A. Moreland, 4300 Fielding Street, Alexandria, Virginia, addressed the Board. He stated that a larger garage was required so that he could repair his family's cars. He said that the exceptionally narrow lot, the 43.0 foot drainage easement, and the financial considerations justified the variance. Mr. Moreland noted that the neighbors supported the request.

In response to Mrs. Thonen's question as to how many cars the applicant owned, Mr. Moreland stated that he had five cars.

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

Mr. Pammel made a motion to grant VCA 71-L-131-1 for the reasons reflected in the Resolution and subject to the development conditions stated in the staff report dated July 23, 1991.

Mrs. Thonen seconded the motion. She stated that she supported the variance because it was just a continuation of the existing garage, there is a huge storm drainage ditch on the property, the narrow lot has topographic problems, and the variance will have no detrimental impact on the area.

Mr. Hammack stated that he could not support the motion. He expressed his belief that a 50.0 foot garage 8.1 foot from the property line would have too great an impact on the adjacent neighbor, the applicant had reasonable use of the property, and the variance would not be in harmony with the intended spirit of the zoning Ordinance.

Mrs. Harris stated that one of the reasons the original variance was granted was due to the fact that the drainage field precluded a garage being built toward the rear of the lot. She noted that the proposed extension of the garage would extend towards this drainage field. Mrs. Harris said that for these reason she could not support the variance.

Mr. Pammel stated that the Board has consistently denied variances for two car garages because of the width. He noted that the applicant was just extending his one car garage and expressed his belief that the request was reasonable.

Mrs. Harris said that the applicant's one car garage had required a variance. She expressed concern regarding the extension of the original variance by 24.0 feet.

Mr. Kelley said that he would support the motion. He noted that the neighbors had no objection to the variance.

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**NOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Variance Amendment Application VCA 72-L-131-1 by JAMES A. MORELAND, under Section 18-401 of the Zoning Ordinance to amend VC 72-L-131 to allow addition (garage) 8.1 feet from side lot line, on property located at 4300 Fielding Street, Tax Map Reference 101-1((3))294, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1991; and

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

1. The applicant is the owner of the land.

Page <sup>452</sup> 452, July 30, 1991, (Tape 1), (JAMES A. MORELAND, VCA 72-L-131-1, continued from page <sup>451</sup> 451)

2. The present zoning is R-3.
3. The area of the lot is 11,937 square feet.
4. The application meets the requirements necessary for the granting of a variance.
5. The applicant had submitted justification for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location 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.

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.

Mrs. Thonen seconded the motion which FAILED by a vote of 3-3 with Mrs. Thonen, Mr. Kelley and Mr. Pammel voting aye; Vice Chairman Ribble, Mrs. Harris, and Mr. Hammack voting nay. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991.

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Page 453, July 30, 1991, (Tape 1), Scheduled case of:

9:50 A.M. MILDRED N. MANSFIELD, SP 91-L-023, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed) to remain 1.8 ft. from side lot line and 2.7 ft. from rear lot line (12 ft. side yard and 12.2 ft. min. rear yard required by Sect. 3-307 and 10-104) on approx. 11,795 s.f. located at 5805 Accomac St., zoned R-3, Lee District, Tax Map 80-1((5))(30)20.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Houliston replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit for a modification to the minimum side and rear yard requirements based on error in building location to allow an accessory storage structure (shed) to remain 1.8 feet from the side lot line and 2.7 feet from the rear lot line. Therefore, a modification of 9.5 feet to the minimum rear yard and 10.2 feet to the minimum side yard requirement was requested. He stated that the dwelling on adjacent Lot 19 is located approximately 13.2 feet from the shared lot line.

Mr. Riegle stated that the structure was constructed without a building permit and is presently in violation of the Zoning Ordinance. He said that according to the applicant's statement, the builder had believed the shed could be located at the present site. He noted that a petition of support had been included in the staff report.

In referring to the background of the case, Mr. Riegle stated that special permit application, SP 90-L-082, identical to the subject application, was heard by the Board on January 17, 1991. The application was denied; however, the applicant was granted a waiver of the 12 month limitation on re-hearing of the application.

The applicant's attorney, Michael L. Houliston, 4510 Old Columbia Pike, Annandale, Virginia, addressed the Board. He said that at the previous hearing, the applicant had been misrepresented by the builder. He stated that the builder had assured Ms. Mansfield that the shed could be built on the site. Mr. Houliston explained that Ms. Mansfield took pride in her house, the shed had cost \$6,100.00, and the lawn was beautifully manicured. He noted that the steep slope of the yard prohibited the shed from being located elsewhere, and the neighbors supported the request.

Mr. Houliston expressed his belief that to deny the request would create a undue hardship for the applicant. He again stressed that Ms. Mansfield relied on the builder to conform to the Zoning Ordinance, and was in no way responsible for the error. Mr. Houliston stated that the application had met the necessary standards and asked the Board to grant the request.

In response to Mrs. Harris' question as to why Mr. Tye, the builder, was not present at the hearing, Mr. Houliston stated that he did not know. He stated that Mr. Tye had indicated to him and to Ms. Mansfield that the shed was not in violation because it had an interior dimension of less than 150.0 square feet.

Mrs. Thonen stated that Mr. Tye had also testified that the lot had no unusual topographic conditions. She expressed her belief that the sharp slope of the lot was extreme.

In response to Mr. Pammel's question as to when the shed was constructed, Mr. Houliston said that the prefabricated shed was built in April of 1990.

Mr. Hammack asked if the abutting neighbors had signed the petition of support, Mr. Houliston stated that they had.

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

Mrs. Thonen made a motion to grant SP 91-L-023 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated July 23, 1991.

Mr. Hammack seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Pammel stated that the testimony had indicated that the concrete slab had been installed and the location of the shed had been chosen before the builder had been hired.

Mrs. Thonen stated that the shed was an asset to the community, severe topographic conditions exist on the lot, and the community supported the request.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

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

In Special Permit Application SP 91-L-023 by MILDRED N. MANSFIELD, under Section 8-914 of the

Page <sup>434</sup> 433, July 30, 1991, (Tape 1), (MILDRED N. MANSFIELD, SP 91-L-023, continued from page 433)

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Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed) to remain 1.8 feet from side lot line and 2.7 feet from rear lot line, on property located at 5805 Accomac Street, Tax Map Reference 80-1(5)(30)20, 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 30, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,795 square feet.
4. The property is near the Southern Railway.
5. The property has severe topographical problems.
6. It is very hard to believe the builder's testimony that he informed the applicant that the shed was in violation because he also testified that no topographical problems existed on the property.
7. The mistake was done in good faith.
8. The applicant would not have constructed an expensive quality shed in that location if she had realized that it might have to be moved.

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

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

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

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

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

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

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3. A Building Permit shall be obtained for the shed.
4. The porch attached to the shed shall not be used for storage.

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

Mr. Hammack seconded the motion which FAILED by a vote of 3-3 with Vice Chairman Ribble, Mrs. Thonen, and Mr. Hammack voting aye; Mrs. Harris, Mr. Kelley, and Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991.

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Page 456, July 30, 1991, (Tape 1), Scheduled case of:

10:05 A.M. TOBY CEDAR, VC 91-V-070, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 11.4 ft. from front lot line of corner lot and to allow 5.9 ft. fence to remain in front yard of corner lot (30 ft. min. front yard required by Sect. 3-307 and 4 ft. max. fence height allowed by Sect. 10-104) on approx. 7,000 s.f. located at 1601 H St., zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(10)17, 18. (OTH GRANTED 6/18/91)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Cedar replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow the construction of an addition 11.4 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30.0 feet; therefore, a variance of 18.6 feet was requested. Mr. Riegle said that the applicant was also requesting a variance to allow an existing fence, 5.9 feet in height, to remain in the front yard. The Zoning Ordinance permits a 4.0 foot fence in a front yard; therefore, a variance of 1.9 feet was requested.

In referring to the background of the case, Mr. Riegle stated that on two previous occasions the Board approved variances on the subject property which were similar to the request. He noted that these variances had expired as construction did not commence within the allotted 18 months. Mr. Riegle noted that all the lots in the area are substandard, and the majority of the dwellings had been constructed under previous Zoning Ordinance requirements.

The applicant, Toby Cedar, 1601 H Street, Alexandria, Virginia, addressed the Board. She said that the addition would continue the existing house line, would enhance the property, and had the support of the neighbors. Ms. Cedar stated that her house is located on a corner lot, thus a variance is required for the addition.

In response to Mr. Kelley's question as to how many years she had owned the property, Ms. Cedar replied that she bought the property 15 years ago. She stated that unforeseen circumstances had prevented her from building the addition when the two previous variances were granted. She explained that after she obtained the first variance, she had lost her job and was unable to finance the project. Ms. Cedar further stated that only after obtaining the second variance was she informed that because her property is on a floodplain, she would have to apply for a special exception. She said that this added procedure, along with the fact that she was in the process of relocating her bookstore, prevented her from proceeding with construction.

Ms. Cedar requested that the Board waive the 8 day waiting period. She said that she had hired a builder and was determined to start construction as soon as a variance was granted.

In response to Mr. Hammack's question regarding the floodplain, Ms. Cedar explained that the height of the addition had been raised, thereby eliminating the need for a special exception. She explained that the fence was in place when she purchased the house and poses no visual obstruction.

There being no speakers to the request, Vice Chairman Ribble called for staff comments.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that only a small portion of the fence is on the applicant's property with the majority on the Virginia Department of Transportation right-of-way.

In response to Mr. Hammack's question regarding the floodplain, Mr. Riegle explained that the application complies with the stipulations in the Zoning Ordinance which permit additions to existing dwellings within the floodplain.

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Mrs. Harris made a motion to grant VC 91-V-070 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated July 23, 1991.

Mr. Kelley seconded the motion.

Vice Chairman Ribble called for discussion.

Mrs. Thonen stated that she could not support the motion. She said that a 6.0 foot fence in a front yard on a corner lot should not be approved.

Mrs. Harris expressed her belief that since the removal of the small section of fence on the applicant's property would not substantially alter the situation, the fence was not an issue.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-070 by TOBY CEDAR, under Section 18-401 of the Zoning Ordinance to allow addition 11.4 feet from front lot line of corner lot and to allow 5.9 foot fence to remain in front yard of corner lot, on property located at 1601 H Street, Tax Map Reference 83-4((2))(10)17, 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 July 30, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 7,000 square feet.
4. The double front yards and the narrowness of the property caused the need for the variance.
5. The addition with not infringe any further into the front yard than the existing structure.
6. There will be no detrimental impact on the adjoining properties.
7. There is no other site on the lot where the addition could be constructed without a variance.
8. The open chain-link fence does not obscure any sight distance.

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

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



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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 and fence 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.

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.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Thonen voting nay and Chairman DiGiulian absent for the vote.

Mrs. Harris made a motion to waive the eight-day waiting period. Mr. Kelly seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1991. This date shall be deemed to be the final approval date of this variance.

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10:15 A.M. LYNNE LAMBERT, VC 91-D-060, appl. under Sect. 18-401 of the Zoning Ordinance to allow additions 10.1 and 10.3 ft. from side lot lines and open deck 10.3 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 6,250 s.f. located at 6841 Melrose Drive, zoned R-3, Branesville District, Tax Map 30-2((4))(K)12,14.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Lambert replied that it was.

Bernadette Bettard, Staff Coordinator, expressed her thanks to Meaghan Shevlin, Staff Coordinator, and Kul Sandhu, Planner II with the Rezoning and Special Exception Branch, for the preparation of the staff reports while she was out due to illness.

Ms. Bettard presented the staff report. She stated that the applicant was proposing to enclose the existing deck and to construct a second-story addition to within 10.1 feet from the side lot line. She noted that the applicant also planned to construct a new elevated deck to within 10.3 feet from the side lot line. Accordingly, the applicant was requesting a variance of 1.9 feet for the proposed addition and a variance of 1.7 feet for the proposed deck.

The applicant, Lynne Lambert, 6841 Melrose Drive, McLean, Virginia, addressed the Board. She stated that she would like to add a conservatory to the house. Ms. Lambert said the existing structure, which was built in 1978, is too close to the lot line under the current Zoning Ordinance. She explained that the addition would not extend any further into the side yard than the existing house.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Clarence, E. Reid, Jr., 1122 Kensington Road, McLean, Virginia, addressed the Board. He explained that he was the builder, the lot is a substandard lot, and he had obtained a variance to the side lot line in order to build the structure.

In response to Mrs. Harris' question, staff stated that no record of the history of the property could be found. It was noted that the official files concerning the property were missing.

In response to Mr. Kelley's inquiry, Ms. Lambert stated that she had no information regarding the former variance.

Page 450, July 30, 1991, (Tape 1), (LYNNE LAMBERT, VC 91-D-060, continued from Page 451),

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There being no further speakers in support and no speakers in opposition, Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant VC 91-D-060 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 23, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-060 by LYNNE LAMBERT, under Section 18-401 of the Zoning Ordinance to allow addition 10.1 and 10.3 feet from side lot lines and open deck 10.3 feet from side lot line, on property located at 6841 Melrose Drive, Tax Map Reference 30-2(4)(K)12,14, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1991; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 6,250 square feet.
4. The applicant meets the requirement necessary for the granting of a variance.
5. The lot is exceptionally narrow.
6. The addition will not intrude any further into the side lot line than the existing dwelling.

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

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

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

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

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

- 1. This variance is approved for the location and the specific addition and deck 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.

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 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.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991. This date shall be deemed to be the final approval date of this variance.

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10:25 A.M. JOHN J. & PATRICIA V. ROBERTSON, SP 91-P-022, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow addition to remain 24.8 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307) on approx. 16,309 s.f. located at 8019 Iliff Dr., zoned R-3, Providence District, Tax Map 39-4((1))232.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Robertson replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She noted that the applicants were requesting a special permit for a modification to the minimum front yard requirement based on an error in building location to allow an attached garage/addition to remain 24.8 feet from the front lot line. Accordingly, a modification of 5.2 feet to the minimum front yard was requested.

Ms. Bettard said that although the special permit plat indicated the subject addition will be connected to the existing dwelling, the two are not presently connected. She noted that should the Board grant the request, the proposed development conditions stipulated that the two structures must be connected within one (1) year.

The applicant, John J. Robertson, 8019 Iliff Drive, Dunn Loring, Virginia, addressed the Board. He stated that the house had been constructed in the late 1800's, he had purchased the property about twelve years ago, and had applied for a building permit to construct a garage/workshop in 1988. Mr. Robertson explained that when he had built the addition, he had believed the setback was 25.0 feet. He noted that he had consulted with the neighbors prior to construction and had planted pine, oak, and maple trees to aesthetically enhance the property. Mr. Robertson further explained that the building was under roof, the cedar roof and siding were in place, and the painters were applying the finishing touches. He apologized for his error and asked the Board to grant the request.

In response to Mrs. Harris' question regarding the garage, Mr. Robertson stated that the 25 x 46 foot building would have two floors. The first floor would consist of a two-car bay with the rear portion used as a workshop; and the second floor would consist of two bedrooms, bath, and living area. He explained that he needed the extra room for various family members visits.

Mr. Pammel noted that the building permit clearly stated that the building must be constructed with a 30.0 foot front yard setback. Mr. Robertson said that when he realized he had made an error, he had brought it to the attention of the County so that the situation could be rectified. He noted that he had invested a great deal of time and money in the project and would not have knowingly put it in jeopardy.

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

Mr. Hammack made a motion to grant the request subject to the development conditions contained dated July 30, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-022 by JOHN J. AND PATRICIA V. ROBERTSON, under Section

Page <sup>460</sup> 460, July 30, 1991, (Tape 2), (JOHN J. & PATRICIA V. ROBERTSON, SP 91-P-022, continued from Page <sup>459</sup> 459)

8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow addition to remain 24.8 feet from front lot line, on property located at 8019 Iliff Drive, Tax Map Reference 39-4((1))232, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1991; and

WHEREAS, the Board has made the following conclusions of law:

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

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

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

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

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

1. This special permit is approved for the location and the specified garage/workshop addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.
3. A building permit reflecting the actual location of the garage/workshop addition shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submission deemed appropriate by the County, if these are required.
4. The garage/workshop addition shall be painted to match the color of the dwelling.
5. The addition shall be attached to the house as shown on the special permit plat within a period of one (1) year from the final approval date of this special permit.
6. A single row of evergreen trees shall be planted along the northern side of the addition. This row shall include at least seven (7) trees and all trees shall have a planted height of six (6) feet.

Page 461, July 30, 1991, (Tape 2), (JOHN J. & PATRICIA V. ROBERTSON, SP 91-P-022, continued from Page 460)

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, twelve (12) months after the approval date\* of the Special Permit unless the activity authorized has been legally 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 which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 461, July 30, 1991, (Tape 2), Scheduled case of:

10:40 A.M. KINGS RIDGE SWIM CLUB, INC., SPA 76-A-292-3, appl. under Sect. 3-203 of the Zoning Ordinance to amend SPA 76-A-292-2 for community swimming pool to allow change in hours without term on approx. 2.91 acres located at 4874 Gainsborough Dr., zoned R-2, Annandale District, Tax Map 68-2(5)V.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Quay replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was seeking an amendment to a special permit for a community recreation facility to allow a continuation in hours of operation for swim team practice and swimming lessons from 7:00 a.m. to 10:00 a.m. without term. Ms. Bettard noted that the original special permit had specifically limited the hours of operation from 10:00 a.m. to 9:00 p.m. She further noted that a subsequent amendment to the special permit had extended the hours for swim team practice and swimming lessons from 7:00 a.m. to 10:00 a.m. with a two year term so that an impact study could be conducted. She said that the Zoning Administrator had been granted the authority to extend the special permit amendment for an additional two year term.

Ms. Bettard stated that there were no land use, environmental, or transportation concerns associated with the application. She said that the extended hours would not result in any changes to the building, parking, or open space requirements. She noted that an impact study had concluded that the extended hours had not had a detrimental impact on the surrounding community. Ms. Bettard stated that staff recommended approval subject to the proposed development conditions contained in the staff report.

The applicant, Gary W. Quay, President of the Board of Directors of the Kings Ridge Swim Club, 4874 Gainsborough Drive, Fairfax, Virginia, addressed the Board. He stated that the extended hours would enable the Club to offer swimming lessons to the community, to accommodate practices for a club sponsored swim team, and would enable the team to compete in the Northern Virginia Swim League.

Mr. Quay said that the impact study had shown that there had been no detrimental repercussions from the extended hours and expressed his belief that the club was an asset to the community. He stated that the programs provided by the club helped the young members develop a strong sense of community spirit and had instilled basic values such as discipline, teamwork, and good sportsmanship. He further stated that team members' parents took an active interest in the programs and volunteered their services to ensure the club's success.

Mr. Quay explained that the club had been in existence for 15 years, had worked hard to maintain harmony in the community, and had provided a much needed service to the youth in the community. He asked the Board to grant the request.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Carol Noesner, 4868 Wheatstone Drive, Fairfax, Virginia, addressed the Board. She stated that she has lived near the club for 15 years and supports the request. She expressed her belief that the club is an asset to the community.

There being no further speakers in support and no speakers in opposition, Vice Chairman Ribble closed the public hearing.

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Mr. Pammel made a motion to grant SPA 76-A-292-3 subject to the development conditions contained in the staff report dated July 16, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-A-292-3 by KINGS RIDGE SWIM CLUB, INC., under Section 3-203 of the Zoning Ordinance to amend SPA 76-A-292-2 for community swimming pool to allow change in hours without term, on property located at 4874 Gainsborough Drive, Tax Map Reference 68-2((5))V, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1991; 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 2.91 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-403 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 specified addition as shown on the plat approved in conjunction with SPA 76-A-292-2 prepared by Springfield Associates Inc. as revised dated September 26, 1986 and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available during the hours of operation of the permitted use.
4. The maximum number of employees shall be four (4).
5. The maximum number of family memberships shall be 400.
6. There shall be fifty-five (55) parking spaces provided and all parking for this use shall be on site.
7. After-hour parties for the swimming pool shall be governed by the following:

Limited to six (6) per season.

Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year provided written proof is submitted which shows that all contiguous property owners concur.

Shall not extended beyond 12:00 midnight.

The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

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- 8. The combined height of the light standards and fixtures shall not exceed twenty (20) feet for the pool and parking lot. If there proves to be a problem, shields shall be installed. If the lights still create a problem, then steps should be taken to lower the light standards not to exceed twelve (12) feet.
- 9. The maximum hours of operation for the pool shall be from 10:00 a.m. to 9:00 p.m. Swimming team practices and swimming lessons only may be held between 7:00 a.m. and 10:00 a.m.
- 10. All Swim meets shall be conducted between hours of 9:00 a.m. and 9:00 p.m. There shall be no more than six (6) swim meets a year.
- 11. The use of loudspeakers, whistles, and bullhorns shall be limited to the hours of 9:00 a.m. to 9:00 p.m. and also be in accordance with the provisions of Chapter 108 of the Fairfax County Code.
- 12. Transitional Screening 1 shall be maintained along the northern boundary as required by Article 13 of the Zoning Ordinance. The existing transitional screening around the eastern, western, and southern boundaries shall be retained and shall be deemed to satisfy the transitional screening requirement along those lot lines.
- 13. The Kings Ridge Swim Club shall maintain the fencing as shown on the approved plat which satisfy the barrier requirement.

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 and Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

Mr. Pammel made a motion to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 463, July 30, 1991, (Tapes 2 and 3), Scheduled case of:

10:55 A.M. DOUGLAS W. FAGUE, A 91-S-004, appl. under Sect. 8-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Par. 11 of Sect. 11-102 is solely enforced by the Director of the Department of Environmental Management and to appeal the Director of the Department of Environmental Management's determination that a mountable curb and gutter is allowed to be used as a driveway entrance to a parking space in a townhouse development known as the Winding Ridge Subdivision, zoned R-1 and R-8, Springfield District, Tax Map 65-2((11))1 through 141, A, B, C, D.

Vice Chairman Ribble called for a location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the Board and introduced John Winfield, Deputy Director of Design Review, Department of Environmental Management. He stated that the property was known as Winding Ridge Subdivision and Townhouse Development, is located on Tax Map 65-2((11))1 though 141, A, B, C, D, and is zoned R-1 and R-8.

Mr. Shoup spoke to the timeliness issue pertaining to the portion of the appeal involving a determination by Joseph Beben, Chief of the Public Utilities Branch, Department of Environmental Management. He stated that it was staff's position, as set forth in the staff report dated July 24, 1991, that CG-7 mountable curb and gutter as a driveway entrance satisfied the requirements of Par. 11 of Sect. 11-102 of the Zoning Ordinance. He further stated that it was staff's position that the Director of the Department of Environmental

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Management (DEM) had the authority to review the site plans and to make a determination based on the Public Facilities Manual Standard TS-5A that CG-7 was a permitted use in townhouse developments. Mr. Shoup stated that it was also staff's position that the Director's determination was in accordance with the Public Facilities Manual and the Zoning Ordinance Provisions, and the appellant had no basis to deem such curb and gutters to be in violation of Sect. 11-102.

He noted the related issue of the appellant's complaint to Zoning Enforcement of a possible violation. Mr. Shoup stated that it was staff's position that no violation existed and that Zoning Enforcement's decision not to pursue the complaint was appropriate.

Vice Chairman Ribble called the appellant to the podium.

The appellant, Douglas W. Fague, 14096 Winding Ridge Lane, Centreville, Virginia, addressed the Board. He inquired as to whether the timeliness issue should be addressed before he presented his testimony.

After a brief discussion, it was the consensus of the Board to hear the testimony regarding the timeliness issue.

Mr. Fague stated that he believed that his complaint had not been properly investigated by Public Utilities, nor had the Zoning Ordinance been properly enforced. He emphasized that CG-7 should not be used for driveway entrances. Mr. Fague explained that he had attended a site plan meeting on March 21, 1991, to discuss the legality of using CG-7, and at that time Mr. Beben had stated that CG-7 could be used for driveway entrances per the site plan. Mr. Fague stated that he had used the date of this meeting, based on Mr. Beben's decision, to file the appeal.

Vice Chairman Ribble called for staff to present testimony regarding the timeliness issue.

Mr. Shoup stated the memorandum from the Zoning Administrator to the Board dated April 29, 1991, Attachment 15 to the staff report, presented staff's position on this issue. He stated that Mr. Beben had authored a determination in a letter to the appellant dated February 26, 1991, and the appeal was filed on April 19, 1991, well beyond the thirty day time limitation. However, the appellant was contending that Mr. Beben's statement made on March 21, 1991, was the basis for the appeal. Mr. Shoup stated that it was staff's belief that the appeal was not timely filed. He stated that it was Mr. Beben's belief that many issues were discussed at the meeting and no new determination had been rendered regarding the CG-7 issue.

Vice Chairman Ribble called Joseph Beben, Chief, Public Utilities Branch, 4050 Legato Road, Fairfax, Virginia, to the podium.

Mrs. Harris stated that she believed that Mr. Beben had made it very clear in the letter dated February 26, 1991, that CG-7 was a usable curb and gutter system. Mrs. Harris asked Mr. Beben if he had made any significant changes to the statement in the letter when he had meet with Mr. Fague. Mr. Beben stated that the principal reason for the meeting was to discuss drainage problems. He said that he was puzzled by Mr. Fague's continued reference to the fact that he, Mr. Beben, had the authority to make determinations. He explained that he did not have the authority or responsibility to make such determinations and that specifications of this type were clearly stated in the site plan. He further explained that when a question arose which needed a detailed explanation regarding the site plan specifications, the Site Review Branch should be consulted.

In response to Mrs. Harris' question as to whether the determination as to what type of curb and gutter would be used on the project was made at the time of Site Plan Review in 1988, Mr. Winfield stated that it was.

In response to Mrs. Thonen's question as to whether any correspondence had been received regarding this matter after the letter dated February 26, 1991, Mr. Fague said there had not.

Mr. Pammel made a motion that the appeal was timely filed. He stated that he had read the documents regarding this case and believed that since a follow-up meeting had taken place, Mr. Fague's appeal was timely filed.

Vice Chairman Ribble called John Farrell to the podium.

John Farrell, an attorney with the law firm of Odin, Feldman, and Pittleman, 9302 Lee Highway, Suite 1100, Fairfax, Virginia, addressed the Board. He stated that he was the representative of Curtis P. Peterson, Inc., the developers of Winding Ridge. Mr. Farrell presented a letter to the Board which addressed the timeliness issue as well as the appellant's stand on the appeal. Mr. Farrell stated that on Phase I of Winding Ridge, the determination of conformance to the Zoning Ordinance and to the Public Facilities Manual was made in 1988, and no appeal had been filed within the thirty-day time limitation. He expressed his belief that the issue was no longer appealable.



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Mr. Farrell challenged Mr. Fague's standing to file an appeal on Phase II of Winding Ridge. He said that Mr. Fague's interest was no different than that of a person who owns a house north of New Braddock Road. He said that effectively Phase I and Phase II of the development are almost two different subdivisions. He noted that the State of Virginia does not have a public citizen right of action and a person must have an immediate, pecuniary interest in order to file an appeal. Mr. Farrell asked the Board to deny the hearing of the appeal, not only on the timeliness issue on Phase I, but also because of the lack of standing on Phase II.

Mr. Fague, speaking in rebuttal, stated that Phase II is part of the Winding Ridge Homeowners Association. He noted that he was a member of the Association and the driveway entrance would be maintained by the Association; therefore, the Association has a standard that does not meet the Code. He stated that if the developer does not upgrade the curbs and gutters, then the residents would have to do so. Mr. Fague expressed his belief the appeal was timely filed and that as a member of the Homeowners Association, he had the right to appeal Phase II.

Mrs. Harris inquired whether Mr. Fague had first lodged a complaint with the County or had he first questioned the legitimacy of the CG-7 curb and gutter in the Winding Ridge subdivision. Mr. Fague stated that he had filed the appeal after he had contacted several County officials and had been informed that CG-7 should not be used as driveway entrances. Mrs. Harris noted that the Public Facilities Manual stated that CG-7 is allowed. Mr. Fague said that he took extensive exception to that. Mrs. Harris explained the importance of what determination Mr. Fague was appealing. Mr. Fague stated that he was appealing the determination made of the Code and also the Zoning Enforcement complaint. Mrs. Harris stated that it was her belief that Mr. Fague was appealing the 1988 approval of CG-7 in Winding Ridge. Mr. Fague stated that he was contesting both the 1988 and the Phase II Site Plan approval.

Mrs. Thonen stated that it was disturbing to her that people would buy into a subdivision, wait until the Phase I was finished and Phase II under construction, and then appeal a site plan that had been approved in 1988. She explained to Mr. Fague that the Board of Zoning Appeals does not write the Code and suggested that his energy would best be put to use by having the Code amended. Mrs. Thonen said that she had driven to the subdivision and experienced no difficulty in entering or leaving a driveway. Mr. Fague stated that he had a fifty-name petition which stated that there was a problem with entering and leaving driveways.

Mr. Pammel stated that he understood the appellant's position in regard to the 1988 Site Plan. He explained that the only interested parties would initially be the developer, who would not appeal his own plans.

Mrs. Harris stated that the Public Facilities Manual was legislative action before the Board of Supervisors in which CG-7 was included as an operable curb and gutter; therefore, it was a determination based on approved methods of providing access to the townhouses.

Mr. Pammel stated that while he agreed with Mrs. Harris' statement, the documents submitted to the Board indicated that the CG-7 was modified and was not installed according to the standards. Mrs. Harris stated that if that were the situation, then it would be DEM's responsibility to rectify the problem and not the Board of Zoning Appeals' duty. Mr. Pammel said that DEM had refused to correct the problem, and Mr. Fague had a reasonable issue on which to base the appeal.

Mrs. Harris expressed her belief that Mr. Beben has merely reiterated the specifications on the site plan and that this reiteration could not be construed to be a determination. She emphasized the fact that Mr. Beben did not have the authority to change a site plan.

Mr. Pammel expressed his belief that Mr. Fague was not appealing the specifications on the site plan, but was appealing the fact that the CG-7 curb and gutters installed at Winding Ridge had been modified and were not the curb and gutters approved by the County and noted on the site plan.

In response to Mr. Hammack's question as to whether he represented the Homeowners Association, Mr. Fague said that the Association had not been turned over to the homeowners.

Vice Chairman Ribble noted that Mr. Pammel's motion had died for a lack of a second.

Mr. Pammel made a motion that the Board determine that the appeal was timely filed for the reasons stated in the earlier discussion. The motion died for lack of a second.

Mrs. Thonen made a motion that the site plan was issued in 1988, there was no evidence that the County wavered from the specifications on the site plan, and the appeal was not timely filed.

Mrs. Harris seconded the motion.

Mr. Fague requested that he be allowed to make a statement of rebuttal. The Chair agreed. Mr. Fague said that the staff report stated that it was the intent of the Board of

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Supervisors and the Planning Commission to approve CG-7 as a driveway entrance. He expressed his belief that staff had not researched the issue and staff had made an assumption regarding the intent. Again, Mr. Fague argued that while CG-7 was allowed on residential street, it is not allowed as a driveway entrance.

Mr. Hammack asked staff to clarify the issue as to whether the CG-7 installed at Winding Ridge met the Code. Mr. Winfield stated that the CG-7 had been constructed in accordance with the standards. He noted that public Facilities Branch of DEM had made periodical inspections to ensure the curb and gutters had met the Code. Mr. Winfield said that if Mr. Fague knew of any CG-7 curb and gutters that had not been constructed to Code, he would see that it was replaced.

In response to Mrs. Harris' question as to whether the curb and gutters had been installed prior to his purchase of the property, Mr. Fague said they were. Mrs. Harris again referred to the timeliness issue and expressed her concern with appealing the CG-7 curb and gutters, when it already existed.

In response to Mr. Kelley's question as to why he had purchased the property when it was unsatisfactory, Mr. Fague said he did not know it was a violation when he bought the house. He stated that it was a Code Enforcement complaint. Mr. Kelley expressed his belief that the Board could not hold a builder responsible for construction that took place three years ago.

Mr. Hammack asked if Mr. Fague had done a home inspection prior to purchasing the house. Mr. Fague stated that he had done a walk-through.

Mrs. Thonen expressed her belief that the various County representative had cooperated with Mr. Fague in order to resolve the issue. She noted the documentation and stated that she had never before witnessed a case that involved so much of County staff's time. She noted that after researching the issue thoroughly, the staff still concluded that the CG-7 curb and gutters were allowable and the CG-7 installed by the builder met the Code.

Mrs. Thonen stated that after researching the documentation, visiting the site, talking to various County officials, consulting legal authorities, she believed that the Board of Zoning Appeals did not have the authority to waive the 1988 approval. She made a motion to determine that the appeal was not timely filed.

Mrs. Harris seconded the motion.

Vice chairman Ribble called for discussion.

Mr. Hammack stated that he believed that Mr. Fague may have a private action such as a civil suit against the builder if he believed the house was not constructed in accordance with the contract and specification. He said that once the CG-7 had DEM approval and were found to be permitted by the Public Facilities Manual, the County inspector did not have the right to override the approval and to amend the plans. He stated that he believed the proper time to have discussed these issues would have been at the time of purchase. He further stated that Mr. Fague would only have an interest in Phase I of the subdivision and would not have a pecuniary interest in Phase II. Mr. Hammack expressed his support for Mrs. Thonen's motion.

Vice Chairman Ribble stated that the hearing should be opened so that speakers could testify to the timeliness issue.

Mrs. Thonen withdrew the motion so that the speakers could be heard. Mrs. Harris withdrew her second.

Vice Chairman Ribble called for speakers to the timeliness issue and the following citizens came forward.

Greg Peters, 14100 winding Ridge Lane, Centreville, Virginia, stated that he purchased his house in September of 1989 before construction had begun. He said that when he read the plans, he noticed on the details that DE-1 and TC-7 were specified and thought DE-1 was the specification for the driveway entrance. Mr. Peters stated that when he went to settlement in December of 1990, the builder had informed him that the exterior of the dwelling was not an item that he could review in the inspection.

In response to Mr. Hammack's question, Mr. Peters stated that although he had not contacted the appropriate County officials, had not sought the advice of counsel, and had gone to settlement voluntarily, the CG-7 curb and gutters were a constant irritation.

Luis Teran, 14098 Winding Ridge Lane, Centreville, Virginia, stated that he was one of the first people to purchase a townhouse and noted that five members of his family now owned houses. He explained that he did not realize that the CG-7 would be a permanent feature, but had believed they would be replaced after the construction was concluded.

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In response to Mr. Hammack's question as to what he expected the Board of Zoning Appeals to do, Mr. Teran said that he would like the Board to disregard the timeliness issue. Mr. Hammack explained that the law required that an appeal must be made within 30 days.

In response to Mr. Kelley's question as to whether any of the five townhouses were leased, Mr. Teran stated that only one was leased. Mr. Kelley stated that he believed that the issue should have been raised when Mr. Teran bought the first townhouse. In response to Mr. Kelley's question as to the time lapse between the purchase of the first and fifth townhouse, Mr. Teran stated that it was approximately eighteen months.

Mrs. Thonen made a motion to determine that the appeal was not timely filed. She stated that while she was reluctant to deny an appellant a hearing, the Board was bound by the law. She expressed her belief that the appellant had not presented evidence to substantiate that the appeal had been timely filed.

Mrs. Harris seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Pammel stated that he could not support the motion. He said that he believed that the appeal was timely filed.

Mr. Hammack stated that while he was sympathetic with the appellant, a ruling such as Mr. Pammel had suggested would allow a homeowner to challenge a DEM approval which had been made in previous years. It would challenge any inspection if sometime in the future a purchaser decided they did not like the materials that were installed under the existing Code. He stated that the Board has to accept the Public Facilities Manual as a correct and legislative act.

After a brief discussion, it was the consensus of the Board that they should not make a determination as to whether the Public Facilities Manual was correct.

The motion passed by a vote of 5-0 with Mr. Pammel voting nay and Chairman DiGiulian absent from the meeting.

Mr. Shoup addressed the Board and stated that DEM's determination on the use of the CG-7 curb and gutters was also an issue of the appeal. He said that the finding on Zoning Enforcement complaint #91-0110 was in dispute. Mr. Shoup explained that Zoning Enforcement had made a determination not to pursue the complaint and the Zoning Administrator had agreed with the position of the Director of DEM.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination not to pursue the matter.

Vice Chairman Ribble noted that the previous testimony related to the timeliness issue and that no testimony had been given regarding the complaint issue. Mr. Shoup stated that Mr. Hammack was correct in his belief that both issues were on the same application. It was the consensus of the Board to continue to allow additional testimony on the complaint issue.

Mr. Hammack withdrew the motion.

Vice Chairman Ribble called the appellant to the podium.

Douglas W. Fague, 14096 Winding Ridge Lane, Centreville, Virginia, addressed the Board. He stated that Zoning Enforcement did not take action on the complaint and he had been told that DEM had the responsibility to make the decision regarding Par. 11 of Sect. 11-102. Mr. Fague stated that Zoning Enforcement also refused to provide an interpretation, nor would they provide enforcement capabilities.

Mrs. Harris expressed her belief that legislatively, the Board could not determine whether the CG-7 curb and gutters was an appropriate curb and gutter. She explained to Mr. Fague that she had researched the issue thoroughly. Mr. Fague argued that the CG-7 curb and gutter was mountable for industrial vehicles only, and was not suitable for residential use. He disputed the Zoning Enforcement's decision that Par. 11 of Sect. 11-102 did not apply to private streets.

Mr. Shoup expressed his belief that the appellant's testimony was not material to the issue before the Board.

Vice Chairman Ribble stated that Mr. Fague had a time limit, but was free to follow any course of testimony he desired.

Mr. Fague stated that the CG-7 did not present a safe and convenient access to the driveway. He stated that various officials at Virginia Department of Transportation (VDOT) agreed with his conclusion that CG-7 was not intended for residential use and constituted a safety

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hazard. He presented photographs of Phase I and Phase II along with a petition with fifty-nine signatures in support of the appeal. In summary, Mr. Fague stated that it was his belief that CG-7 was a specific violation of Par. 11 of Sect. 11-102.

Mr. Shoup stated that it was the Zoning Administrator's determination that the use of CG-7 was in accordance with the Public Facilities Manual provisions as adopted by the Board of Supervisors. He stated that CG-7 was in compliance with Par. 11 of Sect. 11-102; therefore, no fault could be found with the Director of DEM's decision, and it was appropriate for Zoning Enforcement not to pursue the complaint.

Mrs. Thonen referred to the Zoning Administrator's advice to Mr. Fague as to the appropriate action to take in order to achieve changes in the Public Facilities Manual. She explained that the Board of Supervisors would have to amend the Public Facilities Manual to achieve the changes, Mr. Fague desired. Mrs. Thonen stated that the zoning inspectors' authority was limited to ensure that the legislative decisions were enforced.

Vice Chairman Ribble called for speakers to the request and the following citizens came forward.

Hoke Reed, 14097 Winding Ridge Lane, Centreville, Virginia, stated that the driveway entrance was not safe or convenient. He stated that although he had no problem maneuvering his Blazer, the bottom of his Firebird scrapped the curb.

Mrs. Thonen explained to Mr. Reed that even if the Board agreed with him that the driveway entrance was not suitable for his car, the Board did not have the authority to rule on the Public Facilities Manual.

Mr. Hammack stated that although the appellant had alleged that the driveway is not safe, no evidence had been submitted to substantiate the allegations that there had been deviation to the requirement of CG-7 curb and gutters. He said that he would be very concerned if the inspectors would approve construction that was not in compliance with the Public Facilities Manual. He noted that Mr. Winfield had testified that the inspectors had found no violations. He explained that the Board did not have the authority to change the Public Facilities Manual.

Mr. Reed stated that he did not know if the CG-7 was built in compliance but he did not like the situation.

Ebtihag K. Hammoud, 14049 Winding Ridge Lane, Centreville, Virginia, addressed the Board. She stated that before settlement on the townhouse, her husband had complained about the driveway entrance and it was found to be one-half inch higher than allowed. She stated that the builder had not corrected the violation.

Speaking in rebuttal, Mr. Fague disputed staff's position that the Board of Supervisors and the Planning Commission were the only bodies that had the authority to rectify the situation. He stated that staff did not research the intent of the Board of Supervisors or the Planning Commission when they wrote that section of the Public Facilities Manual.

Mr. Shoup stated that no research had been done to conclude how the Board of Supervisors or the Planning Commission had arrived at their final result. He said he had informed Mr. Fague that the Board of Supervisors are presumed to know.

Mrs. Thonen stated that she had researched the matter and CG-7 had gone through hearings before both the Board of Supervisors and the Planning Commission.

Mr. Fague stated that several VDOT officials had informed him that they believe that CG-7 constituted a hazard. He asked that the Board of Zoning Appeals defer their decision until they conferred with VDOT. Mr. Fague again stated that CG-7 was not designed for residential use, created a safety hazard, and was not designed to be used in conjunction with driveway entrances.

Mrs. Thonen stated that private roads do not have to be built to VDOT standards.

There being no further testimony to the request, Vice Chairman Ribble closed the public hearing.

Mrs. Thonen made a motion to uphold the Zoning Administrator. She stated that she had sympathy for the appellant, but the Public Facility Manual listed CG-7 as an approved use for townhouse developments to provide safe and convenient access in accordance with the Zoning Ordinance. She said that while she understood the citizen concerns, the Board did not have the authority to amend the Public Facility Manual or delete any of the provisions. Mrs. Thonen expressed her belief that when Zoning Enforcement made a ruling, it must be based on the standards.

Mrs. Harris seconded the motion.

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Mr. Hammack stated that he would be agreeable to a deferral so that the Board could investigate the matter more closely.

Mrs. Harris stated that the question was whether Zoning Administration has the right to have a final determination as to whether DEM is appropriately applying the Public Facilities Manual to the Zoning Ordinance. She said that DEM has the responsibility of administering the Public Facilities Manual and that Zoning Administration should only become involved when an interpretation is required. She expressed her belief that the Board of Supervisors had made the interpretation on the CG-7 when they determined that it was a safe and accessible use and DEM had the responsibility to implement the Board of Supervisors' decision. Mr. Hammack stated that the testimony had indicated that the CG-7 curb and gutter had not been constructed to Code. Mrs. Thonen expressed her belief that if that were the case, the builder should be taken to court.

The motion passed by a vote of 3-2 with Vice Chairman Ribble, Mrs. Harris, and Mrs. Thonen voting aye; Mr. Hammack and Mr. Pammel voting nay. Mr. Kelley was not present for the vote and Chairman DiGiulian was absent from the meeting.

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The Board recessed at 12:30 p.m. and reconvened at 12:40 p.m.

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Page ~~469~~, July 30, 1991, (Tape 3), Scheduled case of:

11:10 A.M. HARVEY G. AND JATON L. WEST, VC 91-S-019, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory use to cover more than 30% of minimum required rear yard (no more than 30% coverage allowed by Sect. 10-103) on approx. 11,007 s.f. located at 11313 Nancy Ann Way, zoned R-3, WS, Springfield District, Tax Map 56-2((8))18. (DEFERRED FROM 6/25/91 FOR INTERPRETATION AND DECISION - INTENT TO DEFER TO 7/30/91 AT 11:10 A.M. ISSUED 7/16/91)

Vice Chairman Ribble noted that the case had been deferred for decision only and asked for staff's comments.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Zoning Administrator had made the interpretation which was contained in the memorandum to the Board dated July 24, 1991. She noted that it was the Zoning Administrator's determination that the applicants' multi-purpose court may not cover more than 30 % of the required rear yard and does require a variance.

Mr. Pammel stated that he would accept the Zoning Administrator's interpretation as rendered in the memorandum dated July 24, 1991.

Mrs. Thonen made a motion to deny VC 91-S-019 for the reasons reflected in the Resolution.

The applicant, Harvey West, 11313 Nancy Ann Way, Fairfax, Virginia, asked for further guidance. Ms. Kelsey recommended that he contact the Zoning Administrator's office.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-019 by HARVEY G. AND JATON L. WEST, under Section 18-401 of the zoning Ordinance to allow accessory use to cover more than 30% of minimum required rear yard, on property located at 11313 Nancy Ann Way, Tax Map Reference 56-2((8))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 July 30, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3, WS.
3. The area of the lot is 11,007 square feet.
4. The Zoning Ordinance clearly states that 30 percent of the yard cannot be covered for a designated use.
5. The requirements necessary for the granting of a variance have not been met.

Page 470, July 30, 1991, (Tape 3), (HARVEY G. AND JATON L. WEST, VC 91-S-019, continued from Page 469)

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 which carried by a vote of 4-1 with Mr. Hammack voting nay. Mr. Kelley was not present for the vote and Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1991.

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Page 470, July 30, 1991, (Tape 3), Action Item:

Approval of Resolutions from July 23, 1991 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 470, July 30, 1991, (Tape 3), Action Item:

Approval of Minutes from  
May 28, 1991, June 4, 1991, and July 2, 1991 Hearings

Mr. Pammel made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 470, July 30, 1991, (Tape 3), Action Item:

Request for Scheduling of Appeal  
Goodridge Drive associates Limited Partnership

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and recommended a

Page 471, July 30, 1991, (Tape 3), (GOODRIDGE DRIVE ASSOCIATES LIMITED PARTNERSHIP APPEAL, continued from Page 470)

hearing date of October 29, 1991, at 9:00 a.m. She stated that the appellant concurred with the date.

Mr. Pammel made a motion to schedule the case on the suggested date and time.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 471, July 30, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing  
Barbara Cenitch, VC 91-C-083 and SP 91-C-039

Mr. Hammack made a motion to deny the out-of-turn hearing. Mrs. Harris seconded the motion. She stated that the request involved an accessory dwelling and was not an emergency. Mrs. Thonen noted that with the August recess and the current workload, the case could not be heard sooner than scheduled. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 471, July 30, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing  
First Baptist Church of Merrifield, SPA 87-P-073-1

Mr. Pammel made a motion to approve the request. The motion died for lack of a second.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the applicant had given no justification for the request. She noted that they are currently operating and would continue to do so until the public hearing. She asked the Board to defer decision on the request until the next public hearing.

The Chair ruled that the request be deferred for decision until August 6, 1991.

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Page 471, July 30, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing  
Fairfax County Council of the Arts,  
Capital Children's Museum and Big Apple Circus, SP 91-P-041

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the applicants were present to answer questions. She explained that although the event had been advertised and promoted, the applicant had just been able to locate a site for the circus. Ms. Kelsey said that although the application had not been officially accepted, the only outstanding issue was the affidavit and suggested a date of September 10, 1991.

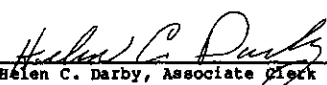
Mr. Pammel stated that the applicant had attempted to obtain an administrative decision but were informed that a special permit would be required. Ms. Kelsey explained that because the circus would last more than twenty-one days, the special permit was needed.

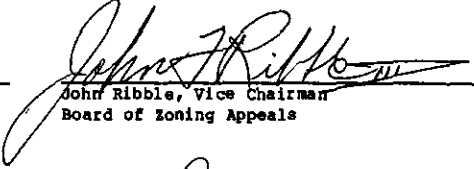
In response to Mrs. Harris' question as to whether staff could accommodate the request, Ms. Kelsey said that although it would be difficult, it would not be impossible.

Mrs. Thonen made a motion to grant the out-of-turn hearing for the suggested date. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: October 22, 1991

APPROVED: October 29, 1991